

bond cannot be enforced by the respondent no.2.

6. In light of the same, the respondent no.2 is directed to refund the security deposit of Rs.5,00,000/- alongwith interest at the rate of 4% per anum, of the principal sum, starting from the date of payment made by the petitioner till the payment to be made by the respondent no.2 to the petitioner.

7. The above refund should be made within a period of four weeks from the date of receipt of a certified copy of this order.

8. Further more, the bank guarantee that has been deposited by the petitioner, in pursuance of the order of the coordinate Bench of this Court, should also be returned to the petitioner alongwith the refund of the security deposit.

9. With the above directions, the writ petition is disposed of.

(2025) 4 ILRA 675

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ - C No. 31742 of 2024

Smt. Kehkashan		...Petitioner
	Versus	
State of U.P.		& Ors.
...Respondents		

Counsel for the Petitioner:

Sri Imtiaz Husain, Sri Siddharth Nandan,
Sri H.N. Singh (Sr. Advocate)

Counsel for the Respondents:

C.S.C., Sri Ganesh Pratap Singh, Sri R.P.S. Chauhan, Sri Rajeev Kumar Singh, Sri Siddharth Khare, Sri Navin Sinha (Sr. Advocate)

Civil Law – Constitution of India,1950 –

Article 226 - U.P. Panchayat Raj Act, 1947 - Section 12-C, - U.P. Panchayat

Raj (Election of Members, Pradhan and Up-Pradhans) Rules, 1994 – Rule 33, 82,

86, 86(1), 86(2), 86(2)(b), 105, 105(2)-

Writ Petition – challenging the election of the Gram Pradhan - the petitioner initially secured 664 votes while respondent no. 4 received 658

- however, respondent no. 4 filed an election petition under Section 12-C of the U.P. Panchayat Raj Act, 1947, prompting a recount

– being aggrieved, petitioner filed writ petition - High Court by earlier order remanded the matter before the prescribed authority to decide the election petition a fresh - led to a Supreme Court – Supreme Court directed recount in present of a Court Commissioner – recounting revealing 659 votes for respondent no. 4 and 657 for the petitioner, with 114 ballots declared invalid - the Supreme Court remanded the matter to the High Court to quickly review only disputed ballots and decide the matter without delay – both contesting parties were allowed to inspect and filed their objections regarding invalid votes – the Court relying on the legal maxim *expressio unius est exclusio alterius* held that, any deviation from the prescribed method, such as using ink dots or thumb impressions, renders the ballot invalid and threatens the integrity of the election process – therefore, court upheld the rejection of several disputed ballot papers in the Gram Pradhan election, citing violations of the mandatory voting procedure under Rules 86 and 105 of the U.P. Panchayat Raj Rules, 1994 - after reviewing the objections to 40 out of the 114 invalid votes, the Court found 36 ballots to be invalid, while 2 were valid in favour of petitioner and 2 in favour of respondent no. 4 – thus, the revised tally brought petitioner's total to 659 votes and respondent no. 4's total to 661 votes - thereby declaring respondent no. 4 as the winning candidate – directions issued to respondent authorities to take consequential steps for

entering of respondent no. 4 as Gram Pradhan within one month – accordingly, writ petition is disposed of. (Para no. 30, 37, 50, 51).

Writ Petition Disposed of. (E-11)

List of referred Cases: -

1. Era Sezhiyan Vs T. R. Balu & ors.– 1990 (Supp) SCC 322,
2. Ram Autar Singh Bhadauria Vs Ram Gopal Singh & ors.– AIR 1975 SC 2182,
3. S. Sivaswami Vs Malaikannan & ors.– 1984 vol. 1 SCC 296

(Delivered by Hon’ble Vikram D.
Chauhan, J.)

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Imtiaz Husain, learned counsel for petitioner and Sri Navin Sinha, learned Senior Advocate assisted by Sri R.P.S. Chauhan, learned counsel for respondent no. 4 and learned Standing Counsel for respondent-State.

2. The present writ petition is preferred challenging order dated 9.9.2024 passed by respondent no. 2 - Prescribed Authority/Sub Divisional Magistrate, Chandausi, District Sambhal in Election Petition No. 04085 of 2021 (Computerized Case No. T202113740404085) (Ashraf Khan Vs. Smt. Kehkashan and others) filed under Section 12-C of U.P. Panchayat Raj Act, 1947 as well as for quashing the entire proceedings initiated in pursuance to Election Petition No. 04085 of 2021.

3. The brief facts giving rise to present writ petition are that election for post of Gram Pradhan for Gram – Mohammadpur Kashi, Tehsil - Chandausi, District - Sambhal was notified. The petitioner and respondent no. 4 along with

other candidates submitted their nomination for post of Gram Pradhan. The election symbol of the candidates are as follows :-

i Ashraf Khan – Imli
Smt. Kehkashan – Car
Smt. Ishrat Jahan – Kanni
Mohd. Kasib – Kitab
Jakir – Camera
Jahid – Carrom Board

4. The election/voting took place on 29.4.2021. The counting took place on 2.5.2021 and the same was concluded. On completion of the counting, petitioner (Smt. Kehkashan) was declared as returned candidate having secured 664 votes and respondent no. 4 (Sri Ashraf Khan) had secured 658 votes, Mohd. Ansar secured one vote, Smt. Ishrat Jahan secured 6 votes, Mohd. Kasib secured 2 votes, Jakir secured 16 votes and Jahid secured 2 votes.

5. The respondent no. 4 thereafter preferred an election petition dated 28.5.2021 under Section 12-C of U.P. Panchayat Raj Act, 1947. The Prescribed Authority by order dated 9.9.2024 has directed recounting of votes.

6. On an earlier occasion, this Court by judgement dated 23.9.2024 decided the present petition. The respondent no. 4 (Ashraf Khan) being aggrieved by order dated 23.9.2024 preferred Civil Appeal No. 12308 of 2024 (Arising out of SLP(C) No. 25059/2024) (Ashraf Khan Vs. Kehkashan & Ors.) before the Hon’ble Supreme Court.

7. The Hon’ble Supreme Court by order dated 23.10.2024 directed recounting of votes in presence of Court Commissioner appointed by Hon’ble Supreme Court. In furtherance thereof,

recounting of votes was once again undertaken whereby the respondent no. 4 (Ashraf Khan) secured 659 votes and petitioner (Smt. Kehkashan) secured 657 votes. In the process, 114 votes have been declared as invalid. The Hon'ble Supreme Court thereafter by order dated 13.11.2024 has remanded the matter before this Court.

8. In pursuance to order dated 13.11.2024 passed by Hon'ble Supreme Court, learned Standing Counsel has produced a sealed envelope containing invalid ballot papers before this Court (in the presence of learned counsel for the petitioner and learned counsel for respondent No. 4 & 7) and same was taken on record on 21.11.2024. Further, by order dated 21.11.2024 on request of learned counsel for parties, learned counsel for petitioner and learned counsel for respondent No. 4 were permitted to inspect the invalid ballot papers (produced by learned Standing Counsel) before the Registrar General of this Court. Further, the parties were permitted to file their objections in respect of invalid ballot papers after inspection of same.

9. In pursuance to above-mentioned order dated 21.11.2024 passed by this Court, the Registrar General submitted its report dated 28.11.2024 reporting that the invalid ballot papers have been inspected and thereafter sealed in presence of learned counsel for the parties.

10. Learned counsel for petitioner has thereafter filed objection dated 2.12.2024 (on behalf of petitioner) in respect of invalid votes. Learned counsel for respondent No. 4 has also filed reply dated 9.1.2025 to the objection of petitioner dated 2.12.2024 before the Registry of this Court. Respondent No. 4 has also filed objection

dated 11.12.2024 in respect of invalid ballot papers.

11. Learned Senior Counsel for petitioner submits that after the above-mentioned order dated 13.11.2024 passed by Hon'ble Supreme Court, invalid votes have been inspected in pursuance to order dated 21.11.2024 of this Court and now only in respect of objections raised with regard to certain invalid votes the arguments are being advanced. Both, learned Senior Counsel for respondent no. 4 and learned Senior Counsel for petitioner agree that the only issue remains to be decided is with regard to the validity of certain invalid votes out of 114 invalid votes which have been detailed in their objection.

12. Learned Senior Counsel appearing on behalf of petitioner further submits that after inspection of invalid votes, the petitioner is raising objection in respect of ballots/votes detailed in paragraph nos. 12, 13 and 14 of objection dated 2.12.2024 filed on behalf of petitioner. Learned counsel for petitioner further submits that some of invalid votes contain thumb impression as a mark to cast the vote in favour of candidate and other invalid ballot papers pertain to objections which are to be individually examined.

13. Learned Senior Counsel appearing on behalf of petitioner further submits that elections for post of Gram Pradhan is conducted in accordance with Uttar Pradesh Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994 (for brevity hereinafter referred to as "Rules of 1994"). It is further submitted that Rule 105 of Rules of 1994 provides ground for rejection of ballot papers. Learned Senior Counsel for

petitioner by referring to Rule 86(2)(b) of Rules of 1994 submits that a mark on the ballot paper would be sufficient with respect to the intention of elector to vote. Learned counsel for petitioner further submits that insofar as the thumb impression on the ballot paper by elector is concerned, the same would be valid as the same would be a mark indicating the vote in favour of a particular candidate. It is further submitted that Rule 86 (2) of Rules of 1994 is not mandatory in nature and the ballot paper can only be rejected on the grounds enumerated in Rule 105 of Rules of 1994. It is submitted that any mark on ballot paper would be sufficient except where the mark which discloses the identification of elector.

14. In this respect, learned Senior Counsel for petitioner submits that ballot paper no. 9BE 2245141 (Polling Station No. 172), 9BE 2245421 (Polling Station No. 172), 9BE 2245115 (Polling Station No. 172), 9BE 2245336 (Polling Station No. 172), 9BE 2245476 (Polling Station No. 172), 9BE 2245490 (Polling Station No. 172) containing the thumb impression mark on the ballot paper is valid. Similarly, it is submitted that Ballot paper no 9BE 2245647 (Polling Station No. 173), 9BE 2245760 (Polling Station No. 173), 9BE 2244037 (Polling Station No. 173), 9BE 2245934 (Polling Station No. 173), 9BE 2245935 (Polling Station No. 173), 9BE 2245852 (Polling Station No. 173), 9BE 2245606 (Polling Station No. 173) containing the thumb impression mark on the ballot paper is valid. Learned Senior Counsel for petitioner further submits that ballot paper nos. 9BE 2244354 (Polling Station No. 174), 9BE 2244211 (Polling Station No. 174), 9BE 224433 (Polling Station No. 174), 9BE 2244297 (Polling Station No. 174), 9BE 2244204 (Polling

Station No. 174), 9BE 2244375 (Polling Station No. 174), 9BE 2244284 (Polling Station No. 174), 9BE 2244503 (Polling Station No. 174), 9BE 2244210 (Polling Station No. 174), 9BE 2244294 (Polling Station No. 174), 9BE 2244195 (Polling Station No. 174), 9BE 2244330 (Polling Station No. 174) containing the thumb impression mark on the ballot paper is valid.

15. Learned Senior Counsel appearing on behalf of the petitioner further submits as follows :-

a) The petitioner (Smt. Kehkashan) was allotted symbol of “Car” whereas the respondent no. 4 (Ashraf) was allotted the symbol of “Imli” for the purpose of election. It is submitted by learned Senior Counsel for petitioner that ballot paper no. 9BE 2245090 (Polling Station No. 172) contains full stamp on Symbol “Car” and Half stamp of Symbol “Kitab”. The Election Symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245090 was again shown to learned Senior Counsel for petitioner during hearing. Learned Senior Counsel appearing on behalf of petitioner after examining the said ballot paper submits that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” as such, he is not pressing his objection in respect of aforesaid ballot paper.

b) The ballot paper no. 9BE 2245380 (Polling Station No. 172) contains full stamp on Symbol “Car” and Half stamp on Symbol “Kitab”. The Election Symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245380 was shown to learned Senior Counsel for petitioner during hearing. Learned Senior Counsel appearing on

behalf of petitioner after examining the said ballot paper submits that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” as such, he is not pressing his objection in respect of aforesaid ballot paper.

c) The ballot paper no. 9BE 2244006 (Polling Station No. 173) contains stamp/mark on Symbol “Car” and lightly stamp on Symbol “Carrom Board”. The petitioner was allotted the symbol of “Car” whereas symbol “Carrom Board” was allotted to respondent no. 9 - Jahid. Learned Senior Counsel for petitioner submits that the primary stamp in said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and the same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner.

d) The ballot paper no. 9BE 2244216 (Polling Station No. 174) contains light stamp/mark on symbol “Car”. The petitioner was allotted the symbol of “Car”. The said ballot paper is to be treated in favour of petitioner.

e) The ballot paper no. 9BE 2244136 (Polling Station No. 174) contains stamp on symbol “Car” and very light stamp on symbol “Kitab”. The petitioner was allotted the symbol of “Car”. The election symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. Learned Senior Counsel for the petitioner submits that on the said ballot paper seal is on “Car” and ink is on symbol “Kitab”. It is submitted that intention of voter can be gathered that he actually voted for symbol “Car”. The said ballot paper is to be treated in favour of petitioner.

f) The ballot paper no. 9BE 2244330 (Polling Station No. 174) contains thumb impression on symbol “Car” and stamp on symbol “Carrom Board”. The petitioner was allotted the symbol of “Car”

whereas symbol “Carrom Board” was allotted to respondent No. 9 - Jahid. Learned Senior Counsel for petitioner submits that thumb impression in said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner.

g) The ballot paper no. 9BE 2244148 (Polling Station No. 174) contains full stamp on Symbol “Car” and half stamp on symbol “Kitab”. The petitioner was allotted the symbol of “Car” whereas symbol “Kitab” was allotted to respondent no. 7 – Mohammad Kasib. Learned Senior Counsel for petitioner submits that primary stamp in the said ballot paper is on symbol “Car” and there is an half stamp on symbol “Kitab” and the same is not a vote casted on symbol “Kitab” as the impression is transferred at the time of folding of ballot paper on other symbol. The said ballot paper is to be treated in favour of petitioner. Learned Senior Counsel appearing on behalf of petitioner after examining the said ballot paper submitted that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” and as such, he is not pressing his objection in respect of the aforesaid ballot paper.

16. Sri Navin Sinha, learned Senior Counsel appearing on behalf of respondent no. 4 submits that the mark which is required to be placed on ballot paper to indicate the vote in favour of a particular candidate, by placing a mark on ballot paper with the instruments supplied for the purpose on or near the symbol of candidate for which the elector intended to vote. Rule 86(2) of Rules of 1994 are mandatory in nature. It is further submitted by learned Senior Counsel for respondent no. 4 to

submit that above-mentioned Rule is *pari materia* with Rule 39 of Conduct of Elections Rules, 1961 (under the Representation of People Act, 1951). Learned Senior Counsel has also relied upon the judgement of Supreme Court in **Era Sezhiyan Vs. T.R.Balu and others, 1990 (Supp) SCC 322** and **Ram Autar Singh Bhadauria Vs. Ram Gopal Singh and Ors., AIR 1975 SC 2182** to submit that the mark with instrument supplied for purpose is necessary to indicate the intention of elector to vote in favour of particular candidate. It is further submitted that use of any other mark would not be tenable in law and such ballot papers are liable to be rejected. Learned Senior Counsel for respondent no. 4 further submits that thumb impression was not mark supplied for purpose of demonstrating the intention of elector to vote in favour of a particular candidate.

17. Learned Senior Counsel appearing on behalf of respondent no. 4 further submits as follows :-

a) The ballot paper no. 9BE 2245512 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and symbol “Kanni”. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 (the symbol of “Imli” was allotted to respondent no. 4 for the purpose of election). It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

b) The ballot paper no. 9BE 2245086 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and “Kanni”. Learned Senior Counsel submits that intention of elector was to cast his vote in favour of respondent no. 4 (who was

allotted the symbol of “Imli” for the purpose of election). It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

c) The ballot paper no. 9BE 2245305 (Polling Station No. 172) full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 (who was allotted the symbol of “Imli” for the purpose of election). It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

d) The ballot paper no. 9BE 2245813 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such learned Senior Counsel for respondent no. 4 at this stage submits that he would not press the challenge to ballot paper no. 9BE 2245813 which has been declared as invalid by the authorities.

e) The ballot paper no. 9BE 2244073 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such, learned Senior Counsel at this stage submits that he would

not press challenge to ballot paper no. 9BE 2244073 which has been declared as invalid by the authorities.

f) The ballot paper no. 9BE 2245690 (Polling Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 who was allotted the symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

g) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245962 (Polling Station No. 173) contains full and proper stamp on the middle line between symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that intention of voter was to cast his vote in favour of respondent no. 4, (who was allotted the symbol of “Imli” for the purpose of election). It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

h) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245963 (Polling Station No. 173) that full and proper stamp on the middle line symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that intention of voter was to cast his vote in favour of respondent no. 4, who was allotted symbol of “Imli” for purpose of election. It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

i) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2244273 (Polling Station No. 174),

respondent no. 4 was allotted the symbol of “Imli” for purpose of election. The ballot paper contains full and proper stamp on “Imli” symbol and another impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such learned Senior Counsel at this stage submits that he would not press the challenge to ballot paper no. 9BE 2244273 which has been declared as invalid.

18. The elections for post of Gram Pradhan for Gram Mohammadpur Kashi, Tehsil – Chandausi, District – Sambhal was notified and voting took place on 29.4.2021. The counting took place on 2.5.2021 and the same was concluded on the same date and the result was declared in which petitioner was declared as returned candidate having secured 664 votes whereas respondent no 4 secured 658 votes. The respondent no. 4 thereafter had filed election petition challenging the election result. By order dated 9.9.2024 passed in the above-mentioned election petition filed by respondent no. 4 an order for recount was passed.

19. The above-mentioned order dated 9.9.2024 was subject matter of challenge in present writ petition. The present writ petition (on an earlier occasion) by judgement dated 23.9.2024 was allowed and the matter was remitted back to respondent no. 2 – Sub Divisional Magistrate/Prescribed Authority with a direction to decide the same afresh. The above-mentioned judgement dated 23.9.2024 was subject matter of challenge

in Civil Appeal No. 12308 of 2024 (Ashraf Khan Vs. Kehkashan & Ors.). Hon'ble Supreme Court by order dated 23.10.2024 further directed for re-counting of votes to be undertaken in the presence of Court Commissioner appointed by the Supreme Court. In pursuance thereof, the recounting exercise was undertaken, whereby respondent no. 4 secured 659 votes and the petitioner secured 657 votes. Further, 114 votes were declared invalid.

20. The Supreme Court by order dated 13.11.2024 remanded the matter to this Court with the following observations:-

“8. As of now, the appellant appears to have an edge over respondent no.1 in view of the fact that in the fresh recounting conducted under the supervision of the Court Commissioner, the appellant received 659 votes as against the 657 votes found polled in favour of respondent no.1. However, there are debatable issues with regard to some of the votes declared invalid. Since the margin is of two votes only, we are of the view that it may be in the interest of justice to relegate the parties before the High Court. In that case, all the 114 rejected votes shall be required to be produced before the High Court. In our considered view, some of the votes examined are such that they are liable to be rejected out-rightly. The High Court will be well within its right not to invite objections so far as those votes are concerned. However, if there are some votes with respect to which there are arguable issues, we request the High Court to accord one week's time to the parties to submit their objections and thereafter, instead of remanding the case to the Election Tribunal, let the High Court take a final decision. We say so for the reason that substantial part of the term of Gram

Pradhan is already concluded and in the event of further remand, the matter faces the threat of becoming infructuous.

9. For the aforesaid reasons, the instant appeal is allowed. The impugned judgment of the High Court is set aside and the matter is remitted to the High Court to decide the writ petition filed by respondent no.1 afresh and in the light of the observations made hereinabove. Accordingly, the parties are directed to appear before the High Court on 20.11.2024.

10. Learned counsel for the parties may produce a copy of this order before the Registrar General of the High Court, who in turn is directed to put up the same before Hon'ble the Chief Justice of the High Court, so that the matter may be entrusted to an appropriate Bench as per roster, with a special request that the same may be decided on merits as soon as possible, and preferably within a period of three weeks.”

21. Learned Senior Counsels for petitioner and respondent no. 4 have submitted that only some of the invalid votes are being objected to and they have confined their arguments to the certain invalid votes as have been stated in their objections and raised hereinabove.

22. The argument raised on behalf of learned counsel for petitioner to the effect that in Polling Station No. 172 - Ballot Paper Nos. 9BE 2245141, 9BE 2245421, 9BE 2245115, 9BE 2245336, 9BE 2245476, 9BE 2245490 contains thumb impression on symbol “Car” which was allotted to the petitioner however, the aforesaid vote have been incorrectly declared invalid. It is further submitted by learned Senior Counsel appearing on behalf of petitioner that in Polling Station No. 173

- Ballot Paper Nos. 9BE 2245647, 9BE 2245760, 9BE 2244037, 9BE 2245934, 9BE 2245935, 9BE 2245852, 9BE 2245606 contains thumb impression on symbol “Car” which was allotted to petitioner however, the aforesaid vote have been incorrectly declared invalid. Similarly, in Polling Station No. 174 - Ballot Paper Nos. 9BE 2244354, 9BE 2244211, 9BE 224433, 9BE 2244297, 9BE 2244204, 9BE 2244375, 9BE 2244284, 9BE 2244503, 9BE 2244210, 9BE 2244294, 9BE 2244195 contain thumb impression on symbol “Car” (which was allotted to the petitioner) however, the aforesaid ballot paper has been incorrectly declared invalid. It is further submitted that ballot paper no. 9BE 2244330 contains thumb impression on the symbol “Car” and symbol on “Carrom Board”. The same has been incorrectly declared as invalid as thumb impression on symbol of petitioner would make vote valid.

23. The election for post of Gram Pradhan is held in accordance with provisions of Uttar Pradesh Panchayat Raj Act, 1947 (for brevity herein after referred to as “Act of 1947”) and Uttar Pradesh Panchayat Raj (Election of Members, Pradhan and Up-Pradhans) Rules, 1994 (for brevity hereinafter referred to as “Rules of 1994”). The procedure for election of Gram Pradhan is provided in Chapter III of Rules of 1994. The procedure for elector on receiving the ballot paper is provided under Rule 86(2) of Rules of 1994. The Rule 86(2) of Rules of 1994 is quoted hereinbelow :-

“86. Maintenance of secrecy of voting by electors within polling station and voting procedure. – (1) ...

(2) The elector on receiving the ballot paper shall forthwith, –

(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(c) fold the ballot paper as to conceal his vote;

(d) if required, show to the Matdan Adhyaksh the distinguishing mark on the ballot paper;

(e) insert the folded ballot paper into the ballot box; and

(f) quit the polling place.”

24. It is further to be noted that under Rule 86 of Rules of 1994, the secrecy of voting is an important object in respect of procedure for election on the post of Gram Pradhan. A perusal of Rule 86 (2) (b) of Rules of 1994 provide that the elector shall make a mark on ballot paper with the instrument supplied for the purpose on or near the symbol of candidate for whom elector intends to vote. The said Rule requires that the mark on ballot paper to indicate the intention of elector to vote against a particular candidate to be made by instrument supplied for the purpose of election. Rule 82 of Rules of 1994 provide that the Nirvachan Adhikari (Election Officer) shall provide at the polling station material for the purpose of enabling voters to mark the ballot paper.

25. It is not the argument of learned counsel for the parties that an instrument was not supplied by Election Officer at the time of voting for the purpose of making a mark on ballot paper with the instrument supplied. The submission raised by learned counsel for petitioner is to the effect that even the thumb impression would constitute a mark to indicate vote in favour of a particular candidate and the aforesaid

ballot paper could not have been rejected as invalid on account of the fact that thumb impression was made as a mark on the ballot paper to indicate the intention of elector to vote in favour of a particular candidate.

26. Rule 86(1) of the Rules of 1994 mandates that every elector to whom a ballot paper has been issued under Rule 33 or under any other provision of said Rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure as laid down in Rules of 1994. For the purpose of maintaining secrecy of voting, Rule 86(2) of Rules of 1994 provides the procedure which the elector has to follow on receiving the ballot paper which is as follows :-

“(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(c) fold the ballot paper as to conceal his vote;

(d) if required, show to the Matdan Adhyaksh the distinguishing mark on the ballot paper;

(e) insert the folded ballot paper into the ballot box; and

(f) quit the polling place.”

27. Rule 82(2)(b) of the Rules of 1994 specifically provide for use of the instrument supplied for purpose of making a mark on ballot paper on or near the symbol of candidate for whom the elector intends to vote. Rule 86(2) starts with the words “shall” which is indicative of mandatory nature of procedure prescribed to be followed by elector on receiving the ballot paper. It is further to be noted that

such direction of law under Rule 86 (2) (b) of the Rules of 1994 for use of instrument supplied to make a mark on the ballot paper to demonstrate elector intention to vote in favour of a particular candidate is relatable to the larger object of secrecy of voting as has been provided under Rule 86 (1) of the Rules of 1994.

28. It is further to be noted that in present case some of invalid votes (detailed hereinabove) contained thumb impression (instead of use of instrument to mark on the ballot paper) in order to demonstrate the intention of elector to vote in favour of a particular candidate as per petitioner. The thumb impression was not the mark prescribed by election authorities as instrument for purpose of making a mark in favour of a particular candidate. It has not been disputed by learned counsel for parties before this Court that an instrument having a distinct mark was supplied at the time of voting. The aforesaid can also be gathered as some of the invalid ballot papers which has been challenged before this Court (and produced) contained the mark made on the ballot paper by the instrument supplied for the said purpose.

29. It is further to be noted that supplying of instrument by election authorities to make a mark on ballot paper on or near the symbol of candidate for whom the elector intends to vote has underlying purpose of fairness in election proceedings. The use of instrument would bring about uniformity in election process. The object of using an instrument to mark a ballot paper in an election is to ensure that the voter's choice is recorded clearly, accurately, and securely. Unauthorized markings on ballot paper can compromise these principles, leading to potential disputes and challenges to election's

validity. The use of instrument to mark the intention of voter on the ballot paper is to ensure the confidentiality and integrity of elector choice of candidate.

30. The use of thumb impression to indicate the intention of elector to vote in favour of a particular candidate instead of using instrument supplied by election authorities may disclose the person's identity who has put in the thumb impression on the ballot paper. The thumb impression can be connected and relatable to an individual on account of uniqueness of thumb impression. Even otherwise, if the law provides a thing to be done in a particular manner then the other manner or procedure is excluded by law. In this regard the legal maxim "expressio unius est exclusio alterius" meaning "the expression of one thing is the exclusion of the other" is applicable. Once the law has specifically provided the manner in which elector has to make a mark on ballot paper then other mark (including thumb impression) would not be available to elector to indicate his intention to vote in favour of a particular candidate. The dilution of aforesaid principle would have serious impact on the fairness of election process itself as then the parties to election process may claim that even a "point" (by ink) on the ballot paper would constitute a mark, which would result in dispute.

31. The Supreme Court in **Ram Autar Singh Bhadauria (supra)** while dealing with Rules 38 and 39 of Conduct of Elections Rules, 1961 (framed under Representation of the People Act, 1951) which is *pari materia* with Rule 86 of the Rules of 1994 has held that the said Rule to be mandatory in nature and a defect arising from their non-observance inexorably entails rejection of defective ballot paper.

Paragraph nos. 19 to 21 of the said judgement is quoted hereinbelow :-

"19. Clauses (a) and (b) of Rule 56(2) are referable to Rule 38 which requires every elector to whom ballot paper has been issued under Rule 38 to maintain secrecy of voting and "to make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote."

20. Rule 38 is also relevant. This Rule requires every ballot paper and the counter-foil attached thereto to be stamped on the back by the Presiding Officer with such distinguishing mark as the Election Commission may direct. Every such ballot paper before it is issued is required to be signed in full on its back by the Presiding Officer. Sub-rule (2) requires that at the time of issuing of ballot paper, the Polling Officer shall on its counter-foil record the electoral roll number of the elector and obtain his signature or thumb-impression.

21. The object of these rules is to secure not only the secrecy of the ballot but also to eliminate chances of sharp practices in the conduct of elections. Their requirements are therefore mandatory, and a defect arising from their non-observance inexorably entails rejection of the defective ballot paper except to the extent covered by the Provisos to Rule 56(2)."

32. It is further to be noted that under Rule 105 of Rules of 1994 it is provided that the ballot paper shall be rejected if no vote is recorded thereon. As per Rule 86 of Rules of 1994 the vote can be recorded by elector by making a mark on the ballot paper with instrument supplied for the purpose. If ballot paper has been marked with thumb impression (which is not the mark on the ballot paper with the

instrument supplied for the purpose) then the same would amount to no vote being recorded by elector under law. The recording of vote on ballot paper is required to be as per procedure prescribed and any other mark cannot be permitted to be used to indicate the intention of elector through the ballot paper. Rule 105(f) of Rules of 1994 is required to be read with Rule 86 of the Rules of 1994 and the ballot paper which do not satisfy the condition provided under Rule 86(2)(b) of Rules of 1997 would be termed as that no vote is recorded on the ballot paper by the elector and as such consequently such ballot papers which contains thumb impression and not the mark by the prescribed instrument would be liable to be rejected. Accordingly, the invalid ballot papers containing thumb impression to mark intention of voter through ballot paper has been rightly rejected and declared as invalid.

33. The objection raised by learned Senior Counsel for the petitioner that ballot paper no. 9BE 2245090 (Polling Station No. 172) and 9BE 2245380 (Polling Station No. 172) contains full stamp on symbol “Car” and half stamp of symbol “Kitab”. The election symbol of respondent no 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245090 and 9BE 2245380 was again shown to learned Senior Counsel for the petitioner during hearing. Learned Senior Counsel appearing on behalf of the petitioner after examining the said ballot papers could not dispute the fact that the said ballot papers contains double symbol, one on symbol “Car” and other on symbol “Kitab”. A perusal of the above-mentioned ballot papers would clearly show that the mark/vote has been given in favour of more than one candidate and as such the ballot paper is liable to be rejected under Rule

105 (e) of the Rules of 1994. Consequently, the election authorities committed no error in rejecting the ballot paper no. 9BE 2245090 (Polling Station No. 172) and 9BE 2245380 (Polling Station No. 172).

34. The argument raised by learned Senior Counsel for petitioner that ballot paper no. 9BE 2244006 (Polling Station No. 173) contains stamp on symbol “Car” and lightly stamp on symbol “Carrom Board”. The petitioner was allotted the symbol of “Car” whereas symbol “Carrom Board” was allotted to respondent no 9 - Jahid. Learned Senior Counsel for the petitioner submitted that the primary stamp in the said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and the same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner. This Court has perused the above mentioned ballot paper and find that there is mark against the symbol “Car” as well as against the symbol “Kitab”. It is however to be recorded that the mark against the symbol “Kitab” is lighter than against the symbol “Car”. Rule 105(1)(e) of the Rules of 1994 provides that the ballot paper shall be rejected if the vote is given in favour of more candidates than the number of seats required to be filled in a constituency. It is not in dispute between the parties that the Gram Pradhan post is to be given only one vote as there is only one post of Gram Pradhan in each constituency. Accordingly, only one vote could have been given by any elector by placing a mark by the instrument supplied against the name/symbol of a particular candidate contesting for the post of Gram Pradhan. It is further to be noted that as per Rule 105(2) of the Rules of 1994 a vote recorded on the ballot paper shall be rejected if the mark indicating the vote is placed on the

ballot paper in such manner as to make it doubtful to which candidate the vote has been given. It is further to be noted that the ballot paper in question is folded vertically and the names of the candidates contesting for the post of Gram Pradhan is placed horizontally in the ballot paper as such by folding the ballot paper vertically the mark or impression could not have been copied on symbol of other candidate. Rule 105(1)(e) of the Rules of 1994 creates no exception in respect of rejection of ballot paper where the vote is given in favour of more than one candidate. The intention of voter cannot be determined when the vote is cast in favour of more than one candidate. In this respect, it is to be seen that the instructions for voting is issued by the State Election Commission of Uttar Pradesh during general election of Panchayat 2021 (filed along with the objection dated 11.12.2024 of respondent no. 4) provides that at first instance the ballot paper is to be folded vertically which means that if the ink of the stamp/instrument is alleged to have been copied on the other side then the same would copy against the same symbol twice and would not be copied on the symbol of another candidate which are placed horizontally. Further, the principle of rejection of ballot paper if vote is given in favour of more than one candidate, ensures that each voter has an equal say in the electoral process, preventing unfair influence or manipulation. The said principle further ensures that the vote of an elector are recorded fairly and accurately. Consequently, the election authorities committed no error in rejecting the ballot paper no. 9BE 2244006 (Polling Station No. 173).

35. The submission of learned Senior Counsel appearing on behalf of petitioner is

that ballot paper no. 9BE 2244216 (Polling Station No. 174) contains light seal on symbol “Car”. The petitioner was allotted the symbol of “Car” and as such has been incorrectly held as invalid by concerned election authorities. The reply dated 9.1.2025 to the objection dated 2.12.2024 filed by respondent no. 4 in paragraph 8 has stated that the above-mentioned ballot paper is having no seal and is a blank vote without casting the vote in favour of any candidate. A perusal of the above-mentioned ballot paper would go to show that there is very light mark/stamp on the symbol “Car”. There is only one mark on the ballot paper which is a very light mark and is clearly visible through naked eyes. The said ballot paper has been rejected by the respondent authorities on the ground that the ballot paper does not contain the stamp/mark against symbol of any candidate.

36. A perusal of said ballot paper would show that the aforesaid ground for rejection of the ballot paper by the respondent authorities is non-existent as there is a mark on ballot paper against the symbol “Car” although the same may be a very light mark. It is further to be noted that proviso to Rule 105(2) of the Rules of 1994 provides that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct if the intention that the vote shall be for a particular candidate clearly appears from where the paper is marked.

37. In the present case, the vote recorded on the ballot paper is made on the symbol “Car” and the counsel for respondent no. 4 and learned Standing Counsel could not demonstrate that the aforesaid mark on the ballot paper creates doubt as to which candidate the vote has

been given. There is no doubt that the mark is made against the symbol of petitioner and the proviso to Rule 105(2) of Rules of 1994 further mandates that where intention of voter is clear by way the ballot papers is marked and then the ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct. If the voter's choice can be reasonably determined despite an unclear or imperfect mark, the vote is to be considered valid. In view of the aforesaid, the ballot paper no. 9BE 2244216 (Polling Station No. 174) has been incorrectly rejected by the election authorities and is held to be a vote in favour of petitioner.

38. Learned Senior Counsel for petitioner submitted that ballot paper no. 9BE 2244136 (Polling Station No. 174) contains stamp on symbol "Car" and very light on symbol "Kitab". The petitioner was allotted the symbol of "Car". The election symbol of respondent no. 7 – Mohammad Kasib was "Kitab". A perusal of above-mentioned ballot paper would go to show that there is a clear mark on the ballot paper against the symbol "Car" and there is a ink impression on the symbol "Kitab". A vote should be counted if the voter's intent is clear, even if the ballot is not marked perfectly. It is further to be seen that a perusal of the aforesaid ballot paper would go to show that there is no doubt that the vote is casted in favour of the petitioner who was having symbol "Car". The vote or mark against the symbol "Car" is clear & denotes the intention of elector and the ink impression on the symbol "Kitab" is not clear and the same cannot be treated as an intention to vote in favour of the symbol "Kitab". Further the ink mark against the symbol "Kitab" being not clear cannot be taken as an expression of intention of the elector to vote in favour

of candidate having symbol "Kitab". In view of the aforesaid, the ballot paper no. 9BE 2244136 (Polling Station No. 174) has been incorrectly rejected by election authorities and is held to be a vote in favour of petitioner.

39. Learned Senior Counsel for petitioner submitted that ballot paper no. 9BE 2244330 (Polling Station No. 174) contains stamp on symbol "Car" and also stamp on symbol "Carrom Board". A perusal of above-mentioned ballot paper would go to show that there is thumb impression against the symbol "Car" and partial thumb impression against the symbol "Carrom Board". The thumb impression mark on the ballot paper is not a valid mark as has been held hereinabove and as such the same cannot be treated to be a valid vote. The election authorities committed no error in rejecting the ballot paper no. 9BE 2244330 (Polling Station No. 174).

40. Learned Senior Counsel appearing on behalf of petitioner has pointed out that ballot paper no. 9BE 2244148 (Polling Station No. 174) contains full stamp on symbol "Car" and half stamp on symbol "Kitab". After perusal of ballot paper, learned Senior Counsel appearing on behalf of the petitioner has submitted that the said ballot paper contains double mark and as such he is not pressing the objection to rejection of the said ballot paper. Even otherwise, this Court has also seen the above-mentioned ballot paper where there are double mark in the ballot paper, one against the symbol "Car" and other against symbol "Kitab". In view of the aforesaid, the ballot paper no. 9BE 2244148 (Polling Station No. 174) has been rightly rejected by the election authorities.

41. The submission of learned Senior Counsel for respondent no. 4 is that the ballot paper no. 9BE 2245512 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. A bare perusal of the said ballot paper would show that the mark has been made partly on the middle line between the symbol “ Imli” and symbol “Kanni” where the ballot paper number is printed. No part of the mark is made in the space provided for symbol “Kanni” however a part of mark is extended in space provided in symbol “Imli”. It is not the case that the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. As per Rule 105(2) of Rules of 1994 a vote on ballot paper is to be rejected if the mark on ballot paper is placed in such manner as to make it doubtful to which candidate the vote has been given. However, the proviso to said Rule mandates that ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct, if the intention to vote for a particular candidate is clear. The part of the mark is in the space provided for symbol “Imli” and no part of the mark is in the space provided further symbol “Kanni” which is indicative of intention of elector to vote in favour of symbol “Imli”. The Rule 86(2)(b) of Rules of 1994 envisages that mark on ballot paper is to be made on or near the symbol of the candidate to whom elector is intend to vote. Therefore, the ballot paper no. 9BE 2245512 (Polling Station No. 172) has been incorrectly rejected as invalid and is voted in favour of symbol “Imli” belonging to respondent No. 4.

42. In respect of the argument of learned Senior Counsel for respondent no.

4 that the ballot paper no. 9BE 2245086 (Polling Station No. 172) and ballot paper no. 9BE 2245305 (Polling Station No. 172) contain full and proper stamp on the middle line of symbol “Imli” and “Kanni” is concerned, perusal of the above-mentioned ballot paper would go to show that the mark has been made on the middle line between the symbol “Imli” and symbol “Kanni” where the ballot paper number is printed. The mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. The mark on the ballot papers is equidistant to two symbols (between which the mark has been made) and the intention of elector to vote in favour of a particular candidate is not clearly indicated and as such the aforesaid ballot papers has been rightly rejected.

43. The ballot paper no. 9BE 2245813 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol. Rule 105 (e) of Rules of 1994 provides that if votes are given in favour of more candidates than the number of seats required to be filled in a constituency then the said ballot paper shall be rejected. In the present case it is the admitted position of parties that the ballot paper contains two mark in respect of one post of Gram Pradhan and as such the said ballot paper has been rightly rejected.

44. The argument of learned Senior Counsel for respondent no. 4 that the ballot

paper no. 9BE 2244073 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbol. Rule 105(e) of Rules of 1994 provides that if votes are given in favour of more candidates than the number of seats required to be filled in a constituency then the said ballot paper shall be rejected. In the present case it is the admitted position of parties that the ballot paper contains two mark in respect of one post of Gram Pradhan and as such the said ballot paper has been rightly rejected.

45. It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2244273 (Polling Station No. 174) respondent no 4 was allotted the symbol of “Imli” for the purpose of election. The ballot paper contains full and proper stamp on “Imli” symbol and another impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbols. The said ballot paper is hit by Rule 105(e) of Rules of 1994. The said ballot paper has been rightly rejected.

46. The argument of learned Senior Counsel appearing for respondent no. 4 is that ballot paper no. 9BE 2245690 (Polling

Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. He further submits that the intention of voter was to cast his vote in favour of respondent no. 4 who was allotted the symbol of “Imli” for the purpose of election. It is further submitted that the aforesaid ballot paper has been incorrectly held as invalid. The bare perusal of the above mentioned ballot paper would go to show that the mark is between the symbol “Imli” and symbol “Kanni”. The mark is made at the place where the ballot paper number is printed. Rule 105(2) of the Rules of 1994 provides that a vote recorded on a ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. The mark on the ballot paper is equidistant to two symbols (between which the mark has been made) and the intention of elector to vote in favour of a particular candidate is not clearly indicated and as such the aforesaid ballot paper has been rightly rejected.

47. It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245962 (Polling Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that the intention of the voter was to cast his vote in favour of respondent no 4, who was allotted the symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid. A perusal of the above mentioned ballot paper would go to show that the mark has been made between the symbol “Anaj Oshata Kisan” and symbol “Imli”. The mark on the ballot

paper is partly on the symbol “Imli” and partly on the line showing “Pradhan Gram Panchayat 2020”. Definitely the mark is not made in the space provided for symbol “Anaj Oshata Kisan” however the part of the mark is in the space provided on the ballot paper for the symbol “Imli”. In the case of **S. Sivaswami Vs. V. Malaikannan and others, (1984) 1 SCC 296**, the Apex Court in paragraph no. 7 has observed as under:-

“7. ...If the right conferred on the people to choose their representatives to the State Legislatures and the Parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through a marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom the vote is cast has to be respected and given its full effect...”

48. The intention of voter clearly appears in favour of symbol “Imli”. The aforesaid symbol belongs to respondent no. 4. The said ballot paper is a vote in respect of respondent no. 4.

49. Learned Senior Counsel appearing on behalf of respondent no. 4 submits that ballot paper no. 9BE 2245963 (Polling Station No. 173) contain full and proper stamp on the middle line symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel further submits that intention of voter was to cast his vote in favour of respondent no. 4, who was allotted symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid. A bare perusal of the above mentioned ballot paper would go to show

that the mark has been made between the symbol “Anaj Oshata Kisan” and symbol “Imli”. The mark has been made on the ballot paper in the space provided between the above-mentioned two symbols on the marking “Pradhan Gram Panchayat 2020”. The aforesaid marking is equidistant to both the above-mentioned symbols and it is not clear as to the intention of the voter to have casted vote in favour of a particular candidate. Accordingly, the said ballot paper has been rightly held to be invalid and rejected.

50. In view of the above-mentioned discussion/conclusion, it is to be noted that earlier the petitioner secured 657 votes and the respondent no. 4 secured 659 votes and 114 votes were declared as invalid votes (in pursuance to recount by order of Hon’ble Supreme Court by order dated 23.10.2024). The objections raised by the parties before this Court is to 40 invalid votes. The result of the discussion is hereinbelow :-

<u>S.N</u> <u>o</u>	<u>Ballot</u> <u>Paper</u> <u>No</u>	<u>Pollin</u> <u>g</u> <u>Statio</u> <u>n No.</u>	<u>Valid</u> <u>or</u> <u>Invalid</u> <u>Vote (as per</u> <u>reasoning</u> <u>hereinabove</u> <u>)</u>	<u>Determined</u> <u>Valid</u> <u>Vote</u> <u>in favour of</u> <u>(as</u> <u>per</u> <u>reasoning</u> <u>hereinabove</u> <u>)</u>
1.	9BE 224514 1	172	Invalid	-Not applicable –
2.	9BE 224542 1	172	Invalid	-Not applicable –
3.	9BE 224511 5	172	Invalid	-Not applicable –
4.	9BE 224533 6	172	Invalid	-Not applicable –
5.	9BE 224547 6	172	Invalid	-Not applicable –
6.	9BE 224549 0	172	Invalid	-Not applicable –
7.	9BE	172	Invalid	-Not

	224509 0			applicable –
8.	9BE 224538 0	172	Invalid	-Not applicable –
9.	9BE 224551 2	172	Valid	Respondent no 4 (Imli)
10.	9BE 224508 6	172	Invalid	-Not applicable –
11.	9BE 224530 5	172	Invalid	-Not applicable –
12.	9BE 224564 7	173	Invalid	-Not applicable –
13.	9BE 224576 0	173	Invalid	-Not applicable –
14.	9BE 224403 7	173	Invalid	-Not applicable –
15.	9BE 224593 4	173	Invalid	-Not applicable –
16.	9BE 224593 5	173	Invalid	-Not applicable –
17.	9BE 224585 2	173	Invalid	-Not applicable –
18.	9BE 224560 6	173	Invalid	-Not applicable –
19.	9BE 224400 6	173	Invalid	-Not applicable –
20.	9BE 224581 3	173	Invalid	-Not applicable –
21.	9BE 224407 3	173	Invalid	-Not applicable –
22.	9BE 224569 0	173	Invalid	-Not applicable –
23.	9BE 224596 2	173	Valid	Respondent no 4 (Imli)
24.	9BE 224596 3	173	Invalid	-Not applicable –
25.	9BE 224435 4	174	Invalid	-Not applicable –
26.	9BE 224421 6	174	Valid	Petitioner
27.	9BE 224421	174	Invalid	-Not applicable –

	1			
28.	9BE 224433	174	Invalid	-Not applicable –
29.	9BE 224429 7	174	Invalid	-Not applicable –
30.	9BE 224420 4	174	Invalid	-Not applicable –
31.	9BE 224413 6	174	Valid	Petitioner
32.	9BE 224437 5	174	Invalid	-Not applicable –
33.	9BE 224428 4	174	Invalid	-Not applicable –
34.	9BE 224450 3	174	Invalid	-Not applicable –
35.	9BE 224421 0	174	Invalid	-Not applicable –
36.	9BE 224429 4	174	Invalid	-Not applicable –
37.	9BE 224419 5	174	Invalid	-Not applicable –
38.	9BE 224433 0	174	Invalid	-Not applicable –
39.	9BE 224414 8	174	Invalid	-Not applicable –
40.	9BE 224427 3	174	Invalid	-Not applicable –

51. In view of above mentioned conclusion and findings and the objections to the forty invalid votes by the parties, this Court finds that thirty six ballot papers are invalid and two ballot papers are found to be voted in favour of petitioner and two ballot papers have been voted in favour of respondent no. 4. Therefore, the final result of present conclusion is to the effect that petitioner (Kehkashan) has secured 659 votes and respondent no. 4 (Ashraf Khan) has secured 661 votes. Accordingly, respondent no. 4 (Ashraf Khan) is hereby declared as the winning candidate. The respondents authorities are directed to take

consequential steps for entering of respondent no. 4 as Gram Pradhan of village in question within one month from the date of production of certified copy of this order.

52. The writ petition is disposed of with the aforesaid observations/directions.

(2025) 4 ILRA 693

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 18.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 34248 of 2024

M/S Rajan Construction Comp....Petitioner
Versus

State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:

Sri Satyendra Chandra Tripathi, Sri Shiv Poojan Yadav

Counsel for the Respondents:

Sri Mukul Tripathi, S.C., Sri Shad Khan, Sri Shishir Prakash

Civil Law – Constitution of India, 1950 – Article 14, 19, 19(1)(g), 19(6), 21, 226 & 301- Writ Petition – challenging the restricting clause of the impugned E-tender – Petitioner, a biomass pellet supplier, was restricted from participating in an E-Tender issued by Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. – tender was for the supply of Agro-based non-torrefied biomass pellets – - Judicial Review - court finds that, tender documents contained a restrictive clause 3(i) as a pre-qualifying condition, which mandated that only existing manufacturers in the NCR region or those are located within 100 km of HTP Station, Aligarh – Plea taken that, Clause 3(i) is arbitrary, unconstitutional, and violates Articles 14, 19(1)(g), 21, and 301 of the Constitution of India – court observed that, the restriction was aimed at reducing NCR air

pollution caused by stubble burning – and it is aligns with government policies, including the Environment Rules, 2023, and advisories from the Ministry of Power – court held that, - (i) Judicial review will not be permitted to be invoked to protect private interest at the cost of public interest – (ii) courts being the guardian of fundamental rights is duty-bound to interfere only in cases when there is arbitrariness, irrationality, mala-fide and biasness and not otherwise, - (iii) Restrictive condition in the tender cannot be considered to be arbitrary and discriminatory because, it is the wisdom of the employer to determine conditions/clauses which are suited for the work to be performed in the public interest – (iv) no evidence of mala fide intent or targeted exclusion was found – accordingly, writ petition is dismissed.

(Para no. 16, 22, 23, 24, 26, 27, 28, 29, 31, 32)

Writ Petition Dismissed. (E-11)

List of referred Cases: -

1. Maa Binda Express Carrier Vs North-East Frontier Railway - (2014) 3 SCC 760,
2. Reliance Energy Ltd. Vs Maharashtra St. Road Development Corpn. Ltd. - (2007) 8 SCC 1,
3. Tata Cellular Vs U.O.I. - (1994) 6 SCC 651,
4. Caretel Infotech Ltd. Vs Hindustan Petroleum Corpn. Ltd. - (2019) 14 SCC 81,
5. Silppi Constructions Contractors Vs U.O.I. - (2020) 16 SCC 489,
6. Montecarlo Ltd. Vs NTPC Ltd. - (2016) 15 SCC 272,
7. Agmatel India (P) Ltd. Vs Resoursys Telecom - (2022) 5 SCC 362,
8. Balaji Ventures (P) Ltd. Vs Maharashtra St. Power Generation Co. Ltd. - 2022 SCC OnLine SC 1967,
9. N.G. Projects Ltd. Vs Vinod Kumar Jain - (2022) 6 SCC 127,