
(1965) 09 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 94 of 1965

Idandas, Medical Practitioner, Harsud

APPELLANT

Vs

Election Officer (Gram Panchayat Election), Khandwa and
others

RESPONDENT

Date of Decision : 28-09-1965

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 11, 19

Citation : (1966) JLJ 434 : (1966) MPLJ 242

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

Bench : Division Bench

Advocate : R.S. Dabir and V.S. Dabir, for the Appellant; R.J. Bhawe, Govt. Advocate for Respondents Nos. 1 and 2, Y.S. Dharmadhikari for Respondents Nos. 4, 7, 9, 10, 12, 23 and 24 and P.S. Khirwadkar for Respondents Nos. 11, 13, 18, 19 and 21, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution, the Petitioner, who claims that he is an elector in Harsud Gram Panchayat, challenges the validity of the entire election and co-option to the Harsud Gram Panchayat, and seeks an appropriate writ or direction for quashing the election of Respondents Nos. 3 to 22 and co-option of the Respondents Nos. 23, 24 and 25. He also questions the legality of a supplementary voters' list published on 23rd December 1964 under Rule 11 of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963 (hereinafter referred to as the Rules) containing the names of some persons, whose names did not appear in the original list, and prays that this list be quashed by the issue of a writ of certiorari. It is also prayed that the order passed by the Respondent No. 2 on 23rd December 1964 deleting the names of four persons from the voters' list be also quashed. The legality of the meeting of the elected members called on 16th January 1965 for the co-

option of two women members and a representative of the co-operative societies has also been attacked, and a writ for quashing the notice issued by the Respondent No. 2, the Block Development Officer, Harsud, has also been sought.

The material facts are that according to the election programme published on 11th November 1964 by the prescribed authority, the nomination papers were to be filed during the period from 10th November 1964 to 20th November 1964. The date fixed for polling was 2nd January 1965. After the voters' list had been finalised under Rule 8, some ninety-six members made applications before 1st December 1961, under Rule 11, for inclusion of their names in the list. Those applications were decided on various dates, and ultimately as a result of their disposal a supplementary list of ninety-six voters was published by the Respondent No. 2 on 23rd December 1984. On that date, the Respondent No. 2 also made an order deleting from the original list of voters the names of four persons. Thereafter the general election was held on the basis of the original and supplementary lists, and the Respondents Nos. 3 to 22 were elected to the Panchayat from various ward3. On 9th January 1965, the Respondent No. 2 issued a notice convening a meeting of the elected members for the purpose of co-opting members as required by Sections 11 and 19 of the Madhya Pradesh Panchayats Act, 1962 (hereinafter called the Act). In accordance with Section 11, it was necessary that on the Harsud Gram Panchayat there should be two women members and the chairman of any co-operative society or societies functioning in the area of the Gram Sabha. As in the election held no woman or a chairman of any co-operative society or societies was elected, it became necessary to hold a meeting as laid down in Section 19 for co-option on the Gram Panchayat of two women and the chairman of a co-operative society. It appears that the co-option of women members was held first and the co-option of the chairman of a co-operative society was held later. It is not at all clear from the record whether the co-option of two women members was held simultaneously or one after other. Be that as it may, the procedure that was followed for the purpose of co-opting these members was that the elected members first co-opted one or two women, and then the co-opted woman or women participated in the co-option of other members.

Shri Dabir, Learned Counsel appearing for the Petitioner, argued that the electoral roll on the basis of which the election had been held was prepared illegally and contrary to the rule3, in that even after it was finalised under Rule 8 some names were added to the voters' list and Ors. were deleted therefrom after the first date of submission of nomination papers, that is, 10th November 1964; and that there being thus a fundamental illegality in the preparation of the electoral roll, it was totally vitiated and the election held on the basis of such illegal voters' list was altogether invalid. It was further submitted that the prescribed authority u/s 19 of the Act competent to call the first meeting under that provision was the Chief Executive Officer, Janapada Panchayat, and not the Respondent No. 2, the Block Development Officer; and that, therefore, the notice issued on 9th January 1965 by the Respondent No. 2 calling a meeting of the elected members on 16th

January 1965 for the purpose of co-opting members as required by Section 11 was illegal and the meeting held pursuant to that notice was also illegal. Learned Counsel further urged that u/s 11 only the elected members could co-opt members and the member or members co-opted had no right whatsoever to participate in the co-option of other members.

Shri Dharmadhikari, Learned Counsel appearing for the Respondents Nos. 3, 4, 6, 8, 9, 14, 15, 17 and 20 made a two-fold answer. His first answer was that having regard to the decision of this Court in *Thakurprasad v. v. S. Mehta* 1965 MPLJ 480 this Court should not interfere in these proceedings with the elections already held. It was argued that u/s 357 read with Section 20 of the Act and Rule 22 (1) (d) of the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1962, the Petitioner has the remedy of challenging the election of a person elected as a Panch on the ground that as a result of addition or deletion from voters' list of a ward the names of some persons contrary to Rule 11 (6) of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963, the result of the election of the returned candidate had been materially affected; and that he can also challenge by an election petition the co-option of any member on the grounds urged by him in this petition. The second way in which the Learned Counsel dealt with the matter was that merely because of the addition or election of names of some persons under Rule 11 (6) of the Rules of 1963 the electoral roll could not be considered to be so inherently imperfect as to have no legal existence; that the electoral roll was prepared in conformity with Rules 5, 6, 7 and 8 of the Rules of 1963; and that the addition of 96 persons or the deletion of the names of 4 persons from the list did not go to the root of the validity of the electoral roll inasmuch as the names of the persons added or deleted were distributed in small numbers over as many as eleven wards and did not at all, therefore, vitiate the entire voters' list. It was further argued that u/s 11 of the Act the Gram Panchayat consisted of elected members as well as the members co-opted; that co-option had to be by the Gram Panchayat and the person co-opted was deemed as a person elected; and that, therefore, a member who had been co-opted could participate in the co-option of other members by the Gram Panchayat.

The contention of the Petitioner that the electoral rolls prepared and finalised under Rules 6, 7 and 8 of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963, lost all their validity because of the addition and deletion of the names of some persons after the period of limitation prescribed by Rule 11 and, therefore, the elections held to the Gram Panchayat from different wards thereof all became invalid, is not sound. It is trite to say that in elections to a democratic body the preparation of a proper and correct electoral roll is all important. The Supreme Court has emphasized this in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, by making the following observations-

It is of 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 elections is not discharged and the elections held on such imperfect electoral roll would acquire no validity and would be liable to be challenged at the instance of the parties concerned.

The above observations stress the importance of an opportunity being given to the parties concerned to scrutinize whether the persons, whose names have been entered in the electoral roll, possess the requisite qualifications, and for preferring claims and objections to the entries in the voters' list. They do not mean that even where the relevant election rules give such opportunity and the provisional electoral roll prepared has been finalised after following the procedure laid down therein, still every defect or irregularity caused by the negligence or inefficiency or breach of rules by the authorities entrusted with the preparation of the roll would necessarily invalidate it and an election held on the basis of such a roll would be totally illegal. The real question in connection with the validity of an electoral roll prepared in conformity with the Rules 6, 7 and 8 of the rules before us is whether because of certain errors or omissions or irregularities in the preparation of the roll it has become fundamentally defective and imperfect in its most essential and mandatory ingredients, and whether the roll fails to effectuate its true purpose and object of a proper election. The answer to this question must depend on the facts and circumstances of each case, the nature and extent of the breach of rules, irregularity or error, and the circumstances in which it was committed.

Now, here, the irregularity in the preparation of the electoral roll, according to the applicant, consisted in the addition of names of some 96 persons and the deletion of four persons from the voters' list after the period prescribed by Rule 11. The addition of 96 persons was distributed over different wards with the result that in the voters' list from each of those wards the names of four or five persons were added. The addition and deletion was not of such a large number of voters so as to alter altogether the content of the electoral roll for different wards finalised in accordance with Rules 6, 7 and 8. The electoral roll finalised in accordance with Rules 6, 7 and 8 before the alterations made therein under Rule 11 remained substantially intact even after those alterations. It is no doubt true that, as held by this Court in *Nemchand Gulabchand Vs. Block Development Officer, (Returning Officer) and Others*, , an application for inclusion in or exclusion from a votes list of a name could not be entertained within one month before the date fixed for the filing of nomination papers. But if the alterations made in the electoral roll under Rule 11 were after the expiry of the limitation prescribed thereby and the inclusion in or exclusion from the voters' list of the names of some persons affected the election of any individual Panch from a

ward, then the applicant has the remedy of challenging the election of that individual Panch by an election petition. Under Rule 22 (i) (d) (iii) of the M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1982, an election petition calling in question the election of a Panch can be made on the ground that the result of the election in so far as it concerns the returned candidate has been materially affected by any non-compliance with the provisions of the Act or of any rules or orders made thereunder. It is important to note that Rule 22 (i) (d) (iii) is not so worded as to limit the non-compliance spoken of only to the non-compliance with that provision or provisions of the Act or the rules which have a bearing on the procedure to be followed for the holding of an election after the preparation of electoral roll. It covers illegalities or irregularities committed antecedent to and in the preparation of electoral rolls. Shri Dabir, Learned Counsel for the applicant, suggested that the word "non-compliance" used in Rule 22 (i) (d) (iii) meant failure to comply with a positive provision of the Act or of the rules, and that when Rule 11 (6) laid down that no application for the inclusion or exclusion of a name shall be entertained within a period of one month from the date fixed for a general election or a bye-election, there could not be a non-compliance with that rule if an application for inclusion or exclusion of a name was entertained after the limitation period. We are not impressed by this argument. It is easy to see that Rule 11 (6) put in a positive form would read as enjoining the Collector or the authorised officer to refrain from making any alteration in the list after the period of limitation specified in that rule. If, therefore, an order under Rule 11 (6) is passed contrary to it, there would clearly be non-compliance with that rule.

It has been ruled by this Court in *Thalurprasad v. v. S. Mehta* 1965 MPLJ 480 that where under the M.P. Panchayats Act, 1982, and the M.P. Gram Panchayats Election and Co-option Rules, 1963, made thereunder the remedy of an election petition for challenging the election of an individual Panch is open to the person aggrieved by the election, then it would not be proper for this Court to exercise its powers under Articles 226 and 227 of the Constitution for disturbing the election. Where an election has already taken place, the entire election cannot be lightly interfered with unless it is shown that there has been a material infringement or violation of the Act or the rules which goes to the root of the entire election or that there has been a fundamental deficiency in the preparation of the electoral roll in accordance with the relevant rules. In the present case, as pointed out earlier, merely on the ground that the names of some ninety-six persons were entered in the voters' lists of different wards and the names of four persons were deleted therefrom, it cannot be held that the electoral roll, on the basis of which the election of the Respondents Nos. 3 to 22 was held, was inherently, fundamentally or materially imperfect. The Petitioner's prayer for quashing the entire election of the aforesaid Respondents cannot, therefore, be granted.

The Petitioner's contention that the co-option in which the person or persons already co-opted participated is invalid, must be given effect to. The provision

with regard to co-option of members is contained in Section 11 of the Act. That section, in so far as it is material here, is as follows:-

11. (1) Every Gram Panchayat shall consist of ten elected members and where the population of the Gram Sabha area is more than one thousand, it shall, in addition to ten elected members consist of one elected member for every unit of two hundred and fifty persons of the population or part thereof exceeding one hundred and twenty-five persons.

(2) Every Gram Panchayat shall be composed of-

(i) elected members;

(ii) members co-opted or appointed, if any, under Sub-section (3), (5) or (7), (3)

(i) If the elected members do not include a woman or include less than two women, the Gram Panchayat shall co-opt such number of women who are members of the Gram Sabha and are qualified for being members of the Gram Panchayat as would make the total number of women members at least two.

(3) If there is one or more Co-operative Societies in the Gram Sabha area and the elected members do not include the Chairman of any such Co-operative Society, the Gram Panchayat shall co-opt a Chairman of any of such Co-operative Societies who is a member of the Gram Sabha and is qualified for being a member of Gram Panchayat, to be a member of the Gram Panchayat.

(4) ** ** *

(5) Where there are members belonging to the Scheduled Castes or Scheduled Tribes residing within the Gram Panchayat area, such number of seats shall be reserved for the members of Scheduled Castes or Scheduled Tribes on the Gram Panchayat as shall bear, as nearly as may be, the same proportion to the total number of seats in the Gram Panchayat as the population of the members of the Scheduled Castes or Scheduled Tribes in the Gram Sabha area bears to the total population of such area: Provided that in case no reservation of seats is possible as aforesaid due to small population of Scheduled Castes or Scheduled Tribes, as the case may be, and the elected members do not already include a member of such Castes or Tribes, the Collector shall appoint a member of the Scheduled Casts or the Scheduled Tribes, as the case may be, to be a member of the Gram Panchayat.

(6) If any person is co-opted or appointed as a member of a Gram Panchayat in accordance with the provisions of this section, the total number of members of such Gram Panchayat as fixed under Sub-section (1) shall be deemed to have been increased by the number of members so co-opted or appointed.

(7) *** ** *

By Section 12 it is provided that the election and co-option of Panchas of a Gram Panchayat shall be in accordance with the rules made under the Act. Before referring to the rules, it is necessary to note Section 19 (1) of the Act which lays

down that the prescribed authority shall "as soon as may be after every general election, call a meeting of the elected members for the purpose of co-opting members as required by Section 11, if necessary". Rule 77 of the M.P. Gram Panchayats Election and Co-option Rules, 1963, is as follows-

77. Where the authority prescribed for subsection (1) of Section 19 finds, on perusing the result of the election of Panchas of a Gram Panchayat, that the co-option of a Panch or Panchas therefore is necessary under Clause (i) or (ii) of Sub-section (3) of Section 11 or Sub-section (5) thereof, he shall forthwith call a meeting of the newly elected Panchas to co-opt the requisite number of Panchas under Sub-section (i) of Section 19.

Rule 78 deals with the issue of a notice of the meeting and requires that the notice of the meeting shall be sent in the prescribed form to "all the Panchas". It also contains provision with regard to the conduct of the meeting called for co-option. Sub-rule (10) of Rule 78 says -

The co-option of the Panchas shall be taken in the order in which the Panchas are mentioned in Clauses (i) and (ii) of Sub-section (3) and Sub-section (5) of Section 11.

Section 20 of the Act inter alia prescribes that every co-option of a Panch shall be notified by the Collector in the prescribed manner. That manner has been laid down in Rule 80 of the Rules. It is plain from the above provisions, and in particular from Section 19 (1) of the Act and Rules 77 and 78 of the Rules, that the co-option of members to a Gram Panchayat, when necessary, is by elected members of the Gram Panchayat. Section 19 (1) and Rule 77 say in so many words that if it becomes necessary to co-opt members as provided by Section 11 of the Act, then a meeting of the newly elected Panchas, for the purpose of co-opting, shall be called. The notice under Rule 78 of the meeting has to be given to the elected Panchas. There is no provision whatsoever in the Act itself that a person co-opted shall be entitled to participate in the co-option of members subsequent to his own co-option. It must be noted that the effect of Section 20, read with Rule 80 of the Rules, is that a person, who has been co-opted as a Panch, cannot function as a Panch and perform all the duties and exercise all the powers of a Panch unless and until his co-option is notified. If, therefore, the Legislature intended that a member co-opted as a Panch would be entitled to take part in a co-option held subsequent to his own co-option, then the Act itself would have contained appropriate provisions laying down the order in which the Panchas mentioned in Section 11 (3) would be co-opted and for the notification of the co-option of the Panch immediately after he is co-opted and for the holding of a subsequent meeting of elected members and of the Panch co-opted for the purpose of co-opting other Panch. No such provision is to be found in the Act. On the other hand, the language of Section 19 and Rules 77 and 78 negatives the proposition that a person co-opted as a Panch is entitled to take part in subsequent co-options. It is true that Sub-rule (10) of Rule 78 says that the co-option of the Panchas shall be taken in the order in which the Panchas are

mentioned in Clauses (i) and (ii) of Sub-section (3) and Sub-section (5) of Section 11. The purpose of this sub-rule is not at all clear. But when the Act itself gives only to the elected members the right to co-opt other Panchas, then Sub-rule (10) of Rule 78, which merely lays down the order in which the Panchas are to be co-opted, cannot be read as a provision giving to a co-opted Panch the right to take part in a subsequent co-option. Such a reading of that rule would be utterly inconsistent with Section 19 (1) of the Act and would make that rule ultra vires.

Shri Dharmadhikari, Learned Counsel for some of the Respondents, however, based himself on Section 11 of the Act for his contention that a member, who had been co-opted, could participate in the co-option of other members. His argument was that a Gram Panchayat was composed of elected members, and members co-opted or appointed; that Sub-section (3) of Section 11 said that the "Gram Panchayat shall co-opt", and by Sub-section (6) of Section 11 it was provided that if any person was co-opted or appointed as a member of the Gram Panchayat, then the total number of elected members of that Gram Panchayat as fixed under Sub-section (1) was deemed to have been increased by the number of persons so co-opted or appointed; and that consequently a person co-opted had the status of an elected member and could participate in the subsequent co-option. We are unable to accept this argument which proceeds on a misconception of the effect of Section 11. The Scheme of section H is that every Gram Panchayat should consist of elected members, and the elected members should include two women and a chairman of any co-operative society functioning in the Gram Sabha as also a member of the Scheduled Castes or Scheduled Tribes. It is only when the elected members do not include two women or a chairman of any co-operative society that co-option of such members to the Gram Panchayat becomes necessary. So also, where no seat has been reserved for a member of a Scheduled Caste or Scheduled Tribe and the elected members do not include a member of such caste or tribe, the Collector is required to appoint a member of a Scheduled Caste or Scheduled Tribe as a member of the Gram Panchayat. The strength of a Gram Panchayat thus varies from the minimum prescribed by Sub-section (1) of Section 11 to the maximum by the addition of the members co-opted or appointed when that becomes necessary. What Sub-section (1) of Section 11 does is to fix, with reference to elected members the minimum strength of the Gram Panchayat. Whenever there is co-option to a Gram Panchayat or appointment of a member of a Scheduled Caste or Scheduled Tribe as a member, then under Sub-section (6) of Section 11 there is a "deemed" increase in the number of members fixed under Sub-section (1). Sub-section (6), when it says that "the total number of members of such Gram Panchayat as fixed under Sub-section (1) shall be deemed to have been increased by the number of members so co-opted or appointed", has not the effect of giving the co-opted or appointed member the status of an elected member, or of wiping out the classification made by Sub-section (2) of Section 11 of the members of the Gram Panchayat into two categories, namely, (i)

elected members, and (ii) members co-opted or appointed. The expression "the Gram Panchayat shall co-opt", used in the two clauses of Sub-section (3), only means that the prescribed number of members shall be elected into the Gram Panchayat by votes of existing members. This follows from the plain and natural meaning of the word "co-opt". It is true that according to Sub-section (2) of Section 11 the Gram Panchayat is composed of elected members and members co-opted or appointed, if any, under Sub-section (3), (5) or (7). But clearly the words "Gram Panchayat" as used in the expression "the Gram Panchayat shall co-opt" occurring in the two clauses of Sub-section (3) cannot be co-opted or appointed. Indeed, if the words, "Gram Panchayat" were to be so read, the provision in Sub-section (3) in regard to co-option would be altogether unworkable. It seems to us that co-option of members u/s 11 can only be by elected members, and a person who has been co-opted cannot take part in a co-option subsequent to his own co-option.

It was also argued by Shri Dharmadhikari that as the applicant had the remedy of an election petition, we should not disturb the co-option already held in the exercise of our powers under Articles 226 and 227 of the Constitution. In our opinion, in the present case the alternative remedy of an election petition available to the Petitioner cannot be allowed to stand in the way for giving to the applicant the relief of quashing the illegal co-option. What the decision in *Thakurprasad v. V.S. Mehta* 1965 MPLJ 489 lays down is that ordinarily and normally the High Court should not in the exercise of its powers under Articles 226 and 227 of the Constitution interfere with an election when the aggrieved person has the remedy of an election petition for calling into question the election. It does not rule that the High Court should never interfere with an election in the exercise of its powers under Articles 226 and 227. Having regard to the fact that in the present case the challenged co-option was held manifestly in violation of Sections 11 and 19 of the Act and the rules referred to earlier and with the aid of members not entitled to participate in the co-option, we think it would not be proper to allow the members illegally co-opted to function as Panchas and to direct the Petitioner to challenge their co-option by an election petition. This is a fit case in which this Court should quash the illegal co-option in the exercise of its powers under Articles 226 and 227 of the Constitution.

For the foregoing reasons, this petition is allowed in part. The co-option of Panch or Panchas in which any already co-opted Panch participated is declared to be illegal and is quashed by the issue of a writ of certiorari. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the Petitioner.