
(1963) 09 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 248 of 1963

Jai Bhagwan Sharma and Another

APPELLANT

Vs

Matu Ram and Others

RESPONDENT

Date of Decision : 02-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1964 P&H 135 : (1963) 65 PLR 1090

Hon'ble Judges : Grover, J;Falshaw, J

Bench : Division Bench

Advocate : Anand Swarup, for the Appellant; C.D. Dewan, D.A.G. and Messrs. D.C. Gupta and S.C. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Grover, J.—This is an appeal under Clause 10 of the Letters Patent against a judgment of a learned Single Judge allowing a petition under Article 226 and setting aside the election of Respondents 4 to 14 (in the writ petition) to the Municipal Committee, Jind. The present appeal, however, has been filed by only two of the aforesaid Respondents, namely, Jai Bhagwan Sharma and Shankar Dass Bindlish.

2. The sole point on which the decision of the learned Single Judge had been invited was whether the election had been held in contravention of the mandatory provisions of Rule 3(3) of the Punjab Municipal Election Rules of 1952 which required that "the election programme shall be published not less than ten days" before the first of the dates specified in the election programme ". Under Rule 3(2) the election programme has to specify the date or dates on/by or within which-

(i) the nomination papers shall be presented ;

* * *

(xi) the result of election shall be declared.

The case of the Petitioners was that the election programme had to be published not less than ten days before the nomination papers were required to be filed. The election programme was published on 29th July, 1961 and the last date for making nominations was fixed for 8th August 1961. The contention raised was that the intervening period between the publication and the last date for making nominations should have been ten clear days whereas in reality it was only ten days including 8th August 1961 but excluding 29th July 1961. The only question, therefore, was and is whether the words "not less than ten days" meant ten clear days. If 29th July 1961 and 8th August 1961 are to be excluded, then only nine days intervened between the two dates which was not in conformity with the statutory rules. The learned Single Judge found that as ten clear days did not intervene between the two dates the election programme which was the basis on which the entire election was held was in contravention of the statutory rules, with the result that the election could not be sustained.

3. Mr. Anand Swarup, the learned Counsel for the Appellants, contends that the expression "not less than ten days" in Rule 3(3) does not mean ten clear days and that on a simple arithmetical calculation 29th July 1961 was not less than ten days before the first of the dates specified in the election programme i.e. 8th August 1961. It has been held by a Full Bench of this Court in *The Northern India Caterers Private Ltd. v. The State of Punjab* ILR 1963 P&H 761: 65 P.L.R. 344 (F.B.) that the notice contemplated under section 4(2)(b) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, wherein it was provided that the notice to show cause against the proposed order on or before a specified date must be for a date "not earlier than ten days from the date of issue thereof" meant a notice of ten clear days. Tek Chand J., who delivered the judgment of the Court, made the following observations:-

The expression "earlier than" means "before" or "previous to". If the words, instead of "not earlier than ten days" had been "not less than ten days" then the Petitioners' contention deserved to prevail as that would have meant ten clear days. According to another rule of reckoning, where the time requisite is from a particular date to another date, then the first terminal day is to be excluded from the computation and the last day is to be excluded.

Reference was made to *In re Railway Sleepers Supply Company* (1885) 29 Ch. D. 204 in which Section 51 of the Companies Act, 1862, provided that interval of not less than fourteen days was to elapse between the meetings passing and confirming a special resolution of a company. This was construed to mean an interval of fourteen clear days exclusive of the respective days of meetings. Similarly in *McQueen v. Jackson* (1903) 2 K.B. 163 it was provided by Section 19(2) of the Sale of Food and Drugs Act, 1899, that "in any prosecution under the Sale of Food and Drugs Act the summons shall not be made returnable in less time than fourteen days from the date on which it is served". It was held that fourteen clear days must elapse between the dates of service and that of

return. It is, therefore, quite obvious that in the present case ten clear days had to intervene between the date of publication of the election programme and the first of the dates specified in it, namely, 29th July, 1961 and 8th August, 1961. Admittedly in this view of the matter there was a contravention of the mandatory provisions of the aforesaid rule.

4. It appears that before the learned Single Judge no other point was raised on behalf of the present Appellants but it has now been sought to be argued that the election involving so much expense and effort should not have been set aside in the absence of any injury or prejudice having resulted to the Petitioners in the writ petition. Apart from the fact that this matter was not agitated before the learned Single Judge and for that reason it cannot normally be raised at the present stage, there can be no manner of doubt that a good deal of prejudice has resulted to the aforesaid persons owing to the contravention of the rule in question. It had been alleged in paragraph 1 of the petition that they were entitled to be registered as voters for the Municipal Election of 1961 but were omitted from being registered. They had, however, applied for inclusion as voters under Rule 8-L but their applications were rejected by the Director of Election (Local Bodies) on 5th August 1961 on the ground that they should have filed their applications on 2nd August 1961 whereas these applications had been submitted a day later. Actually some of them wanted to contest the election. It was further alleged that there were a number of other persons who could be registered as voters if the rules had been complied with. It is not denied by Mr. Anand Swarup that according to the rules the Petitioners in the writ petition could have got their names registered by making an application on the 3rd August 1961 if ten clear days had intervened between the publication of the election programme and the first of the dates specified therein. In other words, if instead of 8th August 1961, 9th August 1961 had been the first of the dates specified as required by Rule 3(3), then the applications could not have been thrown out on the ground that they were barred by a day. It is not possible, therefore, to see how prejudice was not caused to the aforesaid persons by non-compliance with Rule 3(3).

5. For the reasons given above, the appeal must fail and it is dismissed with costs.

Falshaw, C.J.

6. I agree.