

(1966) 09 RAJ CK 0002

In the Rajasthan High Court

Case No : Full Bench Ref. No. 1 of 1966 (Civil Writ No. 35 of 1964)

Atma Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Municipalities Act, 1959 — Section 16, 21, 22, 33

Citation : AIR 1967 Raj 239 : (1967) RLW 275

Hon'ble Judges : L.N. Chhangani, J;D.M. Bhandari, J;B.P. Beri, J

Bench : Full Bench

Advocate : Marudhar Mridul and Gunman Mal Lodha, for the Appellant; Hiralal, M.M. Vyas, Government Advocate and Chand Mal Lodha, for Non petitioners Nos. 16 to 30, for the Appearing Parties

Judgement

Bhandari, J.—The following four questions have been referred by a Division Bench of this Court to a larger Bench:

(1) Whether Rule 2 of the Rules made by the Collector, Ganganagar u/s 22 of the Rajasthan Municipalities Act, 1959, lays down the requirement that the draft electoral rolls along with the notices must inter alia, be placed at the office of the Municipality concerned and at two conspicuous places in each ward therein under Clauses (a) and (b) of the said rule, or, this provision relates only to the publication of the notice?

(2) If the answer to the above question is in favour of the petitioners, whether the want of publication of the draft electoral rolls in strict conformity with the aforesaid rules amounts to a defect of a fundamental nature in the process preliminary to the election, and if so, whether such a defect would, by itself, be sufficient to vitiate the election in a writ petition?

(3) Whether Anop Chand's case (supra) correctly lays down the law in so far as it confined the operation of the decision of the Supreme Court in Radhey

Shyam's case (supra) to that class of cases only where there may be no rules as regards the revision of the electoral rolls, or its principle would equally apply to such cases where rules in that behalf may have been framed and are fundamental and have been breached?

(4) Whether the cases, for example, Jugal Kishore v. The State of Rajasthan (supra) and Ram Krishna v. The State of Rajasthan (supra), which have taken the view that no amount of violation of the rules framed by the Collector for the revision of the electoral rolls can vitiate an election and that it is only the total absence of the rules for revision thereof that can vitiate an election, correctly lay down the law?

These questions have arisen in the writ petition filed by Atma Singh and others for declaring the elections held on 30th December, 1963 for the general and reserved seats to the Municipal Board. Ganganagar null and void and also for certain other reliefs which need not be mentioned. The election took place in accordance with the provisions of the Rajasthan Municipalities Act, 1959 (Act No. 13 of 1959) (hereinafter called "the Act"). Chapter II of the Act provided for the constitution and government of municipalities in Rajasthan. It has been divided into several parts. Part I consists of three Sections, 4 to 6, and makes provisions for delimitation of the municipality for declaration of any area so delimited as a municipality and constitution of municipal board.

Part II consists of Sections 7 to 12 in which are contained provisions relating to composition of Board and terms of the member and vesting of the Municipal Government in the Board. Part III consists of Sections 13 and 14 and contains provisions for division of a Municipality into wards for the purpose of holding elections. Part IV consists of Sections 15 to 22 and contains provisions for the preparation of electoral rolls. Part V consists of Sections 23 to 33 and contains provisions relating to conduct of elections. Part VI consists of Sections 34 to 60 and contains provisions relating to election petitions. The other parts contain provisions on other matters. The provisions of this Chapter show that, except in cases mentioned in Section 10, the municipal board in which the municipal government is to vest shall consist of elected members and such co-opted members as are mentioned therein. The point for determination before the Division Bench was whether the electoral rolls were prepared in accordance with the provisions of this Chapter or not and if there was any irregularity in the preparation of the electoral rolls, what was the effect of such irregularity on the elections held on the 30th December 1963 in which the respondents to the petition were elected. As already mentioned, the electoral rolls under the Act are to be prepared in accordance with the provisions of Sections 15 to 22 contained in Part IV. These sections may be quoted in extenso:

"(4) Electoral Rolls.

15. Elections on the basis of adult suffrage --The election of the members of a board shall be on the basis of adult suffrage.

16. Electoral rolls for every ward.--(1) There shall be an electoral roll for every ward, which shall be prepared in accordance with the provisions of this Act under the supervision of the Collector.

(2) For purposes of preparation of such electoral roll the electoral rolls prepared for the State Assembly Constituencies under and in accordance with the provisions of the Representation of the People Act, 1950 (Central Act XLIII of 1950), relating to the area comprised in a ward shall be adopted and published in the manner prescribed and upon its publication it shall, subject to any alteration, addition or modification, made under or in accordance with this Act, be the electoral roll for the ward prepared in accordance with this Act.

(3) Where any addition, omission, alteration or other amendment is made under the Representation of the People Act, 1950 (Central Act XLIII of 1950), or the rules framed thereunder, in the said Assembly rolls relating to the area of the ward, a similar amendment shall be made in the corresponding electoral roll of the ward.

(17). Qualifications for electors Subject to the provisions of Section 18, every person who is qualified to be registered in the State Assembly electoral roll relating to the area comprised in the ward, or whose name is entered therein, shall be entitled to be registered in the electoral roll of the ward,

(18). Disqualifications for registration in an electoral roll.-- (1) A person shall be disqualified for registration in an electoral roll prepared under this Act, if he is disqualified for registration in the State Assembly rolls. (2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll prepared under this Act :

Provided that the name of any person struck off the electoral roll by reason of disqualification under Sub-section (1) shall forthwith be re-entered in that roll if such disqualification is, during the period such roll is in force, removed under the provisions of this Act or under any other law authorising such removal.

(19). Registration to be in one ward and in one place:--(1) No person shall be entitled to be registered in the electoral roll for more than one ward in the same municipality. (2) No person shall be entitled to be registered in an electoral roll more than once.

(20). Returning Officer--The electoral roll for each ward shall be prepared by a Returning Officer who shall be such officer as the Collector may appoint.

(21). Annual revision of electoral roll The electoral roll for each ward shall be revised every year in accordance with the provisions of this Act.

(22). Order regarding electoral rolls.--The Collector may by order published in the official Gazette and in such other manner as may be prescribed, make provision in respect of the following matters concerning the electoral rolls, namely: (a) the date on which the electoral rolls first prepared and subsequently

prepared under this Act shall come into force and their period of operation (b) the correction of any existing entry in the electoral rolls on the application of the elector concerned; (c) the correction of clerical or printing errors in the electoral rolls; (d) the inclusion in the electoral rolls of the name of any person--(i) whose name is included in the State Assembly rolls for the area relatable to the ward, but is not included in the electoral roll of such ward or whose, name has been wrongly included in the electoral roll of some other ward; or (ii) whose name is not so included in the State Assembly rolls and who is otherwise qualified to be registered in the electoral roll of the ward; (e) the annual revision of the electoral rolls; (f) the custody and preservation of the electoral rolls; and (g) generally for all matters relating to the preparation and publication of the electoral rolls.

In exercise of the powers u/s 22, the Collector of Ganganagar by order No. M/ Elec., dated October 26, 1963 made certain provisions and published them in the Rajasthan Gazette Extraordinary, Pt. VI--(K), dated 30-10-1963--Pages 314-318. The provisions material for the purpose of deciding Question No. 1 are stated below:

"2 Publication of Draft Electoral Roll.--The Returning Officer shall publish the draft electoral rolls by making a copy thereof available for inspection, and displaying a notice in Form A.-

(a) at the office of the Municipality concerned; (b) at two conspicuous places in a ward. The Returning Officer may also give further publicity to the notice in Form A as he may consider necessary."

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(6). Final publication of Electoral Rolls.--The Returning Officer shall thereafter publish the roll together with the list of amendments by making a complete copy thereof available for inspection and displaying a notice in Form "B" at the places where the rolls in draft were published under Clause 2. On such publication, the rolls together with the list of amendments shall be the final electoral rolls for the Municipal Board :

Provided that the Returning Officer, may at any lime correct any clerical or printing errors that he may discover in the electoral rolls.

In substance, the sections relating to the preparation of electoral roll of a ward in a municipality provide that the electoral roll prepared for the State Assembly constituency relatable to the area comprised in a ward shall be the electoral roll for the ward and alteration, addition, omission and modification made in the Assembly constituency relatable to that ward shall be incorporated in it from time to time. Thus, it becomes necessary to refer to the provisions of law relating to the preparation of electoral roll for the State Assembly. The Parliament has enacted the Representation of the People Act, 1950 (Act No 43 of 1950) which deals with the allocation of seats and delimitation of constituencies the qualifications of voters and preparation of electoral rolls and matters connected

therewith. In the matter of the preparation of electoral rolls, Section 21 of the Representation of the People Act, 1950 provides that the electoral rolls, shall be prepared in the prescribed manner by reference to the qualifying date. The Central Government has made rules called. "The Registration of Electors" Rules, 1960" Rules 10 and 11 are material in this case, and they run, as follows:

"10. Publication of roll in draft--As soon as the roll for a constituency is ready, the registration officer shall publish it in draft by making a copy thereof available for inspection and displaying a notice in Form 5--(a) at his office if it is within the constituency, and (b) at such place in the constituency as may be specified by him for the purpose, if his office is outside the constituency.

11. Further publicity to the roll and notice. The registration officer shall also--(a) make a copy of each separate part of the roll together with a copy of the notice in Form 5 available for inspection at a specified place accessible to the public and in or near the area to which that part relates; (b) give such further publicity to the notice in Form 5 as he may consider necessary, and (c) supply free of cost two copies of each separate part of the roll to every political party for which a symbol has been exclusively reserved in the State by the Election Commission."

2. The first question referred to the Full Bench relates to the interpretation of Clause 2 of the order of the Collector. This clause makes it necessary for the Returning Officer to publish the draft electoral rolls, the term "Returning Officer" being used for the officer registering the names of the electors. The manner of publication is given in this clause. It consists in making the copies of the draft electoral roll available for inspection. The controversy is, whether the draft electoral rolls are to be made available for inspection at the places "a" and "b" mentioned in that clause, or only notices in Form "A" are to be displayed at such places. The notice in Form "A" is to mention that electoral roll of a particular ward is being made available for inspection at a particular place.

3. In our opinion, mere displaying of notices in Form "A" at the places referred to in the clause is not sufficient but the copies of the electoral rolls must be made available for inspection at the places. Our reason for adopting this view is that if the mere displaying of notices in Form "A" at the aforesaid places is deemed to be sufficient, then it shall have to be taken that the rule has not specified the places where the copy of the electoral rolls is to be made available for inspection, and it is left to the sweet will of the Returning Officer to make them so available at any place. This could not have been the intention of the order. The proper view would be to hold that Clause 2 has made it incumbent on the Returning Officer to make available a copy of the electoral roll for inspection at each of these places and did not leave it to the Returning Officer to place them at any place which may be even outside the ward. The publication of the draft electoral roll is considered necessary so that mistakes, if any, in it may be pointed out by the residents of the ward and this purpose will be better fulfilled if the copy of the electoral roll is placed at some conspicuous place in the ward in addition to its being available at the office of the municipality concerned

This interpretation is therefore more in consonance with the underlying intention of Clause 2 as it would help in achieving the object behind it in much more effective manner, and also be convenient to the residents of the ward concerned. Then again places (a) and (b) in this clause have been mentioned not in continuation of the expression "displaying a notice in Form 'A'", but after putting a dash after it. This shows that the places mentioned at (a) and (b) have reference to making a copy of the draft electoral roll available for inspection and also for displaying notice in Form "A". This interpretation is in consonance with the principle that-

".. .where a clause, or phrase, follows several words to which it might be equally applicable, it should, if at all possible, be considered as applying to them all." , (Statutory Construction (Interpretation of Laws) by Craford, 1940 Edn. p 332)

This interpretation is further borne out by reference to Rules 10 and 11 of the Registration of Electoral Rules, 1960. The phraseology employed in Clause 2 of the Collector's order is a compressed form of the aforesaid rules. Rule 10 makes provision for publication of the roll in draft by making it available for inspection and also for displaying a notice in Form 5. We are left in no manner of doubt about the interpretation of Rule 10 that it makes incumbent on the Registration Officer to make a copy of the roll available for inspection at his office if it is within the constituency and if his office is not within the constituency, at such places in the constituency as may be specified by him for the purpose. The same must be the interpretation of Para. 2 of Clause 2 which has been adopted from Rule 10 with some changes.

4. It may also be mentioned that Clause 6 of the Collector's order makes it necessary that the final publication of the electoral roll would be by making a complete copy thereof available for inspection and by displaying a notice in Form "B" at the places where the draft electoral rolls were published under Clause 2. Thus, the places for inspection of the final electoral rolls are the same as those where they were first placed for inspection in draft form. It cannot be taken that even the final electoral roll is left to be put up for inspection at a place which may be determined by the Returning Officer. Considering all these circumstances, we are of the view that the order intended to particularise the places where the copies of the draft electoral roll are to be made available for inspection. This is our answer to Question No. 1

5. Now let us take up Question No. 2. In considering this question, we first confine our attention only to the point whether the provision in Clause 2 for publication of draft electoral roll, if not strictly complied with, would invalidate the electoral roll of the ward. The relevant provisions for the preparation of the electoral rolls contained in the Act may again be referred to. Sub-section (2) of Section 16 of the Act makes a provision for the adoption of the electoral roll prepared for the State Assembly constituencies relatable to the area comprised in a ward in the manner prescribed. Sub-section (3) makes provision for making amendments in the electoral roll from time to time as and when amendments are

made in the electoral roll prepared by the Assembly constituencies. u/s 22, the Collector has been given the power to make an order regarding electoral foils in conformity with the provisions of Section 16.

Incidentally, we may observe that the Legislature has entrusted to the Collector the power to make an order regarding preparation and publication of electoral roll. This may be due to the fact that the Collector may have better knowledge of the local conditions. But uniformity of law in the matter of preparation and publication of electoral roll is also necessary and in our opinion, it would have been proper that this power had been left to be exercised by a Central authority. Be that as it may, the order of the Collector has made provision for preparation of electoral rolls. Clause 1 of the Collector's order provides that the electoral rolls prepared for the State Assembly constituency relatable to the area comprised in a ward shall be adopted and brought according to the newly delimited ward, and the electoral roll so prepared shall be called Draft Electoral Roll.

Then there is provision in Clause 2 for publication of the draft electoral roll. Clauses 3 and 4 relate to the period and manner of lodging claims or objections and also for the manner in which inquiry into claims and objections are to be made. Then there are provisions for the final publication of the electoral rolls. Clause 6A makes provision for correction of entries and inclusion of names in electoral rolls. Under Clause 7 the electoral rolls published in accordance with the provisions of the Collector's order shall come into force immediately from the date of final publication and shall remain in force until new list is finally published. Clause 8 for the revision of the electoral rolls is, as follows:--

"8. (i) As soon as may be after the annual revision of the Assembly Electoral Roll relatable to the area of any ward has taken place, the Returning Officer shall prepare, with reference to the qualifying date, a list of amendments to the electoral roll for the time being in force for such ward on the basis of-

(a) additions, omissions, alterations or other amendments made in the Assembly Electoral Roll relatable to the area of the ward; and

(b) information supplied by the occupants of dwelling houses and by access to birth and death registers and such other information as may be readily available to the Returning Officer:

Provided that if for any reason the Assembly Electoral Roll relatable to the area of the ward is not revised in any year, the Returning Officer shall prepare, with reference to the qualifying date, a list of amendments to the electoral roll for the time being in force on the basis of information referred to in part (b) of Sub-clause (i) of this clause.

Explanation: For the purpose of this clause, "qualifying date" in relation to the revision of electoral roll under this clause means the 1st day of January of the year in which it is so revised.

(ii) When any such list of amendments to an Electoral Roll for a ward has been

prepared the Electoral Rolls for the ward for the time being in force together with such list of amendments shall be published in draft in the manner specified in Clause 2 and the provisions of this order shall be so far as may be applied in relation to the Electoral Rolls prepared under the Act.

(iii) When the Electoral Roll together with the list of amendments is finally published under Clause 6, the Electoral Roll shall be deemed to have been revised accordingly and the rolls so revised shall come into force immediately on such final publication."

The object of the various provisions contained in the Act and the Collector's order is that the electoral roll should be so prepared that as far as possible the names of all electors of a ward find place in it." and for that purpose it may be revised from time to time. Publication of a draft electoral roll of a ward in the manner provided in Clause 2 is considered necessary for the purpose that the persons who have any objection to any entry therein or to have any claim for including a name in it. may file such objection or claim in the manner provided in Clause 3. We have to examine what is to happen if provisions of Clause 2 have not been strictly complied with, and yet there is a final publication of the electoral roll. A defect in the publication of the draft electoral roll may be taken to have resulted in not giving full opportunity to the residents of the ward in making claims and preferring objections to the full extent before publishing the final electoral roll. There are further opportunities provided for inclusion of names of persons under Clause 6A on their making application to the Returning Officer. Clause 8 contains detailed provisions for revision of electoral rolls.

The final electoral roll can be corrected under Clauses 6A and 8. Thus, opportunities for correction of electoral rolls are there even after the final publication of electoral rolls in Clause 6. All this is in addition to the provisions contained in the Representation of the People Act, 1950 and the rules made thereunder. This being the position, we are definitely of the view that it would not be proper to hold that the electoral roll existing for the time being in relation to a particular ward is altogether null and void because there has occurred a defect in the publication of the draft electoral roll. In spite of such a defect, the electoral roll which may have come in existence at the time of the election cannot be treated altogether non-existent unless the court comes to the conclusion that the final electoral roll is so worthless a document that no election can be held on the basis of such an electoral roll. The contention of the petitioners is that in this case there has been a breach of mandatory provision of law. But it must be remembered that the breach has been committed by a public officer in the discharge of his duties and such provisions are not construed as mandatory but are generally treated directory. Here we may refer to an oft-quoted passage from Maxwell's Interpretation of Statutes, 11th Edition: p. 369:

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who

have no control over those entrusted with the duty, yet not promote the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words, as directory only."

6. There might have been some neglect in the performance of his duties by a Returning Officer in the mailer of publication of draft electoral roll, yet if in spite of any breach of the provisions of law in the publication of draft electoral rolls, an electoral roll has come into existence and has been acted upon for the purpose of election, it cannot be held to be altogether invalid

7. The proper approach is to see whether the object intended to be achieved by the legislature has been achieved in spite of the breach of any particular provision. For determining this, the entire scheme of law relating to the subject under consideration has to be examined. The following observations of their Lordships of the Supreme Court in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, sum up the law on the point.

"The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it uses the word "shall" as in the present case or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provisions is the determining factor, The purpose for which the provision has been made and its nature, the Intention of the legislature in making the provision, the serious inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory". (Para 7: Page 899)

8. On a careful consideration of the provisions contained in Sections 16 and 21 and the Collector's order, and for reasons which we already mentioned, we are of the view that the breach of the provision of Clause 2 would not by itself invalidate the electoral roll that has come into existence. We may draw support for taking this view from another case of the Supreme Court *B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others*, The appellant in that case was elected along with another person to the Panchayat of Byappanahalli, from his constituency in the State of Mysore. One of the defeated candidates filed an election petition u/s 13 of the Mysore Village Panchayats and Local Boards Act, 1959 (Mysore Act No. 10 of 1969). His case was that on the date of the filing of the nominations the appellant's name was not in the authenticated list of voters published under Rule 8, Clause 5 of the relevant rules.

The Munsiff set aside the election on the ground that the appellant's name was not included in the authenticated list of voters of the said Panchayat. The appeal

of the appellant to the High Court failed. The provisions of the Mysore Act in the preparation of the electoral roll adopted the electoral roll of the State Assembly for the time being in force for such part of the constituency as was included for the purposes of that Act. The name of the appellant had been included in the electoral roll of the Mysore Legislative Assembly before the date prescribed for filing of nomination papers but the Electoral Registration Officer had not followed the procedure prescribed for that purpose. The Supreme Court accepted the appeal and made the following observations:

"It is not disputed that an application was filed before the registration officer for the inclusion of the appellant's name in the electoral roll; it is also common case, that the electoral registration officer did not follow the procedure prescribed in Rule 26 relating to the posting of the application in a conspicuous place and inviting objections to such application. It cannot, therefore, be denied that the inclusion of the name of the appellant in the electoral roll was clearly illegal. u/s 30 of the Representation of People Act, 1960, no civil court shall have jurisdiction to question the legality of any action taken by or under the authority of the electoral registration officer. The terms of the section are clear and the action of the electoral registration officer in including the name of the appellant in the electoral roll though illegal, cannot be questioned in a civil court: but it could be rectified only in the manner prescribed by law, i.e. by preferring an appeal under Rule 27 of the Rules, or by resorting to any other appropriate remedy. But it was contended before the High Court that the action of the electoral registration officer was a nullity inasmuch as he made the order without giving notice as required by the Rules. We find it difficult to say that the action of the electoral registration officer is a nullity. He has admittedly jurisdiction to entertain the application for inclusion of the appellant's name in the electoral roll and take such action as he deems fit. The non-compliance with the procedure prescribed does not affect his jurisdiction, though it may render his action illegal. Such non-compliance cannot make the officer's act non est, though his order may be liable to be set aside in appeal or by resorting to any other appropriate remedy." (Para 9: Page 461)

9. This case points out that non-compliance made by an officer of certain provisions of law does not necessarily make his act non est. Following the same reasoning, we may say that in this case in spite of non-compliance by the Returning Officer of the provisions of Clause 2, the electoral roll that had come into existence could not be said as non est.

10. We are, therefore, of the view that a defect of the nature pointed out in Question No. 2 by itself is not sufficient to treat the electoral roll that had come into existence before the election took place as altogether void. Having reached this conclusion, it follows that the defect of the nature pointed out in Question No. 2 is not itself sufficient to vitiate the election.

11. Now, we proceed to examine the still wider question, as to under what circumstances, election to a municipal board can be set aside by this Court acting

under Article 226 of the Constitution. The discussion on this subject would be helpful in answering Questions Nos. 3 and 4 also. The provisions for holding of elections under the Act for the municipal boards are more or less on the same lines as the provisions of the Constitution of India and the Representation of the People Acts of 1960 and 1951, but there are several important points of distinction which would be proper to point out at this stage because our attention has been drawn to certain oases bearing on this aspect of the matter.

12. Under Sub-section (1) of Section 38 of the Act which runs, as follows, the jurisdiction of the civil court is barred in certain matters:--

"38.--Jurisdiction of Civil Courts.--(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll prepared under this Act, or (b) to question the legality of any action taken under the authority of an electoral registration of or of any decision given by any authority appointed under this Act, for the revision of any such roll, (c) to question the legality of any action taken or any decision given by the Returning Officer or by any other officer appointed under this Act in connection with an election."

An election held under the provisions of the Act cannot be called in question except by an election petition Section 34 of the Act which runs, as follows:--(6) Election Petitions: "34. Grounds on which election may be called in question.--The election of any person as member of a board may be questioned by an election petition on one or more of the following grounds, namely:

(a) that on the date of election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under tills Act, or

(b) that any corrupt practice specified in Section 36 has been committed by a returned candidate or his election agent or by any other person, with the consent of a returned candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder, or

(a) That in fad the petitioner or some other candidate received a majority of the

valid votes, or

(f) that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained majority of the valid votes."

Now the Representation of the People Act, under Article 329 of the Constitution has made a provision barring the jurisdiction of any court even of a High Court acting under Article 226 from entertaining any application for setting aside an election as held in *P.D. Shamdasani Vs. Central Bank of India Ltd.*, But Section 33 which finds place in the law made by a Legislature cannot affect the jurisdiction of the High Court to pass orders under Article 226 of the Constitution. This is the first point of distinction.

13. The second point of distinction is that u/s 34 of the Act an election may be set aside if the result of the election so far as it concerns the returned candidate has been materially affected by non-compliance of the provisions of the Act or of any rules or orders made thereunder, and as pointed out. The Act contains provisions relating to pre-election matters as well as matters relating to the conduct of elections. u/s 100(1)(d) of the Representation of the People Act, 1951, if the Tribunal is of the opinion that the result of the election in so far as it concerns a returned candidate has been materially affected by any non-compliance of the provisions of the constitution or of that Act or of any rules or orders made under that Act, the Tribunal shall declare the election of the returned candidate to be void. The breach of the provisions of the Representation of the People Act, 1951 covers only the breach of the provisions relating to the conduct of elections and such other matters as are covered by the Representation of the People Act, 1951 and not pre-election matters which are covered by the provisions of the Representation of the People Act, 1950

14. Having pointed out these points of distinction, we may take up the questions whether we should interpret Sub-section (d) (iv) of Section 34 of the Act when it makes reference to the non compliance of the provisions of the Act or of any rules made thereunder as confined to the breaches of the provisions relating to the conduct of election, or as including even breaches of provisions relating to pre-election matters. The word "election" has been interpreted by the Supreme Court in AIR 1952 SC 69 and has been given a wide meaning. It has been taken "to connote the entire process to be gone through to return a candidate to the Legislature". In Section 34 of the Act which provides for a remedy for questioning an election, it must be given the same meaning and matters relating to non-compliance with the provisions of the Act or of the rules or orders made thereunder which provide the procedure for returning a candidate to the board cannot form the ground for setting aside an election.

It will neither be reasonable nor proper to hold that non-compliance of the provisions of the Act relating to pre-election matters can form the subject matter of investigation in an election petition. Such matters can hardly be an

appropriate subject for investigation by an election tribunal. As a matter of fact, Section 33 of the Act has barred the jurisdiction of the Election Tribunal to review the acts of the concerned authority relating to pre-election matters as provided therein. Thus, Section 34 provides for questioning an election for errors and defects in the conduct of election committed by the returned candidate or by the Returning Officer. This leads us to the conclusion that the election cannot be set aside by an Election Tribunal for any mistake in the preparation of electoral roll. This statement of law is of course subject to the provisions of Section 31 (d) (iii) read with Section 27 which provide that if the result of the election is materially affected by the improper reception, refusal or rejection of any vote or rejection of any vote which is void, the election may be set aside. Such matters may form the subject matter of investigation in an election petition. We may, therefore, hold that the petitioners have no remedy by way of election petition when they challenge the preparation of electoral roll on account of the defective procedure followed in its preparation.

15. Now we take up the question whether an election is liable to be set aside by this Court under Article 226 of the Constitution on the ground that proper procedure has not been followed in the preparation of electoral roll.

16. The process of election starts by issuing of a notification calling upon a constituency to elect a member or members. Before such a notification can be issued, a number of preliminary steps have to be taken under the law. We have noticed that the Act makes provision for taking such steps. Broadly speaking these provisions relate to-

1. Constituting a municipality and defining its limits.
2. Issuing notification by the State Government declaring the composition of the Board
3. Division of Municipality into various wards and defining the limits
4. Preparation of electoral roll.

The law has laid down the manner in which these things are to be done. There may arise cases in which the authorities have failed to perform their functions in accordance with law in doing these things. Sometimes the transgression of law may be inexcusable and of such a serious nature that a court may be persuaded to take the view that the bedrock to hold elections is missing. In such circumstances, a citizen may apply to this Court under Article 226 of the Constitution for issuing of mandamus or any other appropriate Writ directing the State Government to perform these things in accordance with law and the High Court in an appropriate case may, in its discretion, issue such a writ or direction restraining the Government to hold election. Suppose nobody comes forward at that stage and the elections are held, even then, a citizen may file a petition under Article 226 of the Constitution not only for a declaration that the State Government has not acted in accordance with law in the doing of the aforesaid

things and that what has been done is null and void but also for a further declaration that the elections that had taken place be also held null and void.

The High Court may take into account the circumstance that the petitioner could have come earlier before the elections for relief in this Court under Article 226 of the Constitution and he has failed to do so but it may find that the infirmity in taking these proper steps is of such consequence that no elections could have taken place and it may in its discretion then quash the preliminary steps taken in these pre-election matters and may as a consequence also set aside the election. The attack of the petitioner is not to the manner in which the elections have been conducted, but to the infirmity to these preelection matters. In substance, the petitioner is pointing out that there was no foundation at all for holding elections. Under such circumstances what the court could do before the election, it can also do after the elections. We may no doubt point out that the court would refuse to grant relief unless it comes to the conclusion that the very foundation for holding the election was lacking. Setting aside an election is a serious matter and every breach of a provision should not be permitted to be an excuse for a prayer for setting aside an election.

17. There are several reasons why this should be the attitude of the court. One obvious reason is that any elector, in case the breach of the provision of law is of such a fundamental character that no election should have taken place on the basis of such election, could have come forward before this Court for a Writ or direction restraining the State or any other concerned authority from holding the election even before the election had taken place. Such a case is the case of the Supreme Court-- Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, in which the Supreme Court upheld the order of the Judicial Commissioner of Ajmer restraining the District Magistrate, Ajmer from holding the election to the Ajmer Municipal Committee on the ground that the electoral roll of the Ajmer Municipal Committee was not in conformity with the provisions of Section 30, Sub-section (2) of the Ajmer-Merwara Municipalities Regulation and such an electoral roll could not form any basis for election to the Ajmer Municipal Committee. Their Lordships made the following observations:

"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 scrutinise 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 imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was, in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf and in so far as the rules which were

thus framed omitted these provisions they were defective." (p. 308)

We may here sound a note of warning. It will be too much to read in these observations that a court of law should pass an order restraining the State or concerned authority from holding election for every technical breach of the provision of law in preparing the electoral roll. A court of law should be slow and cautious in passing an order restraining the holding of election because thereby it will deprive the people to exercise their right of franchise at least for sometime and thus cause delay in the process of constituting a body of elected representatives. In this connection, we may refer to the following observations in *Dr. Narayan Bhaskar Khare v. Election Commission of India* and *Narayan Bhaskar Khare Vs. The Election Commission of India*,

"The well-recognised principle of election law, Indian and English, is that elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to the time schedule."

(Para 9/Page 698)

The *Ajmer* case before their Lordships of the Supreme Court was a case where new rules were framed for the revision of the electoral roll and the aforesaid observations were made in that context and cannot be utilised for staying election even in cases where there has been mere technical breaches of law.

18. There is yet even more important consideration for not setting aside the election after it has taken place. Election to an office should not generally be brought into question except by an election petition. At one time in England, a Writ of Quo Warranto was issued for ousting any person who had unlawfully usurped the office at a particular time. This was replaced by information in the nature of Quo Warranto. The Municipal Corporations Act, 1882 which applied to all local authorities prevented an election from being questioned by Quo Warranto whenever an election petition would lie. (Page 388, Hart's Introduction to Law of Local Government and Administration 7th Edition).

19. The provisions of Section 34 point out that certain conditions are to be satisfied before election of an elected candidate can be set aside. These conditions are enumerated in Clauses (a) to (f). In framing these clauses the Legislature has taken notice of the entire set of circumstances. Election is a costly process and cannot be indulged too often. Apart from its expense, it is a process in which a large number of persons are involved and there is always likelihood of some irregularity having been committed here and there. Thus, elections can be set aside on the ground that the person elected should not have been elected, or who was disqualified has been elected, or one who could not stand as a candidate is illegally debarred from doing so, or when there had been no fair contest and the result declared does not truly reflect the voting.

20. No doubt, jurisdiction of the High Court in exercising the power under Article 226 of the Constitution cannot be taken away by any provision made by the Legislature for ousting the jurisdiction of the civil court but when this Court is passing an order for setting aside an election for any infirmity in preelection matters, it will no doubt keep in view that the Legislature has laid down certain conditions which must be satisfied before an election could be set aside, and those who come to this Court for seeking relief under Article 226 of the Constitution should not be permitted to get such relief by evading that provision of law, except when on strictest scrutiny of the case, the Court finds that there has been such breaches of the provisions of law that the State or the authority concerned should not have proceeded at all to hold the election, or when the holding of an election was merely a farce. Except for such cases, generally speaking, election of a person as a member of the Board should not be set aside for defects in pre-election matters.

21. Now let us consider some cases of this Court which have been cited at the Bar. In *Qurabali and Others Vs. Government of Rajasthan and Others*, there were two points involved, one was that the Municipal Board, Pali, was not properly constituted and the other was that the territorial limits of certain wards within the municipality were altered, but the notification altering the limits was not issued according to law, and in spite of these shortcomings, elections were held. The learned Judges of the Division Bench differed on the second point but agreed on the first point and held that as there was no proper composition of the Board, the election should be set aside. This was thus a case in which it was held that there was no proper composition of the Board and elections could not have been held without the Government's first determining proper composition of the Board.

22. *Uda Ram v. State of Rajasthan* ILR (1960) 10 Raj 540 is a case in which the formation of wards was defective and elections were held. It was held that the defect was of such a serious nature that the elections should be set aside.

23. On the other hand we have the Full Bench case of *Jaiwant Rao and Others Vs. State of Rajasthan and Others*, In that case, the boundaries of the wards of the Kotah Municipality were fixed by the Collector u/s 10 of the Rajasthan Town Municipalities Act, 1951, by virtue of the powers delegated to him by the Government, and the Collector's order dated 13-2-59 was published in the Gazette dated 12-8-59. The Collector subsequently made certain alterations in boundaries of the wards by his order dated 20-8-1959. Copies of the order were sent to the Returning Officer and to the Press immediately, but the publication in the Gazette was delayed by the Press and was made only on 14-5-59, the voters list was published on 30-3-59 and this was prepared with reference to and expressly mentioned the changes made in the wards by the order dated 20-5-59. It was held that the delay in the publication of the Collector's order in the Gazette could not be regarded to be fatal for holding the election because the effect of the irregularity was counter-balanced by the information in this behalf contained in the voters' list which was duly published in accordance with the

rules and the voters had full opportunity to file objections to the voters" list.

24. In *Gokul Chand v. State of Rajasthan* ILR (1961) 11 Raj 1047 Jagat Narayan J. took the view that the provision contained in Section 23 of the Act requiring the publication of the date of the general election in the official gazettee was mandatory and where it was not complied with, the election was null and void.

25. There is another case of this Court *Hari Prasad v. Returning Officer, Nawalgarh* 1962 Raj LW 57 in which it was held that:

"A breach of Section 10 of the Act in the sense that the total strength of a Board has not been fixed or that the character of its membership that is whether it is to consist of whole elected members or partly elected and partly nominated, and if so, what is to be proportion of one to the other, has not been determined goes to the very foundation of the constitution of the board and an election held in the absence of such a notification cannot but be struck down as illegal."

Certain cases of this Court relating to the Panchayat elections have also been cited before us, but we find that the provisions of the Panchayat Act are different in the matter of filing of election petitions and all of them need not be cited. We may, however, refer to *Prabhudayal Vs. Chief Panchayat Officer, Jaipur and Others*, which held that Rule 4 of the Rajasthan Panchayat Election Rules, 1954, requiring that the date, time and place of election should be notified 7 days before the date of election was mandatory and the election held without complying with this provision was illegal.

26. Without examining the correctness of each individual case referred to above, we may say that this Court acting under Article 226 of the Constitution struck down the entire election mainly on the ground that elections had been held when they could not have been so held on account of certain infirmities in the the pre-election matters. What the court orders in such a case is the demolition of an edifice built without foundation. But before ordering such demolition, the court must be very circumspect to see that the edifice cannot survive. If the edifice is ordered to be demolished for light reasons, it would mean enormous waste of time, labour and money of the nation and also of the contestants at the election.

27. Now we take up cases relating to the defects in the preparation of electoral rolls. We may start by referring to certain cases from the Punjab High Court.

28. A single Judge of the Punjab High Court in *Lekh Raj v. The Cantonment Board, Jullundur Cantonment* AIR 1968 Punj 356 issued a Writ directing that the election with regard to a particular ward should not be held as it was not prepared in accordance with the Cantonments Electoral Rules, 1945 (as amended in 1954). The same Judge struck down the entire elections in *Nitya Nand Kul Bhushan Lal v. Khalil Ahmed Ali Ahmad* AIR 1961 Punj 105. The learned Judge held that:

"A comparison of these two rolls can possibly leave no doubt that what was done by the Municipal authorities In the matter of publication of the preliminary rolls

was that a verbatim copy of the Punjab Legislative Assembly Electoral rolls which had been prepared and arranged ward-wise in accordance with the instructions sent on 4th August 1959 by the Director of Elections was published as the preliminary rolls on 21st August 1959 without making any changes although the qualifying date in the light of the explanation appearing in Rule 80 had become 20th August 1959 instead of 21st March 1958. Even otherwise it is not possible to believe that as soon as the fresh instructions were received on 20th August 1969, all the necessary enquiries about the inclusion of these persons who had become eligible to be included in the list, the qualifying date having become 20th August 1959, were made, and the completed preliminary rolls prepared in accordance with the rules, as amended, were printed and published overnight.

That is a feat which it is not possible to expect from Municipal authorities in this country to perform, whatever the degree of promptness and speed which may be imagined to have been imported. I am constrained to hold that the preliminary roll that was published on 21st August 1969 was not prepared in compliance with the rules, as amended, and thus the entire basis of the electoral rolls remained grossly defective and illegal "

29. The Full Bench decision of the Punjab High Court in *Dev Prakash Balmukand v. Babu Ram Rewti Mal* AIR 1961 Punjab 429 reviewed the previous decisions on the question of setting aside of an election in a writ petition on account of the defects in the preparation of the electoral roll. In that case prior to 13th August 1959, the rules framed under the Punjab Municipal Act required that an election to a municipal committee should be held on the basis of electoral roll prepared for election to the Punjab Legislative Assembly. Sometime in the beginning of August 1959, the Punjab Government decided to amend the rules, although the amendment was made on the 13th August and published on the 14th August. The amendment was the addition of a proviso that the Government may, If so inclined, direct that the Punjab Legislative Assembly roll shall not be used for the municipal election and a fresh roll in accordance with Rules 8-A to 8-K, which were added shall be prepared. The actual direction to this effect was received on 19th August 1959 and the roll was published on 21st August and objections to it invited in accordance with the new rules.

In that case, objection was taken to the electoral roll published on the 21st August, and this on the ground that in law nothing toward its preparation could have been done till the direction of the State Government was received and, therefore, everything done towards its preparation before the receipt of such direction was illegal, and consequently the whole electoral roll remained illegal in spite of its publication and the hearing of objections and claims in respect of it and its final publication on the 29th August, Dulat J. observed that-

"The contention raised seems largely to ignore the substance of the matter, which according to the rules, lay in this that the roll published was to contain the names of the electors qualified according to the new rules and claims and objections were to be invited and disposed of according to the rules and a final

roll was then to be published." (Page 432).

It was further observed that-

"The argument also ignores the fact that the election was actually held on the basis of the finalised roll and not the preliminary roll as published on the 21st of August. It is also to be remembered that even after the finalisation of the roll there was a provision in the rules for the correction of any further errors." (Page 432).

It was observed further that-

"An election is in its nature an expensive and time-consuming process, and if it is to be disturbed after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely a technical breach of a technical rule. (Page 434)

This case was distinguished by Grover J. in *Sher Singh Budh Singh v. State of Punjab* AIR 1965 Punj 361. Even in that case, the view taken by the learned Judge was that it will necessarily depend on the facts of each case whether the roll is illegal, and if it is illegal no election on its basis can proceed or be allowed to stand. These cases show that elections are not to be set aside for mere technical mistakes in the preparation of electoral roll.

30. In *Kanglu Baula Kotwal v. Chief Executive Officer, Janpad Sabha, Durg* AIR 1955 Nag 49 the Full Bench of the Nagpur High Court took the view that powers of the High Court under Article 226 are untrammelled by a law made by the Legislature and even though such law says that elections can be challenged only by way of an election petition before a Tribunal created by that law, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. The election of a candidate was set aside as the electoral rolls were not prepared in accordance with law.

31. Coming to the cases of this Court, we may take up the case of *Anopchand Gbiya v. State of Rajasthan* ILR (1961) 11 Raj 322 referred to in Question No. 3. This case arose out of a Writ petition under Article 226 of the Constitution. The petitioners were the residents of Ladnu town and their grievance was that the wards of the Ladnu town municipality were not determined on the population basis and elections to the town municipality were held on 25-2-1959. The Division Bench of this Court held that the questions relating to delimitation of constituencies are not justiciable and it was for the Government to arrange for the distribution of the wards taking into consideration various factors such as compactness of area, population and the electoral strength & C. Then it was argued that the final electoral roll was not prepared in accordance with law. In that case draft electoral roll was published on the 1st of May 1958, and claims and objections were invited for consideration on 1st June, 1958.

They were to be heard by the Revising Committee as required by the rules on 7-6-58.

The petitioners contended that no revising committee was ever formed as required by the rules. There were 1016 claim petitions filed by Individuals for inclusion of their names in the voters' list but all those petitioners were rejected by the Returning Officer on the ground that they did not conform to the prescribed rules as contained in Sub-rules 2 and 3 of Rule 9. Nevertheless, when the final electoral roll was published the names of all those claimants were included in the electoral roll. During the course of arguments in that case learned counsel for the petitioners had placed reliance on the observations of their Lordships of the Supreme Court in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, . In that context, the Division Bench observed:

"Reliance has also been placed upon the dictum of the Supreme Court in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, where it was observed that the validity of the elections could be challenged on the ground that proper Electoral Rolls were not maintained. In order that a proper Electoral roll should be maintained it is necessary that after the preparation of the Electoral Roll an opportunity should be given to the parties concerned to scrutinise 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. All this is true; but the Supreme Court decision referred to a case where no such Rules were at all framed and since these provisions were omitted, the Rolls were held defective and could not form the basis of a valid election. That apart; on facts there appears to be some confusion in the case of the petitioners upon the point."

Their Lordships then examined the facts and came to the conclusion that the electoral rolls were prepared in accordance with law. Their Lordships further gave another ground for rejecting the writ petition by making the following observations:--

"Taking the worst view of the case, the whole argument of the learned counsel on the point boils down to this that the names of certain persons were included in the list of voters about whom there was no decision by any Revising Committee whether they were competent to vote and yet such persons participated in voting at the elections. It means, in other words, that certain unauthorised votes were cast at the polls. In that event it would be an appropriate subject matter for consideration by an election tribunal whether the reception of these unauthorised votes materially affected the result of the elections. It cannot entitle the petitioners to a writ from this Court which would be almost in effect a writ of quo warranto declaring void the election of those who have been returned at the elections."

32. With great respect, we may say that it cannot be assumed, as has been done in formulating Question No. 8, that *Anopchand's* case, ILR (1961) 11 Raj 322 lays down the law that the dictum of the Supreme Court was applicable to those cases only where there were no rules for preparing the electoral rolls. The

Supreme Court case was noted in that case and it was pointed out that that was a case in which no rules for revision of electoral rolls were framed and then the Division Bench proceeded to decide the question on facts. From this, it cannot be inferred that the Division Bench confined the operation of the decision of the Supreme Court in Radhey Shyam's case to that class of cases only where there were no rules as regards the revision of the electoral rolls, nor can such an inference be drawn from the concluding observations quoted above. Again, with great respect, we may observe that the correct import of the aforesaid observations in Anopchand's case ILR (1961) Raj 322 has not been appreciated in Jugal Kishore v. State of Rajasthan ILR (1961) Raj 1183 in which these observations were understood as laying down that no amount of the violation of the rules framed for the revision of the rolls can render the election void, and that it was the total absence of the rules for the revision of the rolls that can render the election void. This case was followed in Ram Krishna v. State of Rajasthan. ILR (1964) Raj 414.

The aforesaid concluding observations in Anopchand's case ILR (1961) Raj 322 were made for furnishing an additional ground for rejecting the Writ petition. They were not meant to convey the extreme view of law taken in Jugal Kishore's case ILR (1961) Raj 1183. We may, however, add that in our view the petitioners in Anopchand's case ILR (1961) Raj 322 had no remedy by way of election petition. With respect we may say that we find ourselves unable to agree with the view that if certain persons whose names appear in the electoral roll have cast their votes, it can be an appropriate subject matter for consideration by an Election Tribunal. As we shall show presently, the Election Tribunal can examine the validity or invalidity of only such votes as are specified in Sub-sections 2 to 5 of Section 27 and not of others.

33. We are, however, of the view that the observations of the Supreme Court made in Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, that--"the elections held on such an imperfect rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned" were made in the context of that case and they should not be over-stretched by applying them to every case in which there has been some defect in the preparation of electoral rolls. The essence of the matter is whether the electoral rolls prepared were such as could not have formed the bedrock for holding elections. If the Court comes to this conclusion, then having regard to the other circumstances of the case, it may, in its discretion, set aside the election. Apart from some minor defects, the following three kinds of defects are generally noticeable in an electoral roll.

"(1) That the names of some of the voters have been omitted from the electoral roll;

(2) That the names of persons who were not the voters have been inserted in the electoral roll;

(3) That the names of some persons find mention at two places in the electoral

roll and sometimes in two different constituencies."

Many of these defects creep in even when all the formalities in the preparation of the electoral rolls are duly complied with. To a limited extent, these defects can be taken notice of by the Election Tribunal u/s 34(d)(iii) by reference to Section 27 of the Act, which runs, as follows:--

"27. Right to vote--(1) Except as expressly provided by this Act, every one who is, for the time being, registered in the electoral roll of any ward, shall be entitled to vote in that ward. (2) No person shall vote at an election in any ward if he is subject to any of the disqualifications referred to in Section 18. (3) No person shall at any election vote in more than one ward and if a person votes in more than one ward his votes in all the wards shall be void. (4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the electoral roll thereof more than once, and, if he does so vote, all his votes shall be void. (5) No person shall vote at any election under this Act if he is confined in a prison whether under a sentence or otherwise or is in the lawful custody of the police; provided that nothing in this sub-section shall apply to a person subject to preventive detention under any law for the time being in force".

If in contravention of these provisions there has been an improper reception, refusal or rejection of any vote, or the reception of any vote which is void at an election, the Election Tribunal can examine the matter and set aside the result of the election if the result of the election has been materially affected. With regard to cases not covered by Section 27 a question may arise in a writ petition that the electoral roll prepared in contravention of the law was so defective as to be treated an entirely worthless document for holding an election. If such a case comes up, the High Court may, acting under Article 226 of the Constitution, examine the circumstances of the case and grant relief, in its discretion, even by setting aside an election. But such a case will be an exceptional one

It is not possible for us to lay down any hard and fast rule as to how this Court should exercise its discretion beyond saying that this Court shall exercise its extraordinary jurisdiction under Article 226 of the Constitution with due regard to all the circumstances including the conduct of the petitioner who has come before it, the fact that he could have come earlier, the nature of the breach of the provision of law relating to the preparation of electoral roll, its effect on the final electoral roll and even the circumstance how far it has affected the election.

34. As a result of the aforesaid discussion, our answers to the questions referred to us are, as follows :

Answer to Question No. 1. -- Under, Clause 2 of the order of the Collector, Ganganagar made u/s 22 of the Rajasthan Municipalities Act, 1959, the requirement is that the draft electoral rolls along with the notices must inter alia, be placed at the office of the municipality concerned and at two conspicuous places in each ward as provided in Clauses (a) and (b) of the said order;

Answer to Question No. 2.--The want of publication of the draft electoral rolls in strict conformity with the aforesaid provisions does not by itself amount to a defect of fundamental nature in the process preliminary to the election and such a defect by itself would not be sufficient to vitiate the election and this Court may refuse to grant such a relief in a Writ petition.

Answer to Question No. 3.-- In our view, Anopchand's case cannot be assumed to lay down the law that the operation of the decision of the Supreme Court in Radhey Shyam's case should be confined to that class of cases only where there may be no rules as regards the revision of the electoral rolls and the observations made in the Supreme Court case may be applied in appropriate cases to other cases where rules for the revision of electoral rolls have been framed, but there has been other fundamental breach of such rules:

Answer to Question No. 4.--It cannot be laid down as a matter of law that no amount of violation of the provisions of the order of Collector for the revision of the electoral rolls can vitiate an election In our view, each case shall be decided according to its merits, keeping in view the principles enunciated hereinbefore.