
(1956) 05 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ No. 93 of 1955

Chandra

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-05-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 23
Rajasthan Panchayat Act, 1953 — Section 6
Rajasthan Panchayat Election Rules, 1954 — Rule 19, 20

Citation : AIR 1956 Raj 188 : (1956) RLW 311

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Wanchoo, C.J.—This is an application by Chandra under Article 223 of the Constitution against the State of Rajasthan and others relating to the election to the Panchayat at Gangwa, which has been called Village Panchayat Manglana in the petition, and appears as non-petitioner 4.

2. The facts, which have been alleged by the applicant, are that a Panchayat was established at Gangwa. This Panchayat included three other villages, namely, Deolikhurad, Manglana and Dilandhana, and was known as Gangwa Panchayat according to the notification issued when it was established. Elections for this Panchayat were scheduled to be held on 10-4-1955, at village Gangwa, and, six Panches were to be elected from six wards into which the four villages were divided.

The applicant was a candidate in ward No. 1 of village Gangwa. Votes were taken in ward No. 1, and the applicant secured 176 votes as against 101 by the rival candidate Pusa Balai. The applicant was then declared elected. Elections with respect to other wards were not held.

The applicant does not disclose in his application why this was so, and we presume therefore that the postponement must have taken place for reasons which permit such postponement and are to be found in Rule 5 of the Rajasthan Panchayat Election Rules, 1954. At any rate, the applicant has made no grievance of this postponement.

3. Thereafter, another notification was issued for holding the election on 30-5-1955. This time the elections were held at Manglana, and the Panchayat was called "Panchayat Manglana", though, its proper name, according to the notification, would be "Gangwa Panchayat". In this election, candidates stood from all the six wards, and the election of the applicant in ward No. 1 was completely ignored.

After the elections of 30-5-1955, were over there was election for the office of the Sirpanch, to which one Parma was elected, Thereafter, it is said that the Panchayat started acting, and on 21-8-1955, the Sirpanch issued an order to the effect that at least one person from each house in the village should go with a spade and an iron pan for making embankment of a tank tailing which the household will be fined Rs. 11/-. Such person was required to turn up, and work from 7 A.M. to 5 P.M. without any payment.

4. The contention of the applicant on these facts is three-fold-

(1) that as he was elected from ward No. 1 on 10-4-1955, the election in that ward on 30-5-1955, was illegal, and Ladu, opposite party 11, cannot represent ward No. 1;

(2) the whole election held on 30-5-1955, was invalid, as the notification stated that election to the Manglana Panchayat would be held on that day, and, in any case, the election of the Sirpanch was invalid as he did not reside in the Panchayat Circle, and was therefore not eligible for election as Sirpanch;

(3) The Panchayat or its Sirpanch had no power to compel village persons to work in connection with the embankment of the village tank, and this amounted to forced labour which was prohibited under Article 23 of the Constitution. Further the Sirpanch or the Panchayat had no authority in law to impose any fine for failure to turn up to work on the embankment.

5. No reply has been filed on behalf of the opposite parties. We have heard learned counsel on both sides, and have come to the conclusion that the application must succeed so far as points 1 and 3 are concerned. We are however of opinion that the application so far as it relates to the second point must fail. We shall give our reasons presently for this conclusion.

6. Let us begin with the first contention of the applicant, namely, that when he was elected on 10-4-1955, there could be no further election from that ward subsequently on 30-5-1955. It has not been challenged that the applicant was elected from ward No. 1 on 10-4-1955.

Under these circumstances, it stands to reason that unless the applicant's election was set aside, there could be no further election in ward No. 1. It is no one's case that the applicant's election of 10-4-1955, was ever set aside before 30-5-1955. In these circumstances, it is clear that the election of Ladu, opposite party 11, on 30-5-1955, from ward No. 1 was improper. It has, however, been urged that this Court should not interfere in its extraordinary jurisdiction as the point can be raised in an election petition.

This Court has held in *Tekchand Vs. Banwarilal and Others*, that it will not interfere in the exercise of its extraordinary jurisdiction in a case in which an election petition lies till the election petition has been decided. The question, therefore, arises whether in this case the applicant could have obtained a remedy by riling an election petition. In that connection we would refer to Rules 19 and 20 of the Rajasthan Panchayat Election Rules, 1954, which provide for election petitions.

Rule 19 merely gives a right to make a petition. It does not state under what conditions the petition could be made. Rule 20 prescribes the conditions under which the Collector can interfere with the election. It is obvious that the grounds on which the Collector can interfere with the election must also be the ground on the basis of which an election petition can be filed. Otherwise there will be no sense in filing an election petition on a ground, on which the Collector cannot interfere at all.

The grounds mentioned in Rule 20 are misconduct or corrupt practice. Corrupt practice is defined in Rule 46, and is obviously something done by the candidate or his agent in order to procure votes through bribery or personation. Misconduct has not been defined anywhere in the rules. The question, however, which arises is whether the misconduct mentioned in Rule 20 must be of the candidate or his agent, or the action of the Returning Officer can also be made the basis of a petition under Rule 19.

Reading Rule 20 as it stands, there can. In our opinion, be no doubt that the misconduct or corrupt practice referred to therein must refer to the misconduct or corrupt practice of the candidate or his agent, and not to the misconduct or corrupt practice of the Returning Officer. As we have already pointed out, corrupt practice as defined refers to the action of the candidate or his agent only.

The word "misconduct" appears in Rule 20 along with the term "corrupt practice" as an alternative, and must also, in our opinion, refer to the misconduct of the candidate or his agent, and not to the misconduct of the Returning Officer. Therefore, no election petition will lie on the ground of any irregularity committed by the Returning Officer.

7. In this case, the election in Ward No. 1 had already been held on 10-4-1955, and the result had been declared. The Returning Officer, therefore, could not hold an election again in Ward No. 1 within a month till the election of the applicant is set aside. This point, however, cannot be raised by an election petition under

Rules 19 and 20 in view of our interpretation of those rules.

The applicant is, therefore, entitled to relief from us because there is no other relief for him in the circumstances. So far therefore as the first point is concerned, we are of opinion that the applicant was elected to the Panchayat at Gangwa on 10-4-1955 and still continues to be its member, and that Ladu, opposite party 11, has no right of membership of the Panchayat.

8. We now come to the second point, namely, that the entire election, which was held on the 80th May, was invalid, and that, in any case, the election of the Sirpanch was illegal. So far as the election of the entire panchayat is concerned, the matter may be confined only to the five wards other than ward No. 1 about which we have already decided. The election to the remaining wards Nos. 2 to 6 was held on the 30th May.

It is urged that in the notification for this election the Panchayat was named as Manglana Panchayat though its proper name is Gangwa Panchayat. We find, however, that no one was misled by this mistaken description, and Manglana is one of the villages included in this Panchayat. In these circumstances, we are not prepared to hold that the election from wards Nos. 2 to 6 was invalid simply because of this technical mistake.

9. As far as the election of the Sirpanch is concerned, the contention of the applicant is that the Sirpanch was not a resident of this Panchayat Circle, and therefore was ineligible under Sections 10, 11 and 13 of the Panchayat Act. All that the applicant said in that connection was that the Sirpanch was not a resident of this village. The Sirpanch has filed an affidavit in reply, and he says that he told the Returning Officer on 30-5-1955, that he was a resident of village Manglana and therefore qualified to be elected as Sirpanch.

In these circumstances, if the applicant contends that the Sirpanch's statement to the Returning Officer was false, and the Sirpanch was really not a resident of Manglana, he would have a remedy by way of an election petition under Rules 19 and 20 of the Rajasthan Panchayat Election Rules, 1954, as the conduct of the Sirpanch in making a false declaration before the Returning Officer about his residence would amount to misconduct.

In this view of the matter we are of opinion that as the applicant has a remedy by way of an election petition under Rules 19 and 20, we should not give him any relief in our extraordinary jurisdiction till he has exhausted that remedy.

10. We now come to the last point, namely the order about what we must call compulsory labour, and the fine of Rs. 11/- where a person does not turn up to perform that duty. Learned Government Advocate admits that that order of the Panchayat cannot be supported.

Obviously the Panchayat cannot force persons to perform labour. The order that it has passed is clearly against Article 23 of the Constitution which forbids Begar. Further nothing has been pointed out in the Panchayat Act which allows the

Panchayat to impose a fine in these circumstances. The order, therefore, dated 21-8-1955, must be set aside.

11. We, therefore, partly allow the application, and order that Chandra, who was elected as a Panch on 10-4-1955, from Ward No. 1, continues to represent that Ward until he is removed through proper election petition, and that Ladu has no right to represent Ward No. 1 in this Panchayat.

We also hold that the Panchayat had no authority to pass the order dated 21-8-1955, relating to what we must call compulsory labour, and to impose a fine for not performing that labour, and set aside that order. In view of the circumstances of the case, we order parties to bear their own costs of this petition.