

(1965) 09 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 29 of 1965

Hafiz Mohammad Anwar Khan and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councilors) Rules, 1962 — Rule 3(1), 3(2), 4(1), 8(1)

Madhya Pradesh Municipalities Act, 1961 — Section 29(2), 32(3)

Citation : AIR 1967 MP 257 : (1969) ILR (MP) 183 : (1967) JLJ 559

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; R.J. Bhawe, Government Advocate for (Nos. 1, 2, 4 and 5), A. Razak, for (No. 2), P.S. Das, for (Nos. 6 and 12) and P.R. Padhye, for (Nos. 7 to 11 and 13), for the Respondent

Judgement

This Judgment has been overruled by : P.T. Rajan Vs. T.P.M. Sahir and Others, AIR 2003 SC 4603 : (2003) 2 JT 613 Supp : (2003) 8 SCALE 165 : (2003) 8 SCC 498 : (2003) 4 SCR 84 Supp : (2003) AIRSCW 5396 : (2003) 7 Supreme 124

Pandey, J.—This petition under Article 226 of the Constitution is directed against the election of the respondents 6 to 12 as councillors of the Municipal Council, Khairagarh, and also against the selection of the respondent 13 as such councilor.

2. Since common questions of law arise, this petition and two other like petitions namely Ramdas v. Municipal Council, Sausar, Misc. Petn No. 53 of 1965 D/- 3-9-1965 (MP) and Baisanath Prasad v Collector, Morena. Misc. Petn No 117 of 1965 D/- 3-9-1965 (MP), have been heard together. In Misc Petn. No. 53 of 1965 D/- 3-9-1965 (MP). the election of the respondents 2 to 10 and the subsequent selection of the respondents 13 and 14 (as named therein) as councillors of the Municipal Council. Sausar, have been called in question. In the other petition, the election of the respondents 2 to 8 and the selection of the respondent 9 (as

named therein) as councillors of the Municipal Council, Jora, have been challenged. This order shall dispose of the other two petitions also.

3. The facts giving rise to this petition (29 of 1965). briefly stated are these. In order to hold a general election for the Municipal Council Khairagarh, a programme was drawn up and signed by the Additional Collector, Durg, on 10 June 1964. A copy of that programme with instructions, was forwarded to the Tahsildar, Khairagarh, who was also appointed to be the Supervising Officer. On 20 June 1964, the Tahsildar-cum-Supervising Officer gave public notice of the preliminary publication and, in pursuance thereof public intimation was given on 25 June 1964 inviting claims and objections within 30 days. Following this, on 18 August 1964 the Tahsildar-cum-Supervising Officer himself finally published the electoral rolls under his own signature. But, by an order dated 22 August 1964, the State Government postponed the general election with the consequence that, in accordance with a revised programme, the poll was held on 12 December 1964.

According to the petitioners, who are voters and one of whom is a sitting member of the Municipal Council. Khairagarh, the respondents 6 to 13 do not, and cannot claim to, lawfully hold the office of councillors of the Municipal Council, Khairagarh, mainly because the election of the respondents 6 to 12 was made on the basis of the electoral rolls prepared by an authority other than the one designated by law to do so. As provided by Rule 3 (1) of the Madhya Pradesh Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councillors) Rules, 1962 (hereinafter called the Rules), the Collector had to prepare and revise the rolls. Further, by Rule 4, he alone had to give public notice of the preliminary publication and also to make in due course, as required in the Rules, final publication of the rolls. In the instant case, all these steps were taken by the Tahsildar-cum-Supervising Officer. The petitioners further say that there was in this case a disregard of Section 32 (3) of the Madhya Pradesh Municipalities Act, 1961 (hereinafter called the Act) in that the electoral rolls were not revised six months before the date on which the poll was actually held. Since the rolls were not so revised, the election held on 12 December 1964 was vitiated.

4. The facts of Misc. Petn. No. 53 of 1965 D/- 3-9-1965 (MP) are these. Prior to the last general election, the territorial area under the jurisdiction of the Municipal Council, Sausar, was divided into 10 wards. In or about May 1964, the area called Sausar Gramin was transferred to Kuddam Grain Pan chayat. Thereafter, by an order of the State Government dated 1 June 1964, the remaining area was divided into 9 wards.

The petitioner, who is a voter residing in Ward No. 1 of the municipality, alleges that the actual division of the area into wards did not conform to the instructions to the effect that there should be within permissible limits, even distribution of voters in the different wards. Further, the electoral rolls were prepared by the Naib-Tahsildar who was not the authority appointed therefore under Rule 3 made

for the purpose and the election, which was thus held on the basis of the unauthorised rolls, was illegal and void. Again, since the Tahsildar did not decide several claims and objections till 2 November 1964, many persons could not avail of the seven days period of limitation for appeal because the last date fixed for the purpose was 5 November 1964. In this way numerous persons, who were eligible, could not get their names entered as electors in the rolls or exercise their right to vote. Finally, as required by Section 32 (3) of the Act, the rolls were not revised six months before the poll which was held on 28 December 1964 with the consequence that the election of the respondents 2 to 10 and the subsequent selection of the respondents 13 and 14 were vitiated.

5. In Misc. Petn. No. 117 of 1965 D/-3-9-1965 (MP) the two petitioners, who are electors of the Municipal Council, Jora, and one of whom is the silling Vice-President of that Council, have challenged the election of the respondents 2 to 8 and the selection of the respondent 9 as councillors of the Municipal Council, Jora, on these grounds:

(i) Contrary to the provisions of Section 32 (1) of the Act, the Collector did not adopt the Assembly Rolls relatable to the areas comprised in the wards and omitted several names and included other names for the preliminary publication which was made on 1 September 1964.

(ii) Following the public notice relating to this preliminary publication, only 19 days lime upto 20 September 1964 was given for lodging claims and objections. This was contrary to Rule 4 (2) which prescribes for that purpose 30 days from the date of publication of the notice.

(iii) Although the poll was fixed for 10 January 1965 the date fixed for withdrawal of candidature, namely, 22 December 1964, did not allow for that purpose the period prescribed by Rule 17 of the Rules.

6. These petitions have been resisted and the grounds raised in support of the reliefs claimed I herein have been controverted in the returns filed by the contesting respondents. Having heard the counsel, we have reached the conclusion that only one of these grounds is substantial and that there is no merit in any of the other grounds. Before we lake up the only ground which deserves serious consideration, we would, for convenience, dispose of the other grounds

7. The contention that the electoral rolls had to be revised six months before every general election is grounded on the main clause of Sub-section (3) of Section 32 of the Act which formally read as follows:

"The electoral roll prepared under I his section shall he revised six months before every general election."

By Act 31 of 1963, which came into force on 11 November 1963, this clause was amended and, thereafter, it read as follows:

"The electoral roll prepared under this section shall be revised not more than six months before every general election."

It is conceded that in all these cases the electoral rolls were duly revised in accordance with the requirements of this amended enactment.

8. It is urged in support of Misc. Petn. No. 53 of 1965 D/- 3-9-1965 (MP) that the State Government's instructions to the effect that in making division of the municipal area into wards, care should be taken to see that as far as possible, different wards have the same number of voters was disregarded. We are unable to accept this submission as justifying interference with the election. In the first place the respondents have contested the factual basis of this submission. Secondly, in the very nature of things, these instructions could not be and were not expected to be, rigidly adhered to. Thirdly, before the division of the wards was made final, there was a public notice inviting objections from the residents of the wards, but no one came forward presumably because none had any grievance in the matter. That being so, it is now too late to complain against the actual division of the municipal area into wards. Lastly, the deviation, if any, from the administrative instructions does not furnish a valid ground for issuance of a high prerogative writ.

9. Another ground pressed into service to sustain in Misc. Petn. No. 53 of 1965 D/- 3-9-1965 (MP) is that the Tahsildar did not dispose of about 100 objections till 2 November 1964 with the consequence that the unsuccessful objectors could not avail of the prescribed period of limitation of seven days for filing appeal because, according to the programme, the last date fixed for the purpose was 5 November 1964. It is not stated how many of the objections decided on 2 November 1964 failed and whether there was any unsuccessful objector who desired to appeal and had not in fact appealed by 5 November 1964. In this situation there can be on this account no grievance more particularly when no one appears to have been thereby prejudiced. We may add that, as at present advised we do not express any opinion on the larger question whether a ground like this can justify interference with election which have been held already.

10. In our opinion, none of the grounds urged in support of Misc. Petn. No. 117 of 1965 D/- 3-9-1965 (MP) can justify interference with the election in selection of the returned candidates. In regard to the first ground, it is sufficient to say that since the wards of Jora Municipality were reformed. Assembly rolls relating to those areas had to be taken. If, on the basis of such rolls, new rolls were prepared, it cannot be said that there was a failure to adopt the Assembly rolls relating to the area within the meaning of Section 32 of the Act. It is true that the names of some eligible persons were included in the rolls and those of others, who had ceased to be eligible omitted therefrom before the preliminary publication, but the defect, if any is technical and not of substance particularly when it could be rectified by making claims and objections. The second ground relates to reduction of the period of 30 days prescribed by Rule 4(2) for filing claims and objections. It is common ground that the preliminary publication of the

rolls was made on 1 September 1964 and the claims and objections thereto were required to be made by 20 September 1964. There is on record an affidavit to show that there were 10 objections filed after 20 September 1964 which were rejected is out of time. In our opinion, any reduction of the period of limitation prescribed by a statutory rule is not permissible and, even if the Collector endeavoured so to do, the objectors were nevertheless entitled to avail of the entire period of 30 days.

If in this situation, the competent authority wrongly rejected the aforesaid objections as timebarred, the objectors could have appealed against those orders under Rule 5 of the Rules. They could also have chosen the alternative of promptly moving this Court under Article 226 of the Constitution for quashing the programme of election as was done in *Dhanraj v. State of Madhya Pradesh*, Misc Petn No 83 of 1961 D/- 12-9-1961 (MP). Since those objectors did not adopt either course, neither they nor any one else can now be permitted to call in question the election which was allowed to be held perhaps in the hope that it would be favourable to the petitioners. The position here is no worse than the one where some of the objections were wrongly rejected but otherwise the procedure for preparing and revising the rolls was proper.

In our opinion, it is not a defect which strikes at the very foundation of the election and we should, therefore, decline to interfere on that account. The third ground is without any basis in fact because the date of withdrawal of candidature was 22 December 1964 and for poll the date fixed was 10 January 1965 and these two dates did allow "not less than fifteen clear days before the date fixed for election" as required by Rule 17

11. The only other ground which survives for consideration is whether the electoral rolls were not prepared in accordance with law and whether, therefore, the election held on the basis of such rolls is liable to be quashed. Section 32 of the Act, which governs this matter reads:

"32. (1) The authority appointed under Clause (i) of Sub-section (2) of Section 29, shall for purposes of preparation of electoral roll for a ward, adopt the Assembly roll relating to the area comprised in the said ward and publish the same in the manner prescribed thereunder and upon its publication it shall, subject to any alteration addition or modification made under or in accordance with this Act, be the electoral roll for the ward prepared in accordance with this Act.

(2) Where any addition, omission alteration or other amendment is made under the Representation of the People Act, 1950 (43 of 1950). or the rules made thereunder in the Assembly roll relating to the area of the ward similar amendment shall as soon as may be. be made in the corresponding electoral roll of the ward

(3) The electoral roll prepared under this section shall be revised not more than six months before every general election.

Provided that no such revision shall be necessary where the general election takes place upon the dissolution of the Council u/s 328 within two years of the last general election.

(4) Notwithstanding anything contained in Sub-section (3), the Collector may at any time, for reasons to be recorded direct a special revision of the electorroll for any ward or part of a ward in such manner as he may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the ward, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed"

The relevant rules are 3, 4(1) and 8(1) and (2) of the Rules which are reproduced"

"(3) (1) The roll shall be prepared and revised by the Collector.

(2) The Collector may employ such persons as he thinks fit for the preparation and revision of the roll.

(3) The roll shall, subject to the provisions of Section 32. be prepared in Hindi and written in ink or shall be typed or printed."

(4) (1) As soon as the electoral roll has been prepared, the Collector shall give public notice in each ward that the roll has been prepared and a copy thereof is available for inspection at the Municipal Office and at such other places as he may determine during office hours".

"(8) (1) The Collector shall cause the rolls to be corrected in accordance with such orders, if any. as may have been passed or received under Rules 4, 5, 6 and 7, and on or before the date fixed by him in this behalf, which shall not be less than six weeks before the date fixed for the elections he shall publish the rolls as amended in manuscript in the manner prescribed for the publication of the original rolls. Rolls not amended need not be published, but public notice shall be given of the fact that they have not been amended. Clerical errors in the rolls may, at any time up to the date of election be corrected by such Revenue Officer not below the rank of Naib-Tahsildar as may be appointed by the Collector in this behalf.

(2) Save in so far as it may be revised by the State Government in exercise of its power of revision under Rule 6, a roll as published originally or as published with amendments under this rule as the case may be, shall be deemed to be the roll of persons entitled to vote at the general elections."

In the case of Khairagarh Municipality it is not disputed that, while the electoral rolls were prepared by the Chief Municipal Officer. Municipal Council. Khairagarh, they were verified by the Tahsildar who made the preliminary publication of those rolls under Rule 4(1) and also their final publication under Rule 8(1). It is clear from these Rules that the Collector is the authority specifically appointed for these purposes as required by Section 29(2) of the Act. It is, however urged that

since the Collector could by virtue of Rule 3(2). employ such persons as he thinks fit for the preparation and revision of the rolls he was competent to delegate the duty of making preliminary and final publications of those rolls and he in fact, did so when he gave to the Tahsildar Khairagarh. the following directions.

"You are further requested to check the electoral rolls prepared by the Chief Municipal Officer Municipal Council. Khairagarh, intensively by deputing one of your assistants The rolls should invariably contain the signature of the verifying officer While verifying the electoral rolls provisions of Sections 30 to 32 the MP Municipalities Act. 1961. may please be borne in mind and it may be ensured that no eligible voter is omitted in the electoral rolls."

We do not find anything in these directions to support the contention that the duty of making preliminary and final publications of the rolls was delegated to the Tahsildar. The directions were confined, we think rightly, to the stage prior to the preliminary publication of the rolls That apart, we are of opinion that under Sub-rule (2) of Rule 3. the Collector is competent to employ such persons as he thinks fit only for the purpose of preparing and revising the rolls up to the stage of preliminary publication and no more and that he has no power to delegate to any one the duty of making preliminary and final publication of the rolls which he causes to be prepared or revised That being the position in law there were in this case no rolls which were finally authenticated and published by the Collector and which could, therefore, be "deemed to be the roll of persons entitled to vote at the genera] elections" within the meaning of Rule 8(2). It is therefore, obvious that the election in this case was held on the basis of rolls which were not authenticated or published in accordance with the requirements of law.

12. It is, however, urged that even though the rolls were imperfect in the sense that they were not prepared, authenticated or published by the competent authority as required by Rules 4(1) and 8(1). the election already held on the basis of those rolls should not be set aside In the first place, the provisions of the Act do not contemplate that any election or selection could be called in question except by an election petition Section 22 of the Act specifically excludes non-compliance with the provisions of section 29 and the rules made thereunder in relation to preparation and revision of the list of voters as a around for declaring any election or selection to be void. Secondly, the remedy under Article 226 is extraordinary and the re-lief is discretionary. The petitioner could but did not, move this Court before the election was held. They are therefore, guilty of laches and it is contended that at their instance the election should not be set aside.

We are unable to accept these contentions because the defect here unlike those in the cases relied upon in support of these contentions, is of substance and goes to the root of the matter. In *Mahadeo v. Bisan* ILR (1953) Nag 378:(AIR 1953 Nag 166) the rolls were found to be erroneous in respect of the names of some electors. In *Brahamdeo Prasad Singh v. Narsingh Prasad* ILR (1959) Pat 1135. certain irregularities had crept in when the rolls were being revised. In *Dev*

Prakash Balmukand Vs. Babu Ram Rewti Mal and Others, , the rolls were prepared substantially according to the rules upto the stage of preliminary publication though in anticipation of those rules being brought into force or the Government's direction in the matter. In Ram Chandra v. State of Assam AIR 1963 gau 168, only the period prescribed by a rule for filing claims and objections was cut down but no prejudice was shown to have been thereby caused and another remedy under the Act was also available. In Kantilal v. Village Panchayat of Shivrajpur 1963 4 Guj LR 929 an election of Panchas was challenged inter alia on the ground that names of 125 persons were wrongly included in the rolls. In Sudarshan v. District Collector Warangal AIR 1964 Andh. Pra 421. amendments in Assembly rolls were as permitted by the relevant Act. adopted in the municipal electoral rolls two days prior to the date of poll and the only other relevant objection was that the names of not all persons qualified to vote were entered in the rolls

It will be readily seen that, in all these cases, the defects in the rolls, which were prepared, authenticated and published by the competent authority, were of a minor character which did not affect the jurisdiction of the authority concerned or render his act non est. In the Punjab Full Bench Case Dev Prakash Balmukand Vs. Babu Ram Rewti Mal and Others, , it was recognised that if the electoral rolls were illegal, no election held on the basis of such rolls could be allowed to stand The relevant observations are:

"Everybody of course agrees that, if the very foundation of the election, namely the electoral roll is illegal, no election on its basis can proceed or be allowed to stand, but that does not mean that any kind of defect in the roll, however technical in its nature, will suffice to reach such a conclusion." (Pages 874-5 of ILR Punj)=(P 434 of AIR) There are similar observations in the Assam and the Andhra Pradesh cases

The leading authority on this point is Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, where their Lordships stated:

"It is if the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained, it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the election is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the installed of the parties concerned. [Pages 75-6 (of SCR) = (al p 308 of AIR)]

This was followed in Parmeshwar Mahaseth and Others Vs. State of Bihar and Others, , and the election held on the basis of rolls not prepared in accordance

with the provisions of the relevant Act was pronounced to be invalid. In *Amulya Ratan Karmakar and Others Vs. The Commissioner of Basirhat Municipality and Others*, the electoral rolls which had not been prepared in accordance with law find which were not such rolls as were contemplated by the relevant Act and the rules made thereunder were quashed. Earlier in *Kanglu Baula v. Chief Executive Officer Janpad Sabha, Durg*, AIR 1955 Nag 49 (FB) this Court set aside an election to the Janapada Sabha on the ground that there were no rolls as required by law because neither fresh rolls were prepared nor the old ones were revised. In the case before us, the rolls were not authenticated or published by the appointed authority and the ones which were authenticated and published by someone else by usurpation of authority cannot in the eye of law be regarded as valid rolls which can sustain an election held on their basis.

13. It is no doubt true that the petitioner could have moved this Court earlier for appropriate relief even before the election was held, but the relief now claimed is in the nature of a writ of quo warranto questioning the right of respondents 6 to 13 to hold their offices. There is in such a case no question of delay or estoppel. On the other hand, as we have already indicated, no election on the basis of the rolls such as those in this case can be allowed to stand.

14. What we said in the foregoing paragraphs about the rolls being authenticated and published by someone else and not by the appointed authority, applies only to Misc. Petn No. 29 of 1965. In Misc Petn No. 53 of 1965 D/- 3-9-1965 (MP) the Collector had under Rule 3(2) duly authorised the Naib-Tahsildar Sausar. to prepare and revise the rolls and then when that was done the Collector himself authenticated and published the rolls under Rules 4(1) and 8(1). That being so, the rolls cannot be regarded as invalid. In Misc Petn No 117 of 1965 D/ 3-9-1965 (MP). the rolls were not called in question on this ground.

15. In the view we have taken of these cases Miscellaneous Petition No 29 of 1965 succeeds and is allowed. The election of the respondents 6 to 12 and the selection of the respondent 18 in that case are quashed. A writ of mandamus shall be issued against the respondent 3 (Collector, Durg) requiring him to hold fresh election according to law after drawing up proper electoral rolls in conformity with the requirements of law bearing on the point. In all circumstances of the case, there will be no order about costs of this petition. The security amount shall be refunded. The other two petitions are dismissed with all costs on the petitioners. In Misc Petn No. 53 of 1966 D/- 3-9-1965 (MP). there will be three sets of costs, one for respondent 1, another for respondents 3 to 8 and 10 and the third for respondents 11 and 12. In Misc Petn. No 117 of 1965 D/- 3-9-1965 (MP). there will be two sets of costs, one for respondent 1 and another for respondents 2, 4, 5 and 7 to 12. The costs of the respondents shall be paid out of the security amounts. The remaining amounts of security shall be refunded. Hearing fee in each of the two cases Rs 75