

(1968) 10 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 1117 of 1968

Abel Pakiam David

APPELLANT

Vs

The Poona Municipal Corporation

RESPONDENT

Date of Decision : 07-10-1968

Acts Referred:

Representation of the People Act, 1950 — Section 21, 22, 23, 24

Citation : (1969) 71 BOMLR 847

Hon'ble Judges : Wagle, J;Patel, J

Bench : Division Bench

Judgement

Patel, J.—By this petition the petitioner challenges the order made by the Assistant Electoral Registration Officer, Shivajinagar constituency refusing to amend the legislative assembly electoral roll by including his name in part 49/73 of Shivajinagar Assembly constituency. The Poona Municipal Corporation was constituted in 1949 under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the Act). When this Act was framed it was found necessary to lay down certain rules, some of them merely being procedural in the form of Schedules for the purposes of municipal administration. Consistent with the principle adopted, in the Schedule Chapter I, Rules 1 to 6 were enacted for the purpose of the preparation and publication of the electoral rolls for the municipal corporation. Elections were held in accordance with the rules applicable under the Act. In 1961 by Ordinance No. III of 1965 later replaced by Act No. XXXIV of 1965, a fundamental change was effected in the matter of electoral rolls for the municipal corporations. In respect of the Corporation, Sections 7A and 7B were added. Section 7A provides that the Assembly roll for the time being in force on a date to be notified by the State Government was to be the electoral roll for the Corporation. An officer to be authorised by the State Government is required to divide it into different sections corresponding to the different wards and to authenticate the same and then it becomes the ward roll for the ward. It further provides that every person whose name is included in such ward roll is deemed to be enrolled in the municipal election roll. The

Commissioner on receipt of the ward rolls under Sub-section (7) has to notify such receipt in the Official Gazette and is required to maintain the roll for each ward and prepare copies thereof in English and Marathi, and keep them for sale to the public, of course, on payment of the charges. u/s 7B the roll is to be effective from the date of receipt by the Commissioner as notified in the Official Gazette. Sub-section (2) provides as below:

If for any reason, a revised municipal election roll is not received from the authorised officer in time, the existing municipal election roll for the time being in force shall continue to be in operation until the revised municipal election roll is received by the Commissioner and comes into operation.

Section 8 provides as follows:

Every person whose name is in a ward roll shall be deemed to be entitled to vote at the ward election, and every person whose name is not in the said roll shall be deemed to be not entitled so to vote.

By the said Ordinance Rules 1 to 6 in Chapter I of the Schedule to the Act were deleted and they were substituted by the following rule:

1. Printed copies of the municipal election roll shall be kept for public inspection in the chief municipal office and such other places as the Commissioner may think fit.

Similarly, in Rule 12 Clause (d) was deleted and in Rules 44 and 46 consequential amendments were made. Chapter I of the Schedule relates to Municipal Election Roll and Rules 1 to 6 which were deleted related to the preparation of the electoral rolls. After the provisions of the Act came to be amended it is clear that the election rolls for the legislative assembly as existing on a date to be notified by the State Government is to be the basis for the preparation of the ward rolls and as Section 8 provides no person whose name does not appear in the ward roll-which is again dependent upon the legislative assembly roll-is entitled to vote and only the person whose name so appears is entitled to vote.

2. For the elections for the year 1968 the State Government issued a notification on March 20, 1968, adopting the assembly roll for the purpose of elections to the Corporation as on April 23, 1968. The roll of the legislative assembly, it may be mentioned, was already prepared for the elections which took place in 1967. All citizens, therefore, had notice of the existence or absence of their names on the roll so prepared. It is possible that by a proper application under the Representation of the People Act, 1950 to a proper officer amendment could have been sought by any person who thought that he was eligible to vote at those elections. With the amendment, however, neither the State Government nor the municipal authorities have anything to do. It is to be done by and under the orders of a public officer authorised to entertain such applications under the Representation of the People Act. It appears- that a Press Note was issued by the Collector informing the public that applications for amendment of the rolls could

be made to the Tahsildar of the place who was constituted the Assistant Electoral Registration Officer for the purpose. The petitioner pursuant to the press note made an application on April 11, 1968, to the Tahsildar. Till May 22, 1968, the petitioner did not receive any reply to his request from the said officer. He, therefore, filed a petition in this Court requesting- that the Municipal Corporation, its Commissioner and the State be directed not to hold the elections of this ward i.e. Ward No. 12, where the petitioner was residing. Thereafter it appears that the petitioner received a communication from the Assistant Electoral Registration Officer on May 25, 1968, which intimated to him that his application was rejected for the reason that he did not reside in the locality to which the part where his name he wanted to be included is related and secondly he was stated to be 38 months old.

3. The petitioner amended his petition later; he added the Assistant Electoral Registration Officer as respondent No. 4 and challenged the propriety of the said order. His contention is that under the rules in force the electoral officer is bound to hear him and then decide the matter,

4. The question now is, to what reliefs the petitioner is entitled to. Under the provisions of the Representation of the People Act, 1950, rules have been framed for the purpose of preparation of electoral rolls. Section 21 of the said Act relates to the preparation and revision of the same. By Sub-section (2) of Section 21 the electoral roll has to be revised in the prescribed manner by reference to the qualifying date before each general election and before each bye-election and in any year if directed by the Election Commission with reference to any qualifying date. But the validity and the continuous operation of the electoral roll as existing is not affected even if it is not revised. By Sub-section (3) power is given to the Election Commission to direct a special revision of the electoral roll for any constituency or part of a constituency. Section 22 gives power to the Electoral Registration Officer to make corrections in the entries after inquiry if he is satisfied that any such correction is needed. By Section 23 a right is given to a person whose name ought to be on the roll but is not included in it to make an application to the Electoral Registration Officer for the inclusion of his name in that roll. By Sub-section (2) power is given to such officer to include his name in the roll if he is satisfied that he is entitled to be registered. By Sub-section (3) it is provided that none of the things referred to in Sections 22 and 23 shall be done after the last date for making nominations for an election in that constituency or in the parliamentary constituency and before the completion of that election. Section 24 gives a right of appeal to the aggrieved party. Rules have been framed in respect of these matters and Rule 19 of the Registration of Electors Rules, 1960, provides that the registration officer shall give, notice of the hearing in the case of a claim to the claimant in the prescribed form and to others not necessary to be stated. Under Rule 20 thereof he has to make an inquiry albeit a summary inquiry. Sub-rule (2) enables the claimant, the objector and the person objected to and any other person to be required to be heard.

5. The petitioner's grievance that he was not heard and the order was passed without any inquiry whatsoever is, therefore, fully justified. Mr. Nariman, for the respondents, points out that an appeal lies under Rule 23 of the Rules of 1960 against the decision of respondent No. 4 and that this Court should not interfere with the order. This objection would have prevailed if the petitioner had received the intimation from respondent No. 4 prior to his making the present application in which case he would have been in a position to go before the appellate authority. It was only after he filed the present petition and obtained stay on May 23 that on May 25, 1968, he got the said order. The order purports to have been written on April 22, 1968, but curiously enough it appears to have been posted only -on May 25, 1968, even though the matter was extremely urgent. Having regard, therefore, to the circumstances of the case, we do not see any reason why we should drive the petitioner to another proceeding- when we find that the conditions for the due exercise of the jurisdiction, which respondent No. 4 undoubtedly possessed, are not satisfied, and when we are not required to go into the actual merits of the order concerned. We must, therefore, quash the said order. Any order that respondent No. 4 may make must be made only after hearing the petitioner.

6. This, however, does not solve the petitioner's trouble so far as the present elections are concerned. It is contended by Mr. Gursahani, for the petitioner, that in any event as the elections have been stayed, if the Assistant Electoral Registration Officer decides his application after hearing him before the new date for the elections can be notified, there should be no reason why his name should not be included in the electoral roll of the Municipal Corporation and why he should not be entitled to become a candidate for the same. This, however, is not possible in view of the provisions of the Act of 1949 as amended. The very basis of the electoral roll u/s 7A of the Act is the assembly roll in force on the date specified by the State Government which is to be divided by the officer authorised by the State Government into different sections corresponding to each ward in the city. As already stated, the specified date was April 23, 1968. That roll, therefore, became the basis for the formation of the ward rolls for the municipal elections. No exception has been made, nor any provision made for corrections that may be deemed necessary by later exigencies. In accordance with the provisions of Sections 7A and 7B of the Act the assembly roll as in existence in 1968 has been divided into appropriate sections; corresponding to each ward and was received by the Municipal Commissioner and the date of receipt has been notified in the gazette. Section 8 then comes into force, and, as the petitioner's name could not be in the ward roll he must be deemed not entitled to vote at the election.

7. It is true that if the rule of general franchise for all adults is accepted, every person must be entitled to vote at the election provided he has attained the voting age just before the nomination day and this would be more so in the case of elections to the local bodies where a citizen comes in closer contact with the administration and would wish to take more active part in the same. However,

the Constitution has not afforded any guarantee in this respect and it has left that function to the legislatures of the Centre and the State. The right, therefore, to vote at an election be it to the Central Legislature or the State Legislature or to local bodies still depends upon the statute which, creates the right, and so is the right to offer one's candidature at any such election. There is no general right as such under the common law. The right, therefore, must be exercised within the limits prescribed by the statute. Until statutory provisions are suitably amended so as to make it possible for the exercise of that right by making proper provisions for the amendment of the electoral rolls right upto the time of the commencement of the elections, there is no right to vote. In the present case, as we have seen, the freezing date of the electoral roll was April 23, 1968 and unless the name of a person appeared in the list on the said date his right of voting at the ensuing elections and/or being a candidate for the same does not exist. The appeal by Mr. Gursahani as to what should be the law is not enough for the present purpose,

8. Mr. Gursahani then invited our attention to the affidavit of the District Collector, particularly to para. 4 thereof. It may be recalled that the Government Notification appeared on March 20, 1968 and the roll as it existed on April 23, 1968, came to be adopted. The Collector issued a Press Note on March 28, 1968, to the effect that any person desiring his name to be brought on the assembly roll should make an application on or before April 15, 1968, to the Tahsildar who was the Registration Officer. In para. 4 of the affidavit the Collector says that this date was fixed as the freezing date notified u/s 7A of the Act of 1949 and the application for enrolment could be decided by the Registration Officer after expiry of seven days from the date of receipt of application for enrolment as laid down by Sub-rule (3) of Rule 26 of the Rules of 1960. Thus an opportunity was offered to persons whose names have not been included in the electoral roll to get their names enrolled by the last date which was the freezing date. Mr. Gursahani contended on the basis of this statement in the affidavit that his client did make the application before the terminal date i.e. on April 11, 1968 and it was not the fault of the petitioner if the Registration Officer did not decide the matter before the freezing date of the electoral roll i.e. before April 23, 1968. It is not, therefore, that he has been deprived of the right of voting at the elections and also to be a candidate by his own negligent conduct but by the default of the officer concerned. If we were satisfied, under the provisions as they exist, that either the State Government or the Collector had a right to direct the Assistant Electoral Registration Officer to amend the assembly roll, possibly some relief could have been granted to the petitioner. Section 7A of the Act of 1949 gives a limited power to the officer authorised, only to divide the assembly roll as on a particular date into different sections corresponding to different wards. It does not permit such officer to fix any date for amendment of that roll at all. It must be remembered that under the Constitution elections to legislatures at the Centre and States are the responsibility of a completely independent body called the Election Commission. The whole machinery of election is managed by the

Election Commissioner and his officers. Under the Representation of the People Act, 1950 the electoral rolls that are prepared under the said Act are essentially meant for the purposes of elections to the legislatures both at the Centre and States and are not concerned with elections to municipal bodies. Though it is true that, almost every State has in one form or the other adopted the assembly roll for the purpose of elections to municipal bodies presumably to save unnecessary expenditure on compilation of rolls for the purpose of municipal elections, the Rules framed under the Act of 1950 do not appear, so far as we are able to see, to give any authority to amend or to direct or set up a machinery for amendment of the electoral rolls, to the State. Rule 12 of the Registration of Electors Rules, 1960 provides that the period of lodging claims for being included amongst other things on the roll is thirty days from the date of publication of the roll in draft under Rule 10. It is, therefore, clear that in the absence of any legislation by the State containing any power to add to the assembly roll even for the purpose of municipal elections, neither the State nor the Collector has any power to call upon the Tahsildar to amend the rolls on an application made by a particular date. It would seem from a reading of all these provisions together that even if the said officer had made his decision before the terminal date i.e. April 23, 1968, and if the petitioner had been elected in all probability his election might have been successfully challenged.

9. In order to meet such a situation it is desirable that the State Legislature make suitable provision for correcting the roll for the purpose of election to municipal bodies, as it exists in some other States. The statute should provide for addition or deletion of such names as necessary to the assembly roll, before the notified date so that voters who are eligible either to vote or be candidates, are included in such lists. Until then no relief is possible to a voter in such circumstances as the present.

10. Mr. Gursahani referred us to the decision in Chief Commr., Ajmer v. Radhe Shyam AIR [1957] S.C. 204 where the following general observations appear (p. 308) :

It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such impact feet electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.

It is not possible to read these observations without reference to the legislative provisions that the Supreme Court was considering. In that case the question

arose u/s 30(2) of the Ajmer Merwara Municipalities Regulation and the Rules framed thereunder called Ajmer State Municipalities Election Rules. Section 30(7) of that Regulation provides that a person shall not be deemed to be an elector for any purpose of this Regulation or of any of the rules unless he is enrolled as an elector. Sub-section (2) provides that every person who would be entitled under the Representation of the People Act, 1950 to be registered in the electoral roll for a Parliamentary Constituency if that Constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency comprising the Municipality shall be entitled to be enrolled as an elector of the Municipality. Section 43 provides that the Chief Commissioner may by notification make rules consistent with the Regulation for the purpose of regulating all or any of the following matters namely, (c) the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. Rules 7 and 9 dealt with Electoral rolls and Electors. Section 30 of that Regulation is worded in a manner entirely different from Section 7A of the Act of 1949 in the present case. Having regard to those provisions the Supreme Court held that by Sub-section (2) only a qualification was provided for the purpose of enrolment. It further observed (p. 307) :

...It did not eliminate the further steps in the matter of the revision of such electoral roll as also the adjudication of claims to be enrolled therein and objections to such enrolments. The amendment did not obviate the necessity of taking these further steps in spite of the electoral roll for the Parliamentary Constituency being treated as the electoral roll of the Municipality. By thus treating the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality, the trouble and expenses involved in the preparation of the electoral roll for the Municipality were saved but the Municipality was not solved from the obligation of providing for the revision of such electoral roll as well as the adjudication of claim to be enrolled therein and objections to such enrolment.

These observations, therefore, do not apply though it would be proper for the State to make the necessary amendments to the provisions of the Act of 1949 to provide for proper rights of franchise for local administration not only according to the letter but the spirit of our Constitution. That may, however, be for the future, But it does not help the petitioner in the present case, Mr. Gursahani then referred us to a decision of the Patna High Court in Bishwanath Prasad and Others Vs. Ramji Prasad Sinha and Others, where again the provisions are entirely different This case also has no application to the present case.

11. In the result, except for quashing the order made by the Assistant Electoral Registration Officer no further relief can be granted to the petitioner. Subject to this order the prayers for other reliefs are rejected. There will be no order as to costs.

12. Copy to be forwarded to the Law Minister.