

(1966) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 371 of 1966

Govindrao Anandrao Joshi and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 11-10-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 20, 22, 22(1)(d), 29, 55(2)

Citation : (1970) ILR (MP) 207 : (1968) JLJ 896 : (1968) MPLJ 634

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavé, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; K.K. Dubey, Govt. Advocate for Respondents Nos. 1, 2 and 3 and Y.S. Dharmadhikari, for the Respondent

Judgement

P.V. Dixit, C.J.

The two Petitioners in this case challenge the validity of the election of the Respondent No. 4, Sarawan, as President of the Municipal Council, Betul Bazar. The first Petitioner, Govind Rao, claims to be a duly qualified voter of the Municipal Council. The other Petitioner, Jai Krishna, is a Councillor who unsuccessfully contested election for the office of the President.

The election was held on 27th June 1966 at a meeting of the Council convened by the Sub-Divisional Officer, Betul, acting under Rules 2 (d) (ii) and 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962 (hereinafter referred to as the Rules). The Betul Bazar Municipal Council is a Class-IV Municipality under the Madhya Pradesh Municipalities Act, 1961 (Hereinafter called the Act). According to Rule 2 (d) (ii), in the case of first meeting of a Council for Class-III or Class-IV Municipalities called u/s 55(2) the "Presiding Authority" means the Sub- Divisional Officer. Rule 3 is as follows-

3. (1) The election of the President, Senior Vice-President, and Junior Vice-President shall take place at such time and place as may be fixed by the

presiding authority in that behalf.

(2) The presiding authority shall specify in the notice of the meeting the time and place so fixed and shall, by such notice, invite nomination papers of candidates for such election and specify the date and place at which the nominations are to be delivered.

On 9th June 1966 the past President of the Council, styling himself as the "Presiding Authority", issued a notice stating that the election of the President would be held on 17th June 1966 after 4.30 P.M. in the office of the Council, and that nomination papers would be received on that date till 4 P.M. As the past President of the Council was not authorised to issue this notice, another notice was issued by the Sub-Divisional Officer, Betul, saying that the election of the President would be held on 27th June 1966 after 2.30 P.M. in the office of the Council and that nomination papers should be filed between 11 A.M. and 2 P.M. A meeting of the Council was accordingly held on 27th June 1966 for the election of the President. The Petitioner Jai Krishna and the Respondent No. 4 Sarawan contested the election. Sarawan obtained three votes; the Petitioner Jai Krishna got two votes. Two ballot papers were rejected by the presiding authority as one did not bear any cross-mark as required by Rule 10 (4), and on the other ballot paper two cross-marks were placed.

Shri Pandey, Learned Counsel for the Petitioner, attacked the validity of the election of the Respondent No. 4 by contending that, under the rules, the date and place of the meeting of the Council for electing the President, or Senior Vice-President or Junior Vice-President could not be changed after it had been fixed once; that, therefore, the election of the President held at the subsequent meeting called on 27th June 1966 was illegal; and that even the notice issued by the Sub-Divisional Officer for the holding of election on 27th June 1966 was not in conformity with Rule 3. Learned Counsel submitted that according to Rule 4 nomination papers for election of the President or Vice-Presidents could be delivered, at anytime between the hours of eleven in the forenoon and four in the afternoon, to the presiding authority on the date and at the place specified in the notice under Rule 3; that, therefore, if the election of the President were to be held on the very day on which the nomination papers were to be delivered, then it could not be held at any time before 4 P.M.; that in the notice, which the Sub-Divisional Officer issued, it was stated that the election would be held after 2.30 P.M. on 27th June 1966 and that nomination papers would be received on that date between 11 A.M. and 2 P.M.; and that thus there was a non-compliance with the mandatory provisions of Rules 3 and 4. Learned Counsel further said that the Petitioner Govind Rao, who wanted to contest the election, came to the municipal office at 3 P.M. on 27th June 1966 and learned that the election had already taken place; and that thus by holding the election contrary to Rules 3 and 4 Govind Rao was deprived of an opportunity of contesting the election, and the result of the election was materially affected. It was further submitted that the presiding authority wrongly rejected two ballot papers, and that the markings

on those ballot papers clearly indicated that the votes cast by those two ballot papers were in favour of the Petitioner Jai Krishna.

In our judgment, this application must be dismissed. As the petitioner Govind Rao was not a candidate at the election, the remedy of an election petition for calling into question the election of the Respondent No. 4 as president was not available to him u/s 20 of the Act, and he can, therefore, challenge the election by a petition under Article 226 of the Constitution. But the grounds, which the applicant Govind Rao has urged against the validity of the election of the Respondent No. 4, are altogether untenable.

Taking first the objection that the election should have been held on 17th June 1966 and that date could not be altered, it ignores altogether the fact that the notice by which that date was fixed had been issued by the past President of the Council who had no authority whatsoever to call a meeting of the Council for the election of the President. The notice issued by the past President had thus no legal existence. That being so, when the Sub-Divisional Officer, as the competent authority, issued a notice fixing 27th June 1966 as the date for the election of the President, it cannot be said that there was an alteration in the date once validly fixed for the election of the President. The valid notice in the present case was the one which was issued by the Sub-Divisional Officer fixing 27th June 1966 as the date for the election of the President.

The notice issued by the Sub-Divisional Officer no doubt mentioned that the election of the President would be held after 2.30 P.M. and nomination papers would be received between the hours 11 A. M and 2 P.M. But the further objection of the Petitioner that by the mere specification of these timings in the notice there was non-compliance with Rules 3 and 4 is totally misconceived. Sub-rule (1) of Rule 3 only says that the election of the President and Vice-Presidents shall take place at such time and place as may be fixed by the presiding authority in that behalf. The second sub-rule requires the presiding authority to specify in the notice of the meeting the time and place of the election, as also the date and place at which the nomination papers are to be delivered. Sub-rule (2) of Rule 3 nowhere lays down that the election of the President shall not be held before a certain hour on any day. It also does not require the presiding authority to state in the notice the hours between which nomination papers would be received on the date and at the place specified in the notice. The hours during which nomination papers should be presented have been prescribed by Rule 4 (1), which says that they will be delivered between 11 A.M. and 4 P.M. to the presiding authority on the date and at the place specified in the notice under Rule 3. It no doubt follows from Rule 4 (1) that if the election of the President is to be held on the same day as the one fixed for receipt of nomination papers, then the election cannot be held before 4 P.M. The notice issued by the Sub-Divisional Officer, when it mentioned that the election of the President shall be held after 2.30 P.M. and the nomination papers shall be received on that date between 11 A.M. and 2 P.M., no doubt overlooked the provisions of Rule 4(1).

The notice issued by the presiding authority was in compliance with Rule 3. It does not cease to be one in compliance with Rule 3 merely because the aforesaid hours mentioned in the notice were not in consonance with Rule 4. There would have been noncompliance of Rule 4 if the Petitioner Govind Rao had presented his nomination paper to the presiding authority on 27th June 1966 before 4 P.M. and if it had been rejected on the ground that the hours fixed for the receipt of nomination papers according to the notice were 11 A.M. to 2 P.M. The Petitioner has no doubt said that he came to the office of the Municipal Council at about 3 P.M. on 27th June 1966 and wanted to file his nomination paper but there he learnt that the election had already been held. This statement of the applicant has been denied by the Respondents in the return. The Respondents have averred that the Petitioner Govind Rao never came to the office of the Municipal Council on 27th June 1966, and did not present any nomination paper at any hour. It cannot, therefore, be held that the Petitioner was in any way prejudiced by the specification of the timings in the notice issued by the Sub-Divisional Officer for the holding of the election of the President on 27th June 1966.

Learned Counsel for the Petitioner laid much stress on the fact that Rules 3 and 4 were mandatory and that when these rules were not complied with, it must be taken that the Petitioner Govind Rao was prejudiced. We are unable to accept this contention. The remedy of an election petition was no doubt not open to the Petitioner Govind Rao. But in challenging the validity of the election by a petition under Article 226 on a ground falling u/s 22 of the Act, the Petitioner cannot claim greater rights than those available to a person who is entitled to challenge the election by an election petition. Now, Section 22(1)(d) of the Act inter alia lays down that an election can be declared to be void if the result of the election, in so far as it concerns a returned candidate, has been materially affected by non-compliance with the provisions of the Act or of any rules or orders made thereunder save the rules framed u/s 29 in so far as they relate to preparation and revision of list of voters. An election cannot, therefore, be declared to be void merely on the ground that there has been non-compliance with some provision of the Act or of any rule. It must further be established that the non-compliance has materially affected the result of the election in so far as it concerns the returned candidate. The mandatory or directory character of the provision, of which non compliance is alleged, has a bearing only on the question whether by certain acts or omissions there has been or has not been compliance with the provision concerned. It has no relevance to the question whether the alleged non-compliance has materially affected the result of the election in so far as it concerns a returned candidate. The Petitioner Govind Rao has made no effort whatsoever to show that the alleged noncompliance with Rule 4 has materially affected the result of the election in so far as it concerned the Respondent Sarawan. So far as he himself is concerned, there was as pointed out earlier, no non-compliance of either Rule 3 or Rule 4.

The further complaint of the Petitioner Govind Rao that two ballot papers were wrongly rejected by the presiding authority is also unsubstantial. He has averred

in the petition that on the two ballot papers in question, cross-marks were placed distinctly so as to indicate that the votes cast were in favour of the Petitioner Jai Krishna. It is difficult to understand how he got an opportunity of seeing the ballot papers when there is nothing to indicate that he was present at the time of scrutiny of the ballot papers. In the return filed on behalf of the State and the presiding authority, it has been stated that one ballot paper did not bear any cross-mark and two cross-marks were placed on the other ballot paper. The presiding authority was, therefore, justified in rejecting the two ballot papers having regard to Rules 11 and 12.

In fact, the question whether the presiding authority was justified in rejecting the two ballot papers is a question of fact which could have been properly decided only in an election petition filed by Jai Krishna. If Jai Krishna was in any way aggrieved by the rejection of the two ballot papers, he should have filed an election petition calling into question the election of the Respondent No. 4. As the remedy of an election petition was open to him, he is not entitled to challenge the election by becoming a Petitioner along with Govind Rao. Nor can Govind Rao come to Jai Krishna's rescue when the latter, who is the sole person affected by the rejection of the ballot papers, has not chosen to challenge the election by an election petition.

For the foregoing reasons, this petition is devoid of any substance and is dismissed with costs. The fee for the Government Advocate appearing for the Respondents Nos. 1 to 3 is fixed at Rs. 125. The fee for the counsel appearing for the Respondent No. 4 is also fixed at Rs. 125. The outstanding amount of security deposit, if any, after deduction of costs, shall be refunded to the Petitioners.