

(1959) 04 MP CK 0008

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 107 of 1958

Gyanchand

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1959) JLJ 697

Hon'ble Judges : T.C. Shrivastava, J;P.K. Tare, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; S.B. Sen and Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.—This petition under Articles 226 and 227 of the Constitution has been filed by the petitioner Gyanchand Jain for a writ of mandamus restraining the respondents 1 to 3 from notifying the election of Shri Wasudeo Yashwant Rajimwale (respondent No. 4) to the office of the President, Municipal Committee, Rajnadgaon, and directing that fresh elections be held for that office.

2. The petitioner is a voter and is also an elected member from Ward No. 10 of the Municipal Committee, Rajnandgaon Shri Rajimwala (respondent No. 4) was a candidate for the office of the President. The polling took place on 30th April 1958 and after the counting on the same night respondent No. 4 was declared elected as President. The necessary notification had not been issued till 22-5-1958 when this petition was filed. The Madhya Pradesh Municipalities (Amendment) Act, 1958 (Act No. 14 of 1958) hereinafter called the "amending Act"--came into force on 5-5-1958 by which section 18 of the Central Provinces and Berar Municipalities Act, 1922 (Act 11 of 1922)--hereinafter called the Municipalities Act--has been amended. The effect of the amendment is that indirect election by the members of the Committee for electing the president and the Vice-Presidents has been provided for instead of direct election by the voters

under the Municipalities Act. The petitioner contends that as the notification regarding the election of respondent No. 4 had not been published, the whole election stands annulled u/s 7 of the amending Act and the respondent No. 4 cannot now be notified as the President of the Committee.

3. The respondents in their returns stated that the necessary unit caution about the election of respondent No. 4 to the office of the President had been published on the 23rd May 1958. They stated that the process of election was complete when the counting of votes was finished and the respondent No. 4 was declared elected on 30-4-1958. Section 7 of the amending Act does not, therefore, affect his election.

4. Section 7 of the amending Act is as follows--

7. Annulment of process of election commenced before this Act: --

Where before the coming into force of this Act the process for the election of the President of any Municipal Committee has commenced but has not been completed in accordance with the provision repealed u/s 2 and the rules framed thereunder, then notwithstanding anything contained in any enactment for the time being in force, such process and all action taken in furtherance thereof shall, on the date of coming into force of this Act, stand annulled and the election of such President shall be held in accordance with the provisions of the said Act as amended by this Act.

This section provides that where the process of election of the President was not complete, all steps taken shall stand annulled and a fresh election of the President as provided in the amending Act shall take place. The question for decision, therefore, is when the process of election was complete.

5. It is conceded by the Learned Counsel on both sides that the process of election includes every stage by which a candidate is elected. It is common ground that the nomination, scrutiny, polling and counting are all steps in the process of election. Thereafter, the next step is declaration of the result by the Supervising Officer and the publication of the notification by the Deputy Commissioner regarding the election. Shri R.K. Pandey, for the petitioner, contends that the Supervising Officer has no power to declare the results and that it is only after the notification issued by the Deputy Commissioner that the process of election is complete.

6. It has been held in *Shankar vs. Returning Officer Kolaba*, AIR 1952 Boo. 277, that "election" is not merely the ultimate decision or the ultimate result but includes every stage from the time the notification is issued till the result is declared. It is thus clear that the process of election extends up to the declaration of the result. To find out whether the declaration of the result concludes the election, I may refer to the Rules framed under the Municipalities Act providing for the election of the President. Rules (20) and (23), which are relevant, appear on page 157 of the *Madhya Pradesh Municipal Manual* (Reprint

1953). According to rule (20), "the candidate at the head of the poll shall be declared elected." This power is given to the Supervising Officer. It is thus clear that the Supervising Officer is authorised to declare the result, and there is no substance in Shri Pandey's contention that he has no power to do so. Rule (23) is as follows :

The result of the election with full particulars shall be immediately communicated by the Supervising Officer to the Deputy Commissioner who shall forthwith notify the name of the elected President u/s 20 in the Madhya Pradesh Gazette.

It is obvious that the duty which the Deputy Commissioner performs under this rule is, more or less, ministerial. He has no authority to do any act with respect to the elections and is enjoined to notify the result forthwith. We have no doubt that the process of election in view of rules (20) and (23) ends with the declaration of the result by the Supervising Officer.

7. Accordingly, section 7 of the amending Act was not attracted in this case. The election of the President was complete and the notification dated 25-3-1981 is valid. The respondent No. 4 was elected to the office of the President prior to the coming into force of the amending Act and therefore there is no substance in the contention that a fresh election to that office should be held.

8. The petition fails and is dismissed with costs. Hearing fee is fixed at Rs. 50 only.