

(1960) 01 MP CK 0042
In the Madhya Pradesh High Court
Case No : M.P. No. 215 of 1958

Famadhar Pandey

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-01-1960

Acts Referred:

Rewa State the Rewa State Municipalities Act, 1945 — Section 15, 21

Citation : (1960) JLJ 980

Hon'ble Judges : M. Hidayatullah, C.J.;G.P. Bhutt, J

Bench : Division Bench

Advocate : A.P. Sen and R.K. Tankha, for the Appellant; M.P. Shrivastava, Dy. Government Advocate for State G.P. Singh for Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M. Hidayatullah, C.J.—This petition is directed against the election of some of the respondents to the Maihar Municipality held on 27th July 1958. The contention of the petitioners is that the elections were bad because separate electoral rolls for the Maihar Municipality and/or the wards thereof were not prepared. It is also contended that scrutiny was not made of the nominations of the candidates with regard to then being qualified under the Act. These are the only two points which have been brought to our notice, and it is therefore not necessary to recount other facts.

2. Formerly, there existed in the Rewa State the Rewa State Municipalities Act, 1945 which was adopted for the purposes of Maihar. Subsequently on the 21st June 1956 the principal Act was amended by the Rewa State Municipalities (Vindhya Pradesh Amendment) Act, 1955 (No. 8 of 1956). It is the provisions of the principal Act read in the light of the amendments made which have led to this petition.

3. u/s 15 of the principal Act, the first general election of members of Municipal Boards was to be held on such date or dates as the Government by notification in

the Gazette appointed. Thereafter, the general elections were to be held at the end of every three years on date or dates appointed by the District Magistrate, In the year 1954, by Act II of 1954, a proviso was added by which the State Government was entitled to postpone the elections. The section in question was replaced by another section by the amending Act, which provided that subject to the provisions of the amending Act the term of office of members of a Board shall be for a period of three years from the date on which their election or nomination has been notified u/s 34, provided that the Government may by notification from time to time extend the term of office of members of the Board so however that the total period for which the term is so extended does not in the aggregate exceed one and a half years It was admitted before us that the term of the old Board came finally to an end in January 1958 necessitating fresh elections. By the time certain rules which were published in the Madhya Pradesh Gazette of the 27th December 1957 came into force, vital changes had been made in the principal Act by the amending Act, and we now begin to scrutinize how the amendments operated and how far reaching they were.

4. u/s 21 of the principal Act the qualifications of electors were stated. It is not necessary to quote those qualifications, because the section was completely replaced by another section by the amending Act, The amended section reads as follows:-

21. Qualification of electors.--(1) For the purpose of holding an election to a Municipality there shall be an electoral roll for each Municipality, a separate roll being prepared for each ward.

(2) So much of the Assembly roll as relates to the areas comprised within a Municipality, or the ward of such municipality shall be deemed to be the electoral roll for such Municipality or the ward thereof, as the case may be.

(3) A person shall not be deemed to be an "elector of a Municipality or a ward thereof, unless his name is entered in the electoral roll of that Municipality or that ward, as the case may be.

5. It will appear from this that the detailed qualifications entitling persons to be enrolled as electors completely disappeared and instead was substituted the qualification that their names must be found in the rolls prepared for the Assembly election relating to the area comprised within the Municipality or the ward of such Municipality. This difference will be commented upon in the sequel.

6. Again, section 25 of the principal Act, which dealt with the matters to be regulated and governed by rules and which read as follows, was amended:

The following matters shall be regulated and governed by rules:-

(a) The preparation and revision of electoral rolls;

.....

We find from the amending Act that this clause (a) of section 25 of the principal

Act was deleted.

7. In spite of the deletion of these powers, by notification dated the 17 December 1957 rules regulating the preparation and revision of electoral rolls were published. Authority for that is shown to be taken from section 275 of the principal Act, which however reads as follows:

Rules-(1) The Government may make rules consistent with this Act in respect of the matters for which provision is made in this Act; and

(2).....

The rules dealing with the preparation and revision of electoral rolls, therefore, do not come within the purview of the Act. They are not supported any longer by section 25, clause (a) of the principal Act inasmuch as it was deleted before December 1957, and they are not supported either by sub-section (1) of section 275 of the principal Act inasmuch as there is no express provision any more in the Act for the making of such rules. They are also inconsistent with the provisions of the new section 21 introduced by the amending Act, In this view of the matter it is not necessary to refer to the rules for the preparation of the electoral rolls or for their revision, even though such rules have been prepared and published.

8. The main contention, therefore, can now be dealt with in the light of the law such as it is after the amending Act was passed. As we have already pointed out, there is no basis of qualification for being an elector except one in the Act as amended. The only qualification is to be found in the newly introduced section 21, which we have quoted elsewhere. It would appear from this that the Assembly roll is to be deemed to be the roll of the Municipality or ward, or at any rate so much of it as it relates to these areas. That one's name is on the Assembly roll is all the qualification for one being a voter at the election.

9. Shri A.P. Sen for the petitioners contends that in spite of the fact that the rules regarding the preparation and revision of electoral rolls are no longer in force, the duty cast by sub-sections (1) and (3) of section 21 still remains. He contends on the authority of a decision of the Patna High Court reported in Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, , and another case of the Supreme Court reported in the Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, , that the electoral rolls of the Assembly can only be used as foundation or basis for the preparation of the electoral rolls of the Municipality, which had to be prepared as required by sub-section (1) of section 21, We have looked carefully into these two rulings, and we are satisfied that they do not govern the present case.

10. Taking the Supreme Court case first, we find that the provisions of law on which the decision was rendered were not in pari materia. Their Lordships have quoted the provisions at page 306 of the ruling, and it is clearly stated in those provisions that though the electoral roll for Parliamentary Constituency was to be

used to find out whether a person was entitled to be enrolled as an elector of the Municipality, preparation of the roll was incumbent. In fact section 43 of the Act there provided for the making of rules for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. Rule 7 which was framed provided that the roll of a particular Municipality shall be the same as the final printed roll for a Parliamentary Constituency representing the area covered by the Municipality, Rule 9, however, provided:-

No person shall be deemed to be an elector for the purposes of these rules unless his name appears in the electoral roll mentioned above.

Their Lordships, on the basis of these provisions, observed that though the Parliamentary Constituency was the foundation for the preparation of the electoral rolls for the Municipality, the duty of preparing the electoral rolls was not taken away. Their Lordships also observed that it did not eliminate the further steps in the matter of the revision of such electoral rolls as also the adjudication of claims to be enrolled therein and the objections to such enrolment.

11. It is manifest that by the scheme of the Act with which we are concerned there can be no revision of the electoral roll because there is no provision in the Act nor any conferment of rule-making power which will reach such a result. The Act contemplates under sub-Section (2) of section 21 that so much of the electoral roll of the Assembly as relates to a particular area shall be deemed to be the electoral roll of the Municipality, The fiction makes that portion of the electoral roll of the Assembly as relates to a particular area the electoral roll of the Municipality. Once we have reached that position-and we find that there is no other provision in the Act either for amendment of the electoral toll or for its preparation--we cannot say that the statute we are considering is in pari materia with that with which their Lordships were concerned. We are quite clear that by taking away the power of the State Government to make rules for the preparation and revision of the electoral rolls and by making the fiction operate which makes the Assembly electoral roll the roll of the electors in the Municipality, the Act has excluded any question of revision of electoral rolls such as was considered in the Supreme Court case.

12. What we have said above is sufficient to distinguish the case. We entirely agree--as we mus.-- with the observations of the Lordships of the Supreme Court that if there was a provision for objections and for applications, the proposition which has been laid down by their Lordships of the Supreme Court would have applied here. The statute, however, rules out any such claims or objections, and the rule-making power of the State Government has also been taken away. In view of these fundamental differences, we ate of the opinion that the Supreme Court ruling does not help in the matter at all.

13. As regards the Patna case, we find that the Act with which the Patna High

Court was concerned had provisions showing the qualifications of electors. Section 15 of that Act laid down the qualifications of persons who were entitled to be registered as voters and also conferred on the State Government the power to prescribe by rules the qualifications and disqualifications and the manner of the registration of voters at elections of Municipal Commissioners. It was therefore provided by sub-section (2) of that section that every person who was registered as a voter in accordance with rules made under sub-section (1) was to be entitled to vote at an election of Municipal Commissioners and that no person who was not so registered was to be entitled to vote at any such election. There is thus at the very outset the fundamental difference, because the Act contemplated by rules a register of voters, their qualifications and the manner of the registration of voters. In the Act with which we are concerned no such provision exists. All that is there is that the electoral roll of the Assembly shall be deemed to be the electoral roll of the Municipality. There is no mention of the qualifications of voters except that they are entitled to be so by reason of their names being found in the electoral rolls of the Assembly. This vital difference, together with the taking away of the power of the Government to make rules for the preparation and revision of such electoral rolls, makes this case just as inapplicable as the case of their Lordships of the Supreme Court. We may state here that in the cited case rule 4 framed under that Act contained a provision which is almost ipsissima verba with certain portions of section 21 of the principal Act. But there was with it a proviso which enabled the District Magistrate to order the preparation of fresh rolls if in his opinion the rolls of the Assembly constituency were not suitable for the purposes of the elections to the Municipality. No doubt, the learned Judges of the Patna High-Court held that that was a discretionary power-and we say nothing as to that-but that also makes a difference between the Act and the rules we are considering and the Act and the rules that the Patna High Court had to consider. Certain observations from the Patna and the Supreme Court rulings have been used by Shri A. P. Sen in support of his contention; but we are of the opinion that in view of these fundamental differences we are not entitled to go upon decisions which have been rendered in the light of statutes existing there.

14. The gist of the matter, therefore, is whether it was incumbent upon the authorities to prepare an electoral roll for the Municipality or the wards of Maihar Municipality. We think that in view of the express provisions of section 21 that duty was not there. No doubt, sub-section (1) of section 21 stated that for the purpose of holding an election to a Municipality there shall be an electoral roll for each Municipality, a separate roll being prepared for each ward; but sub section (2) by its very terms made so much of the Assembly rolls as related to those areas, the electoral rolls of the Municipality or the ward thereof as the case may be. By this fiction the electoral roll of the Assembly became the electoral roll also of the Municipality or the ward as the case may be. There being no other provision, either for the revision of the electoral rolls or for their amplification and the rules on the subject being beyond the Act, the Act could alone be used,

and we find that it has been so used- In view of the provisions we find before us and which have not been questioned, we do not think that there is any force in the contention that the failure to prepare electoral rolls has vitiated the elections which have taken place. We hold accordingly.

15. It was next contended that there is no machinery in the Act for the scrutiny of nomination papers of candidates to find out whether they were qualified under the Act. We find that there is provision for some scrutiny but not along the lines suggested. A reference however to the Act and the rules makes it amply clear that questions of disqualification of candidates are to be taken not before the officer scrutinizing the nomination papers but by an election petition to the Tribunal hearing the election petition. Rule 48 of the rules framed which can be sustained under one of the clauses of section 25 not deleted, makes it a ground of attack in an election petition. The disqualification, therefore, has been advisedly left for scrutiny at a latter stage, and we do not think that by reason of the postponement of such a scrutiny the election can be said to be vitiated. No doubt, if experience of other statutes is called in aid, this appears to be somewhat extraordinary, but there is no logic in these matters and there is no compulsion either. The law contemplates that the scrutiny of nomination papers shall be made with respect to certain points and other matters can be attacked by way of an election petition. We do not think, that the law as framed is either void or unconstitutional. The law being such, we think that the scrutiny with regard to the qualifications or disqualifications of the candidates could not be made before the officer appointed to scrutinize nominations, beyond what the law said.

16. Since these were the only two points argued we do not see any force in the petition. It fails and is dismissed with costs. Counsel's fee Rs. 25/ which shall be paid to each set of contesting respondents out of the security amount, and the balance shall be refunded to the petitioners.