
(1959) 05 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 321 of 1958

Ballabhdas Gendlal Badonia	Vs	APPELLANT
Collector, Mandla and others		RESPONDENT

Date of Decision : 20-05-1959

Acts Referred:

Citation : (1960) JLJ 185 : (1959) MPLJ 106

Hon'ble Judges : T.C. Shrivastava, J;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.J. Bhawe for Respondents Nos. 1 to 4 and A.P. Sen for Respondents Nos. 8, 14 and 18, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution the Petitioner challenges the validity of the elections held on 29-9-1958 for electing members for the Municipal Committee, Mandla. The Petitioner is a voter in Mandla. The Respondent No. 1 is the Collector, Mandla, Respondent No. 2 is the State Government and Respondent No. 3 was the supervising officer for elections at the material time. The Municipal Committee has been impleaded as Respondent No. 4. The remaining Respondents Nos. 5 to 18 are the successful candidates from the different wards. The Petitioner prays that the results of the election be declared illegal and be quashed. He further prays for a writ directing the Respondents Nos. 1 to 3 not to publish the names of the successful candidates.

The Petitioner supports his petition on the following facts. The distribution of the wards is uneven and there is a great disparity of voters in them. The electoral roll was not prepared within three months before the election. The scrutiny of nominations instead of being completed in one day was carried on for two days. Lastly, the symbols allotted were changed before polling to the prejudice of a particular political party.

Respondents Nos. 1 to 3 admit in their return that the State Government had suggested to the Collector to redistribute the wards; but as this was not found possible, the proposal of the Collector was later on accepted. As regards the preparation of the electoral rolls, they state that the preliminary publication was made on 26-6-1958 and the final publication was made on 13-8-1958 after the decision of the claims and objections. The elections were held on the basis of these rolls on 29-9-1958. They deny that the scrutiny of nominations was adjourned to 6-9-1958 and state that it was completed on 5-9-1958, but orders in two cases could not be completed that day and were hence delivered on the following day. The complaint about the change of symbols is stated to be baseless, as no objection was taken to the allotment.

The instruction of the State Government to the Collector to distribute the wards so as to secure roughly an equal number of voters in each ward is merely an executive instruction. Objections to the distribution of wards were invited and the final distribution was published after considering them. We do not think that the validity of the elections can be challenged on the ground that constituencies were not properly delimited. At any rate, it has not been shown to us that any law or rule was contravened in delimiting the wards.

The Petitioner has stated in the petition that the election was held on the basis of the rolls prepared in 1956. During the course of arguments, Shri Y. S. Dharmadhikari accepted the facts as stated in the return. Accordingly, the final publication of the rolls was in proper time. However, he contends that the preliminary publication of the rolls was made four days too early. He refers to Rule 2 of the Madhya Pradesh Municipal Electoral Rules which is as follows:

Three months prior to the date prescribed under Rule 1 the Deputy Commissioner shall cause to be prepared in the vernacular of the district an electoral roll for each of the wards into which a municipality is divided and for each of the special constituencies created u/s 13 of the Act.

He contends that the preparation of the rolls was in contravention of this rule and this renders the whole election void. Reliance is placed on *Kanglu v. Chief Executive Officer, Janapada Sabha, Durg* I L R 1954 Nag. 875. for this proposition.

The rule does not rigidly lay down the period of three months. It only indicates to the authorities when they should commence the work so as to complete it in good time. The various stages in the preparation of the electoral roll like filing of claims and objections, their decision, filing of appeals and their decision and the correction of the entries according to the decisions before final publication easily take six weeks. The rolls have to be finally published six weeks before the date of polling. That is why the period of three months is stated. It cannot be less than three months as the process takes so much time. If the contention of the Petitioner is accepted, it cannot be more also. The result would be that the preparation must start just three months before the date of polling not a day

earlier or a day later. Interpreted that way, the rule creates unnecessary difficulties without benefiting anyone. At any rate, if that were the intention, the rule would have been differently worded to put the necessary emphasis on the exact period. In our opinion, all that is intended by the rule is that the electoral rolls must be freshly prepared. There is substantial compliance of the rules, if the right to file claims and objections continues for some time within the three months prior to the date of polling. In that case, the defects in the roll, if any, can be rectified.

The facts in Kanglu's case I L R 1954 Nag. 875. were quite different. The rolls in that case were some years old and no opportunity for filing claims and objections was given before the elections. Further, there had been a radical change in the constituencies so that the rolls could not be considered to have been prepared with reference to any of the new constituencies. On the facts in that case there were really no rolls on the basis of which the elections could be held. In that instant case, the rolls were prepared before the elections and although the preliminary publication was 3 months and 4 days before the date of polling, an opportunity to those who wanted it was given to have new names included and to have the existing names excluded. The rolls were thus in substantial compliance with the rules.

Reliance was placed by Shri Dharmadhikari on Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, wherein it has been observed that invalid electoral rolls cannot form the basis of elections. In that case, the Parliamentary electoral rolls were sought to be used for the purpose of municipal elections, but there was an omission to publish the rolls inviting claims and objections before the elections as required by the Election Rules. It was observed that the giving of an opportunity to the persons concerned for having the entries revised is a necessary obligation on the election authorities and the rolls prepared without complying with that requirement were invalid. The decision in that case is not applicable to the present case, as the necessary opportunity had been given here.

Shri A. P. Sen for the Respondents has invited our attention to the following passage in Chandulal Shyamlal Gupta and Ors. v. Baldeoprasad Bisahu and others M. P. No. 302 of 1955 decided on 14-1-1958:

It has to be remembered that they relate to procedure and any non-compliance of each rule which does not cause material prejudice does not vitiate the result. It is necessary that the functioning of the democratic institutions of this nature should not be held up by mere technicalities not affecting the substance. The following observations in Selva alias G. Sarangapani Chettiar Vs. C.L. Aravamudha Iyengar and Another, are pertinent:

But it is well settled that non-compliance with Election Rules would be a ground for setting aside the election only if the result of the election had been materially affected thereby and this is so whether the rules in question are directory or mandatory.

In this view, it is not necessary to decide whether the rules are directory or mandatory. The petition cannot succeed unless it is shown that the result of the election has been materially affected.

We agree that elections should not be set aside for mere non-compliance or contraventions of procedural rules unless it is shown that material prejudice was caused.

We hold that the preparation of the rolls was in substantial compliance of the rules and there is no prejudice caused to anyone by the preliminary publication being made four days earlier. The objection raised by the Petitioner has no merit and must be rejected.

The next two contentions of the Petitioner relate to the delay in scrutiny of nominations and the action in changing the symbols. Shri Sen objects that these are matters which can be challenged in an election petition and therefore the existence of this alternative remedy debars the Petitioner to claim any relief on these grounds.

In view of the decision in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, it is now settled that the process of election extends from the stage of calling nominations to the stage of declaring results. Any complaint regarding irregularities at the time of scrutiny or regarding the allotment of symbols would thus be a matter pertaining to elections and should, u/s 20-A of the Municipalities Act, 1922, be challenged by an election petition. Shri Dharmadhikari refers to Rule 17 of the Municipal Election Petition Rules (page 295 of the Municipal Manual) which gives the grounds on which the election can be set aside by the Election Tribunal. In Clause (c) this rule refers to the contravention of Section 10, Sub-section (4), as one of such grounds. The reference is intended to be to Sub-section (6) of Section 10, though Sub-section (4) has been mentioned by an obvious clerical error. The rules u/s 10 are printed on page 131 of the Municipal Manual. There also the preamble refers to the Rules having been made u/s 10, Sub-section (4), though the subject-matter is stated to be "the mode and time of elections". Sub-section (4) of Section 10 does not deal with that matter at all. It is Sub-section (6) which provides for the necessary power and in the very words used in the preamble. It may be observed that by an amendment in 1939 the original Sub-sections (3) and (4) were replaced by the present Sub-sections (3) to (6) and thus the provisions of the earlier Sub-section (4) now appear in Sub-section (6). The Election Petition Rules (page 295 of the Municipal Manual) were framed in 1947; but by inadvertence the references in the earlier rules were copied without making the changes rendered necessary by the amendment made in 1939. A similar mistake continued in the preamble of the Electoral Rules (page 131). If Rule 17 of the Election Petition Rules is thus read, a contravention of the Rules framed u/s 10(6) of the Act regulating the mode of election is one of the grounds to be considered by the Election Tribunal. Accordingly, we hold that an alternative remedy existed in this case.

Shri Dharmadhikari relied upon some decisions of this Court in which interference in election matters has been made even when there was an alternative remedy available. We need not refer to those decisions. The law on the point is well settled. The existence of an alternative remedy is not an absolute bar to give relief under Article 226 of the Constitution. Such a relief can be given if the alternative remedy is not equally speedy or efficacious or some other exceptional circumstances make it just and convenient to grant it. However, the general rule is that no such relief should be given where an alternative remedy exists. Considering the facts of the instant case, we do not think it proper to exercise our discretion in granting relief in these proceedings.

Even on merits, the contentions relating to delay in scrutiny or change of symbols are without any substance. If the scrutiny cannot be completed on the date fixed on account of the number of objections or the contest raised or for some other reason, the supervising officer has no option but to continue the work on the following day. It is unreasonable to contend that this would vitiate the elections. In the instant case, the supervising officer continued the work till 5 p. m. and resumed it again at 9 p. m. He had only two orders left to write which he delivered the following day. We do not think that any contravention of the rules was committed. As regards allotment of symbols, Shri Dharmadhikari conceded that no objection was raised at the time of allotment. It is not now open to the Petitioner to make that as a ground for complaint if his friends have lost the elections after accepting the symbols without any demur. Apparently, those losing candidates have no grievance. The Petitioner, who is a voter, cannot be permitted to raise the objection. Further, it has not been shown that any law or rule was contravened in allotting the symbols.

In the result, the petition fails, It is dismissed with costs. The Respondents were represented by two sets of counsel and we fix the hearing fee at Rs. 100 for each set. The outstanding amount of the security, if any, shall be refunded to the Petitioner.