

CASE NO.:
Appeal (civil) 2717 of 2004

PETITIONER:
Lalit Mohan Pandey

RESPONDENT:
Pooran Singh & Ors.

DATE OF JUDGMENT: 27/04/2004

BENCH:
CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:
J U D G M E N T

(@ S.L.P. (CIVIL) NO. 19748/2003)

S.B. SINHA, J :

Leave granted.

Application of 'Hare System' in Municipal Election is the question involved in this appeal which arises out of a common judgment and order dated 30.09.2003 passed by the High Court of Uttaranchal at Nainital in A.O. No. 196 of 2003.

BACKGROUND FACTS:

An election was held for the post of Adhyaksha, Zila Panchayat Champawat situated in the State of Uttaranchal. The appellant, the first respondent and one Bhagirath Bhatt contested therefor. The appellant got six first preference votes; whereas the first respondent got five first preference votes and the said Bhagirath Bhatt received one. Upon elimination of Bhagirath Bhatt, the appellant and the first respondent obtained six votes each. The election was held on the basis of proportionate representation purported to be by means of a single transferable vote by ballot.

By reason of an order dated 24.5.2003, the Returning Officer declared the said office to be vacant on the purported ground that both the contesting candidates received equal votes as also on the ground that none of them secured the quota which was said to be mandatory in nature.

An election petition questioning the said decision was filed before the District Judge, Champawat, which was allowed. Aggrieved by and dissatisfied therewith, an appeal was filed thereagainst by the Respondent herein before the High Court of Uttaranchal at Nainital which by reason of the impugned judgment has been allowed.

Hence this appeal.

ELECTORAL PROCEDURE:

The election to the said post is governed by the

provisions of Section 237 of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (for short 'the Act'). The Act has been adopted by the State of Uttaranchal. The rules known as Uttar Pradesh Zila Panchayats (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Disputes) rules, 1994 (for short 'the Rules') were framed under the provisions of Section 237 of the Act. Chapter IV of the Rules relates to election of Adhyaksha. In terms of Rule 33, an election petition calling in question the election of Adhyaksha or Up-Adhyaksha may be presented to the Judge at any time within 30 days from the date of result of the election. Rule 34 provides for requirements to specify the ground (s) on which the election petition of the returned candidate can be filed which includes giving of a summary of the circumstances seeking to justify the same. Rule 35 of the Rules enables the election petitioner to claim for the following declaration:-

"(a) that the election of the returned candidate is void.

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected."

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Article 243C of the Constitution of India reads thus:

"243C. Composition of Panchayats.--(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats; Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation--

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the

district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within\027

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of--

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof."

Rule 38 provides for the procedure for holding election. Rule 40 empowers the District Judge to pass a final order on an election petition. Rule 43 specifies the procedure in case of equality of votes. Rule 47 provides for appeal.

Rule 26 of the Rules reads as under:

"After all the valid ballot papers have been arranged in parcels according to the first preference recorded for each candidate, the Returning Officer shall proceed to determine the result of the voting in accordance with the instructions contained in Schedule II to these rules."

The relevant clauses of Schedule II read as under:

"(2) the expression "first preference" means the number 1 set opposite the name of any candidate, the expression "second preference" similarly means the number 2, the expression "third preference" the number 3, and so on;

(3) the expression "next available

preference" means the second or subsequent preference recorded in consecutive numerical order for a continuing candidate, preferences for candidates already excluded being ignored;

(4) the expression "unexhausted paper" means a ballot paper on which a further preference is recorded for a continuing candidate:

Provided that a paper shall be deemed to be exhausted in any case in which \026

(a) the names of two or more candidates whether continuing or not are marked with the same figure, and are next in order of preference; or

(b) the name of the candidate next in order of preference whether continuing or not, is marked by a number not following consecutively after some other number on the ballot paper or by two or more numbers.

2. Ascertain the number of first preference votes secured by each candidate and credit him with that number.

3. Add up the numbers so credited to all the candidates, divide the total by two and add one to the quotient disregarding any remainder. The resulting number is the quota sufficient to secure the return of a candidate at the election.

4. (1) If there are only two contesting candidates then \026

(a) if one candidate gets larger number of first preference votes than the other, declare the former as elected, or

(b) if both the candidates get equal number of first preference votes, determine the result by drawing of lots. Exclude the candidate on whom the lot falls and declare the other candidate as elected.

(2) If there are more than two candidates then \026

(a) If one of them is found to secure first preference votes equal to or more than the quota determined under instruction No. 3, declare him as elected, or

(b) If none of them secures first preference votes equal to or

more than the quota aforesaid, proceed according to the instructions hereinafter taking into consideration second and subsequent preferences as may be necessary.

5. If at the end of the first or any subsequent count the total number of votes credited to any candidate is equal to, or greater than the quota, or there is only one continuing candidate, that candidate is declared elected."

Illustration appended to Schedule II reads as under:

"Illustration \026 Suppose there are four candidates A, B, C and D and the number of first preference votes secured by them are \026

A = 12
B = 11
C = 7
D = 5

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The quota will be $= 35/2+1 = 18$.

No candidate having obtained votes equal to or over the quota at the first count the candidate having the lowest votes, namely, D will be excluded.

Suppose there are second preferences marked on all four ballot papers in the parcel of D as below:

A = 2
B = 2

The fifth ballot paper will be placed in the sub-parcel of exhausted papers and the two papers recording second preference for A and B each will be placed in separate sub-parcels for A and B; each of them will be credited with two additional votes. The votes for A, B and C will now be

A=12+2
B=11+2
C=7

Since at the end of the second count no candidate be declared elected, the candidate C having the lowest votes out of the three continuing candidates will now be excluded and his votes transferred to other continuing candidates A and B.

Suppose second preferences are recorded in all the ballot papers in the

parcel of C and are as below:

A = 4

B = 3

After crediting A and B with their additional votes A would have secured 18 votes, that is equal to the quota and B 16 votes. A will therefore be declared elected."

In Clause 3 of the Schedule it is provided how the quota will be fixed. It also provides that the resulting number which is the quota sufficient to secure the return of candidates at the election. It is a mandatory provision but the same would apply when one can be declared elected under clause 3 of Schedule II. Clauses 4, 5 and 6 provide procedure for elimination of candidates and counting of votes in first, second and third rounds etc. The illustration appended to clause 5 also demonstrates that for the purpose of achieving the ultimate result, adherence to quota rule is not necessary.

The illustration itself shows that a situation may arise where none of the candidates secure the requisite number of first preference votes so as to fulfill the criteria or quota. In the illustration itself the quota was fixed at 18, none of the 4 candidates had secured quota. Still the continued processes are required to be undertaken which should result in declaration of election.

HIGH COURT:

Before the High Court a question of maintainability of the election petition and consequently that of appeal was raised. The High Court held that the provisions of the Act and the Rules relating to filing of the election petition and the appeal should receive benevolent construction. The High Court, however, proceeded on the basis that whether the election petition before the District Judge was maintainable or not or whether the appeal filed thereagainst in the High Court was maintainable or not; as two wrongs do not make one right; the appeal was to be decided by the High Court on merit. Relying on or on the basis of the decision of this Court in *Jaidrath Singh & Anr. Vs. Jivendra Kumar & Ors.* [(2000) 3 SCC 154] over the decision of this Court in *University of Poona and Others Vs. Shankar Narhar Ageshe and Others* [(1972) 3 SCC 186] the High Court allowed the appeal and set aside the impugned order dated 28.07.2003 passed by the District Judge holding that the Returning Officer was right in declaring the post to be vacant.

SUBMISSIONS:

Mr. Dinesh Dwivedi, learned senior counsel appearing on behalf of the appellant would submit that the High Court committed a manifest error in interpreting the provisions of the Second Schedule. According to the learned counsel, the Second Schedule provides for election of a candidate and, thus, the quota rule as adumbrated in the Second Schedule may not be applicable in a case of this nature where one or more candidates is a continuing candidate.

The process of elimination, Mr. Dwivedi would submit, should continue till the last pursuant whereto the candidate who had secured lowest number of first preference votes

should be excluded and only when the number of first preference votes secured by two or more candidates are the same, a decision is to be taken by lot as to which of them shall be excluded.

Mr. Kailash Vasdev, learned senior counsel appearing on behalf of the first respondent, on the other hand, would support the judgment of the High Court contending that in this case neither the appellant nor the first respondent obtained the required quota. It was urged that right of a candidate to contest an election being a statutory right, the procedure laid down therein must be scrupulously complied with. Clause (3) of the Schedule, Mr. Vasdev would submit, is mandatory in nature and, thus, unless the candidate receives sufficient votes to fulfil the requirement of quota as is required under the Rule, he cannot be declared elected. The illustration appended to the Second Schedule, the learned counsel would urge, does not provide for declaration of a candidate to be successful in election who has not secured any quota and in that view of the matter, the impugned judgment cannot be faulted with.

CONSTITUTIONAL AND LEGISLATIVE SCHEME:

Constitution 73rd Amendment Act, 1992 was enacted with a view to provide for democracy at the grass-root level. 'Panchayat' is an institution of self-governance at the village, intermediate and district levels. It is required to be constituted in accordance with Part IX of the Constitution of India. Article 243C (3) of the Constitution provides that the Legislature of a State may by law provide for the representation of a Chairperson of the Panchayats at the village level, in the Panchayats at the intermediate level or in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level.

The Adhyaksha Panchayat at the district level is to be elected by and from amongst the elected members. The provisions providing for procedures for holding the election must be construed having regard to the necessity of establishing democracy at the grass-root level, being a constitutional requirement. The State Act and the rules applicable therefor must, therefore, be interpreted having regard to the constitutional scheme.

HARE AND CLARK PRINCIPLE:

Whereas the election of office by majority is the normal rule, a single transferable vote system was developed in Denmark and Britain and is known as Hare system, named after Thomas Hare, an Englishman one of its developers. Andrew Inglis Clark, Tasmanian Attorney-General 1888 and a member of the Tasmanian Parliament, introduced a modified version of the Hare system into Tasmanian law in 1896. This system is now known as the Hare-Clark electoral system.

Every voter under the Hare system has a single vote. On the ballot paper, voter has to rank all or any of the competing candidates giving them preferences 1,2,3 and so on. A quota is fixed which is the minimum number of votes which cannot be secured by more candidates than the number of seats. When a candidate secures votes equal to this quota, he is declared elected. If a candidate receives more votes than the quota, then he is declared elected and his surplus votes (votes exceeding the quota) are transferred to other candidates in proportion of second preference

indicated in his ballot papers. After surplus votes of all candidates are transferred, if all seats are not filled in then candidate who has polled lowest votes is eliminated and are continuing (are not elected or eliminated). This process goes on till all seats are filled in by completion of quota or candidates remaining do not exceed seats still to be filled in. This system ensures actual use of maximum number of votes polled.

The system poses a complex system and difficult for use where large number of voters are illiterate. In a complex society like India where divergent religious, linguist or cultural groups and large number of political parties exist, use of single transferable system in elections to legislatures and other bodies is although advocated but the method of voting and computations in this system sometimes renders it unsuitable for an election involving masses. One does not know if feeling of segregation from other groups which is already there may be aggravated if this system is employed. (See Law of Elections by Narendra Chapalgaonker, 2nd edition)

The purpose of the Hare system is intended to secure representation of every shade of the electorate's opinion in direct proportion to its numerical strength.

APPLICATION OF THE RULE:

The Hare-Clark electoral system is a type of proportional representation system also known as the Single Transferable Vote (S.T.V.) method. Under this system, electors vote by showing preferences for individual candidates. In order to be elected, a candidate needs to receive a quota votes. Each elector has a single vote, which can be transferred from candidate to candidate according to the preferences shown, until all the vacancies are filled.

As to how Single Transferable Vote works, has been explained by Vernon Bogdanor at page 81 of his book title "What is Proportional Representation/" as follows :

a) In that system, voters mark preferences for candidates in the order of their choice by using the numbers 1,2, 3, 4, 5 and so on. If there are five vacancies, voters are instructed to show five preferences; if there are seven vacancies, voters are instructed to show seven preferences.

b) In order to get elected a candidate has to receive a quota of votes. However, he may be elected without a quota. This can happen when the number of candidates remaining in the count, who have not been elected or excluded (continuing candidate) is equal to the number of vacancies that remain to be filled. Suppose there are two vacancies. For the said two vacancies, suppose there are five candidates. One of them attains the exact quota, then he stands elected. However, the remaining candidates do not secure the quota. Therefore, one vacancy out of two remains unfilled. For that vacancy, the candidate with the smallest number of votes is excluded and his votes are distributed to continuing candidates according to the remaining preferences. The eliminated candidate with smallest number of votes is called "excluded candidate". Votes of such excluded candidates

are distributed to the continuing candidates. If in the process, any continuing candidate secures the quota, he fills up the remaining vacancy. However, if despite the addition of transferred votes, the remaining continuing candidates do not secure the quota then Returning Officer has to continue to apply the principles of elimination till the number of continuing candidates in the count is equal to the vacancy that remains to be filled. Therefore, even under the Hare system, a candidate can be elected without a quota. It operates at two levels. In cases where a candidate receives votes in excess of the quota the said system prevents wastage of surplus votes by transfer of surplus in favour of continuing candidates. In cases where the quota cannot be attained, it eliminates the candidates having least number of votes, by principle of elimination and the votes of such excluded candidates are distributed to the remaining continuing candidates so that the resultant number is equal to the vacancy which remains to be filled.

In short, the Hare system works on two principles, namely, transfer of surplus votes and transfer of votes of eliminated candidates. In the present case, we are concerned with only one vacancy and three candidates and therefore the principle of transferring the votes of eliminated candidates alone is applicable.

How is a candidate elected?

A candidate is elected when his/her total number of votes equals or exceeds the quota.

What is the quota?

The quota is the lowest number of votes a candidate needs to be certain of election.

To calculate the quota, the number of formal votes is divided by one more than the number of candidates to be elected (rounded up to the next whole number).

If five candidates each receive a quota (just over one sixth of the formal vote) then less than one quota of the votes remain.

Is a quota rule mandatory?

The system states that it is always not necessary to get a quota.

In House of Assembly elections, it is common that the last elected member in a division is elected without obtaining a quota. In some cases the last two elected members in a division are elected without each obtaining a quota.

During the distribution of preferences, some votes are "lost" from the count. A small number are lost due to rounding of fractional numbers. A more significant number of votes are "exhausted" toward the end of the count, as many ballot papers do not show a preference for any remaining candidate.

Where the contest for the last seat is close, it is common for the remaining two candidates to both have less than a quota. The candidate with the least votes is excluded, and the other candidate elected without reaching the quota. The more votes that are lost during the scrutiny, the more likely that not all elected members will obtain the quota.

A less common situation occurs where remaining three candidates are contesting the last two seats. In this case,

the candidate with the least votes is excluded, and the other two candidates elected without either reaching the quota.

Transfer Values

Ballot papers and votes are different.

Ballot papers are the medium from which candidates receive votes. The original value of a ballot paper is 1 vote, however, this can change during a scrutiny.

To distribute surplus votes the last parcel of ballot papers must have a new (reduced) transfer value. This fractional transfer value is calculated as follows:

Transfer Value =
$$\frac{\text{Surplus Votes}}{\text{Number of ballot papers in the last parcel}}$$

(truncate to four decimal)

After each count, the total number of votes counted to each continuing candidate is recalculated. Any continuing candidate who has reached the quota is declared elected and does not continue in the scrutiny.

The next count

When more than one candidate is elected with a surplus, each surplus is redistributed in order of election as separate counts.

Once all surpluses have been distributed, the candidate with the fewest total votes is declared excluded, withdrawn from the scrutiny and all of his/her ballot papers are redistributed to continuing candidates.

Excluded candidates

The exclusion of a candidate can take many counts to complete.

When a candidate is excluded, ballot papers are redistributed in the order, and at the same transfer value, they were received by the excluded candidate. Each parcel of ballot papers is distributed as a new count.

After each count, each continuing candidate's total number of votes is recalculated. Where a continuing candidate reaches the quota, he/she is declared elected and withdrawn from the scrutiny before the next count commences.

Once the exclusion is complete, distribute the surplus of any candidate(s) elected during the exclusion (in order of election). Otherwise exclude the continuing candidate with the fewest total number of votes.

When does a Hare-Clark scrutiny stop?

The process of distributing surplus votes from elected candidates and excluding the candidate with the fewest votes continues until all vacancies are filled.

In the case of the Tasmanian House of Assembly, the scrutiny stops as soon as five candidates are declared elected.

Proportional Representations:

Election of an alderman of a county council or a Mayor depends upon the Statute governing the field. Section 14 (1) & (2) of the Local Government (Miscellaneous and Previous Act, 1953) by way of example lays down the procedure for an alderman of a county council had been laid down thus:

"Every person entitled to vote may vote for any number of persons, not exceeding the number of vacancies to be filled, by signing and delivering at the meeting to the persons presiding thereat a voting paper containing the full names and places of residence and descriptions of

the persons for whom he votes.

The procedure of declaring the result of an aldermanic election was altered by section 14 of the Local Government (Miscellaneous Provisions) Act, 1953, formerly all the voting papers had to be read out in full but the new procedure is as follows.

The person presiding must ascertain the votes given to each person and in the minutes of the meeting there must be included the full names, residences and descriptions of the persons to whom votes were given and the names of the persons by whom the votes were given.

In the case of equality of votes, the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote. This includes the chairman, even though an alderman.

As many persons as there are vacancies to be filled, being the persons who have the greatest number of votes, shall be declared by the person presiding at the meeting to be elected."

(See Local Government Elections by Schofield, Fourth edition)

It is interesting to note that the proportional representation doctrine in some jurisdiction has been declared ultra vires by the American Courts. In 123 American Law Reports (1939), page 235, it is stated:

"Elections, Section 35 \026 proportional representation- constitutionality.

Provisions of proposed legislation for establishment of system of proportional representation (known as Hare system) for electing nine members of city council, which in effect allows to the elector only one effective vote for only one councilman are repugnant to the constitutional provisions guaranteeing right of citizens under conditions of qualification specified therein to vote in the election of all civil officers and on all questions in all legally organised town, ward, or district meetings."

At page 252 of the said book, by way of Annotation, it is stated:

"Introduction

This annotation supplements that in

110 ALR 1521.

The Mechanics of the Hare System, which appears to be the only system of proportional representation which has come before the courts of last resort of this country up to the present time, are outlined in the original annotation in 110 ALR on pp.1521 and 1522, and readers interested in the details of the systems are referred to the pages cited.

Constitutionality-proportional representation.

(Supplementing annotation in 110 ALR 1522)

Prior to the decision s in OPINION TO THE GOVERNOR (R.I.) (reported herewith) ante, 235, the courts were apparently evenly divided on the question of constitutionality of statutes making provisions for proportional representation in elections. As will be observed, the Supreme Court of Rhode Island in that case distinguished the New York decision upholding the validity of the statute and took the view that the Hare System of proportional representation, which the legislature was seeking to incorporate into an amendment to the charter of the City of Providence, was violative of a section of the state Constitution providing that citizens meeting certain residence qualifications should "have a right to vote in the elections of all civil officers and on all questions in all legally organized town, ward or district meetings."

The position taken by the new York Court of Appeals in Johnson v. New York (1937) 274 N.Y. 411, 9 N.E. (2d) 30, 110 ALR 1502, the case to which the original annotation is appended, that there is nothing in the provisions of the New York Constitution relating to elections which render invalid the proportional representation method of electing municipal officials was reaffirmed in Johnson v. Etkin (1938) 279 N.Y.1, 17 N.E. (2d) 401, in connection with a proposed change of the charter of the City of Schenectady which introduced the proportional representation system to that municipality. The primary controversy in this case, however, revolved around the power of a municipality which had adopted a plan of government offered under the Optional City Government Law to amend its charter within a certain time after the adoption of such plan by means of a local law adopted under the Home Rule Amendment to the Constitution, or by proper steps taken under the City Home Rule Law.

In Section 273 of American Jurisprudence 2d, it is stated:

"The expression "proportional representation" is a generic term and applies to different systems of voting which, while similar to each other in essentials, vary considerably in detail. One system, commonly known as the single transferable vote or "Hare system", is usually applied to the election of a legislative board of body. Under this system candidates are not elected by their obtaining a majority or plurality of the votes cast, but by their obtaining a quota of a designated number of votes or a certain proportion of the entire vote in which electors are permitted to express second, third, or additional choices. So that an elector would not waste his vote, if the candidate for whom he has expressed his first choice does not need his vote, the surplus votes are distributed in accordance with the indicated second choices among candidates whose quotas have not been filled. If enough candidates are not elected by this process, the candidate with the smallest number of first choices is then dropped and his votes are distributed in the same way. This process of elimination goes on until enough candidates have filled their quotas or until the successive eliminations have left no more than enough to fill the vacant positions. This system of voting has been upheld in some jurisdictions against constitutional objections. But in others it has been held to contravene constitutional provisions relating to the right of suffrage. For example, it has been held that by allowing only one effect vote for one officer in an election of several such officers, proportional representation is repugnant to a constitutional provisions guaranteeing qualified citizens the right to vote in the election of all civil officers and on all questions in all legally organised town, ward, or district meetings.

How the Courts should read the system:

Although Hare system of proportional representation has been made applicable in the instant case, the Court has to bear in mind that only one candidate is required to be elected whereafter only a District Panchayat would be constituted. The scheme of the Constitution and the statute is not that in case of persons securing equal votes, a re-election shall be held which may also yield similar result. Experiences show that even after holding repeated elections, the same problem of two candidates securing same number of votes may be felt as a result whereof constitution of a District Panchayat would become a difficult task. The

mechanism to elect a Chairman is a delicate task.

The provisions made in the Rules provide for different methods to be adopted at different stages. Securing of the quota may be necessary at one stage but may not be so necessary at a subsequent stage to which we would advert to a little later.

PRINCIPLES OF INTERPRETATION:

It is now well-settled that object of the Act must be given effect to. The object of the Act being to elect an Adhyaksha, constructions of the rules should be made in such a manner which would not negate the same. An interpretation of the rules which would lead to election of one of the candidates should be adhered to and for that purpose, if necessary, the doctrine of purposive construction may be taken recourse to.

It is trite that for the purpose of interpretation a statute is to be read in its entirety and all efforts must be made to give effect to the statutory scheme. [See High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], Indian Handicrafts Emporium and Others vs. Union of India and Others [(2003) 7 SCC 589], Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. [JT 2003 (9) SC 109 = 2003 (9) SCALE 713], Ashok Leyland Vs. State of Tamil Nadu and Anr. [2004 (1) SCALE 224], State of West Bengal and Ors. Vs. Sujit Kumar Rana [2004 (1) SCALE 641], Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd. Baroda [2004 (3) SCALE 546] and Secretary, Department of Excise & Commercial Taxes and Others Vs. Sun Bright Marketing (P) Ltd., Chhattisgarh and Another [(2004) 3 SCC 185].

The object underlying the statute is required to be given effect to by applying the principles of purposive construction.

Francis Bennion in his treatise 'Statutory Interpretation' at page 810 described purposive construction in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by \026

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

Holding of elections in a District Panchayat is mandatory. The right to contest an election although flows from a statute and regulated thereby, it would not be correct to contend that a strict construction of the statutory provisions is called for.

The principle of literal interpretation to the

provisions of the rules and procedures laid down therein cannot be applied for more than one reason.

A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfill the object and purport of the legislative intent.

The question as to when there can be a tie between two candidates leading to a deadlock must be judged on the fact situation obtaining in a particular case. If by a process of interpretation such consequences can be avoided, the same should be preferred to application of any other principle of interpretation of statute.

It must also be borne in mind that elector's votes are not to be wasted. The possibility of a tie would be very high if strict interpretation of the rule is resorted to. For proper construction of a statute the Courts must also take into consideration the social milieu. The courts cannot ignore that local, caste and political affinity play a major role in our electoral system.

It is furthermore that unreasonable result or result which create uncertainty has to be eschewed.

In *Mahadeo Oil Mills and Others Vs. Sub-Divisional Magistrate Araria and Others* [AIR 1978 Patna 86], it was held:

"It was stated in this way by Parke B.:
'It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.' 'If', said Brett L.J. 'the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning.'"

Even a construction which would make the provisions more effective and workable must be adopted and to see if it is possible to be done without doing too much violence of the language used.

Every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

This would be more so if literal construction of a

particular clause leads to manifestly absurdity or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* [1966 1 QB 878] "is not to be imputed to a statute if there some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result: we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction.

HOW SHOULD WE INTERPRET?

Interpretation of a provision as regard electoral process framed to make certain conditions requires construction of principles having regard to the backdrop thereof.

Hare Principle was made applicable when a large number of posts were required to be filled up. The authorities available as regards the applicability of said principle, some of which are noticed hereinbefore do not suggest that the said principles are applied in a case where the number of voters are limited and only one post is to be filled up. It also appears that the Legislatures of different countries had laid down different procedures for holding election which necessarily would depend upon the need of the electoral college. The court cannot also ignore the fact that questions have been raised as regards the suitability of the said process in election involving illiterate masses. In some jurisdictions, as noticed, the Hare principle has also been declared unconstitutional.

A continuing candidate has been defined to mean not elected and not excluded from the poll at any given time. The expression "at any given time", in our opinion, should mean at all point of times which in turn would mean that till that time when the results can be declared. Clause (3), of course, provides for a minimum quota but applicability thereof should not be stretched to all stages of election. Clause (4) as such does not speak of quota. It speaks of declaration of a candidate who gets larger number of first preference votes than the other and in case both get equal number of first preference votes, one candidate has to be excluded on whom the lot falls and the other candidate is required to be elected.

By clause (5) two different situations have been taken care of :

- (i) If at the end of the first or any subsequent round, the total number of votes credited is equal to or greater than the quota and
- (ii) When there is only one continuing candidate that candidate is declared elected.

It is not conjunctive but disjunctive. A continuing candidate may, therefore, also be elected who might not be credited equal to or greater number of votes than the quota. Clause (6) provides for the formula as to how an exclusion can take place.

Sub-clauses (a), (b) and (c) of Clause (6) are disjunctive although the expression 'and' has been used. Clause (6) again provides for exclusion by application of

different formulae which would appear from the subsequent paragraph which is as follows:

"If, when a candidate has to be excluded under clause (a) above, two or more candidates have been credited with the same number of votes and stand lowest on the poll, exclude that candidate who had secured the lowest number of first preference votes, and if that number also was the same in the case of two or more candidates, decide by lot which of them shall be excluded."

Sub Clause (a) of clause 6 does not speak of a quota. Thus, when a candidate has to be excluded who up to that stage has been credited with the lowest number of votes, two or more candidates might have been credited with the same number of votes and they may stand lowest on the poll then one of the candidates has to be excluded who had secured the lowest number of first preference votes. Only in the event, the first preference votes secured by both the candidates are the same then and then only the determination by the lot has to be taken for the purpose of exclusion.

The illustration appended to the rules does not envisage such situation. Illustration although are of relevance and have some value in the construction of the text of the sections but they cannot have the effect of modifying the language of the statute and they cannot either curtail or expand the ambit of the statute.

In Shambhu Nath Mehra Vs. The State of Ajmer [AIR 1956 SC 404], the law has been stated in the following terms:

"13. We recognise that an illustration does not exhaust the full content of the section which it illustrate but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose exercise due diligence, as to the accused, the facts cannot be said to be especially" within the knowledge of the accused. This is a section which must be considered in a common sense way; and the balance of convenience and the disproportion of labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts."

Rules, if given the aforementioned meaning, in our opinion, would subserve the object of the Act and, thus, would fulfil the constitutional and statutory scheme. In the end, the result for which an election is held must be achieved.

APPLICATION OF THE RULE:

In University of Poona (supra) a 3-Judge Bench of this Court held:

"11. Election by Proportional representation by means of a single transferable vote by ballot is often described as the Hare system of proportional representation named after the English Political reformer Thomas Hare. This system of election is based on a quota determined by the following formula. The total votes cast is divided by the number of seats to be filled plus one, and one is added to the quotient. If 100,000 votes are cast and 4 seats are to be filled, divide by 5 to get a quotient of 20,000, then add 1 to get 20,001, which is the quota. A candidate receiving the quota of first-choice of votes is elected. Under this system electors express first second; third or additional choices according to the number of candidates. An elector does not waste his vote. If the candidate for whom he has expressed his choice, does not need his vote, the surplus votes are distributed in accordance with the indicated second choices among candidates whose quotas have not been filled. If enough candidates are not elected by this process the candidate with the smallest number of choices is then excluded and his votes are distributed in the same way. This process of exclusion or elimination goes on until enough candidates have filled their quotas or until the successive elimination's have left no more than enough to fill the vacancies."

(Underlining is ours for emphasis)

Under the system, voters are required to express First, Second, Third or additional choices according to the number of candidates. If the candidate, for whom a voter has expressed his choice, does not need his vote, the surplus votes are distributed as per the second choice. Only when enough candidates are elected by this process, the candidate with the smallest number of choice is eliminated and his votes are distributed in the same way for the next round.

University of Poona (supra) states that the process of elimination must go on. This decision is an authority for two propositions (i) the process of exclusion or elimination goes on until enough candidates fill their quota, (ii) until the successive eliminations leave behind one continuing candidate, which would be enough to fill vacancy.

In Umesh Sharma Vs. State Election Commissioner, W.P. No. 1021 (M/B) of 2003 disposed of on 14th November, 2003, one of us (Kapadia, J.) held:

"We have given the facts of Poona University case (supra) for two reasons. Firstly, it indicates the manner in which votes should be counted under the system of Proportional Representation by means of single transferable vote by ballot. The case of Poona University (supra) was a case of counting of votes where one seat was to be filled. Secondly, the above facts in the case of Poona University (supra) show that difficulties in declaring results normally arise in cases where two or more continuing candidates secure equal number of votes. However, in our case, that is not the position. The judgment of the Supreme Court in Poona University's case (supra) is relied upon by us because it explains the meaning of the words "Election by Proportional Representation by means of single transferable vote by ballot." It also indicates that under the system of Proportional Representation by means of single transferable vote by ballot, the idea of Quota and the rule of Elimination are in-built. The judgment of the Supreme Court in Poona University's case (supra) further shows that the rule of Elimination should be continuously applied till the candidates fill their quota or until successive eliminations leave behind one continuing candidate, which would be enough to fill the vacancy. "

It may be true that in that case there was no question of tie and in that view of the matter it was observed:

"The object is to see that votes do not get wasted. It is important to note that under the above system, votes would not get wasted because the transferred votes, which are carried forward from first count to the second count and so on, are added to the original votes. However, in case of tie, there might be a dead-lock. In our case, there is no such tie. Therefore, the Returning Officer was required to go down the line, try to ascertain whether any candidate fills the quota or apply the rule of Successive Elimination till one candidate remains to fill-in one vacancy. We may clarify that if there were two vacancies and if by rule of Elimination two candidates would remain, then they could be declared elected even if there was no quota."

Despite the same the Court emphasized the need to see that by rule of elimination, the left over candidates in the fray are enough to fill vacancies observing:

"It ensures results of an election. The said system does not only rely upon quota. It also provides for an alternative. This alternative contemplates rule of Elimination by which the remaining candidates would be sufficient to fill the vacancies. Secondly, it is important to note that elections under this system is by Proportional Representation by means of single transferable vote by ballot."

We may notice that a Special Leave Petition against the said decision of the High Court in Sagar Singh Vs. Umesh Sharma & Ors. (SLP(C) No. 22672/2003) has been dismissed by this Court by an order dated 12.12.2003.

In Jaidrath Singh (supra) this Court did not have the occasion to consider these aspects of the matter. The decision does not contain detailed reasons. The principles of literal interpretation was applied therein without noticing the consequence therefor.

It is interesting to note that the impugned judgment was delivered by Ghildiyal, J. on 30th September, 2003 wherein he relied upon Jaidrath Singh (supra). He is also a party to the decision in Umesh Sharma (supra) which was delivered on 14th November, 2003. We have noticed hereinbefore that the Division Bench in Umesh Sharma (supra) has dealt with the legal position more elaborately wherein emphasis has been laid on the decision of University of Poona (supra).

Furthermore, the decision of University of Poona (supra) having been rendered by a 3-Judge Bench should be favoured in preference to the decision of Jaidrath Singh (supra) which has been rendered by 2-Judge Bench.

There is no detailed examination of the principles and the constitutional scheme in the said judgment although University of Poona (supra) had been referred to but the ratio of that decision had not been applied.

WHETHER THE ELECTION PETITION IS MAINTAINABLE:

At the first flush it may appear that the election petition was not maintainable as no result in the election had been declared. The provisions of Rules 33 and 34 must be interpreted having regard to the maxim 'ubi jus ibi remedium'. An election dispute would be adjudicated upon by the election tribunal specially constituted for that purpose. A candidate may, having regard to the fact situation obtaining therein make a prayer that he himself or any other candidate has been duly elected in the said case. Once he makes out a case of being entitled to obtain the aforementioned declaration, it goes without saying that he has a right to question the order of the Returning Officer

in terms whereof he was not declared elected. A fortiori he has also a right to question the correctness of the order of the Returning Officer as a result whereof he had not been declared elected. An election petition, therefore, would be maintainable.

CONCLUSION:

We are, therefore, of the opinion that the High Court committed an error in interpreting the statutory provisions laying down procedures for declaration of result on the election of Adhyaksha Panchayat at district level. Applying the law as we have interpreted, the appellant should have been declared elected.

For the reasons aforementioned, we are of the opinion that in the instant case the appellant herein had received the highest number of first preference votes and in that view of the matter he should have been declared elected.

The appeal is allowed.