

(1972) 11 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2781 of 1972

Jaspal and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 21-11-1972

Acts Referred:

Citation : (1972) 11 P&H CK 0010

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : Achhra Singh, for the Appellant; S.K. Syal for Advocate General, Punjab, for Respondents 1 to 3 and Mr. D.S. Nehra with Mr. Pawan Bansal, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—The petitioners have challenged the election to the Municipal Committee, Dorada, on the grounds that the electoral roll was not properly prepared and their claims for inclusion of their names in the electoral rolls were decided after the date fixed for receipt of nomination papers. It is alleged by them that had their claims been decided earlier they would have contested the election of the Municipal Committee. Because of the non-inclusion of their names in the electoral roll, the result of the election has been materially affected. The first point regarding the validity of the rolls on the basis of the general instructions issued by the State Government, stands concluded by my judgment in Civil Writ No 2288 of 1972, Karam Chand v. The State Punjab ICW 2288 of 1972, decided on 16th of November, 1972. In view of this, the learned counsel for the petitioners has not urged anything on this point, apart from reserving his right for challenging my judgment in Letters Patent Appeal, if any.

2. On the second point, it is stated that the petitioners filed their claim petition on 25th of April, 1972. It is stated that the Deputy Commissioner decided this application on 10th of May, 1972, and ordered the names of the petitioners to be included in the electoral rolls. In order to decide this matter, the Deputy

Commissioner had detailed the Tehsildar to visit Doraha to verify the facts. It is alleged by the learned counsel for respondents Nos. 4 and 8 that the Tehsildar visited Doraha on 5th of May, 1972, on which date the petitioners came to know the fact that their names would be included in the electoral rolls.

3. Normally speaking, when a person competent to fight an election is kept out because of the fact that his name is not included in the rolls, would have the right to approach this Court with a prayer that the concerned authorities should be directed to register him as a voter and to postpone the elections till such time as the needful is done. In this case, however, the petitioners in spite of coming to know of the fact on the 5th of May, 1972, that their names would, in all probability, be included in the electoral rolls, kept quite and did not file any nomination papers with Returning Officer. At this stage I might mention that in order to cope up with the situation arising out of a large number of claim petitions, the Director, Local Bodies Elections, Punjab, Chandigarh, issued instructions to all the Deputy Commissioners that all those persons who had applied for inclusion of their names in the electoral rolls and whose claims cannot be decided within the time should be allowed to provisionally file their nomination papers and their nominal ion papers should not be rejected solely on the ground that their names were not included in the rolls. The Government also issued a public notice dated 5th of May, 1972, in this behalf which was published in a large number of news-papers including the "Daily Tribune" dated 7th of May, 1972. The nomination papers could be filed by 8th of May, 1972 Thus in spite of an opportunity being given, the petitioners did not come and file their nomination papers. They did not approach this Court with an object on for this purpose and also for getting the stay of the election. They waited till the elections were over and now it appears that when some of their friends have lost in the election they have come forth with the plea that had their names been included in the rolls they too would have contested the elections. It is settled law that a person who comes to this Court with inordinate delay, is not entitled to invoke the discretion of this Court under Article 226 of the Constitution What is delay in a particular case depends on the facts and circumstances of that case. In my considered opinion, the rule about laches should be applied with great vigour in cases in which elections are challenged. In such cases the Court should hear a petition which is filed after delay only if it is established that the petitioner did not exhibit such conduct as would disentitle him the equitable relief. In the instant case, as has been observed, earlier, the petitioners did not go and file nomination papers even though it was proclaimed by the Government that the nomination papers if field by persons belonging to their category would be provisionally accepted. The learned counsel for the petitioners has drawn my attention to rule 11 of the Punjab Municipal Election Rules and has submitted that it is mandatory requirement of law that a person who files the nomination paper should be a resident of the municipal committee, his name and number should appear in the electoral roll and nomination paper should contain the same. He has further submitted that because the petitioners had not been allotted any number in the

rolls, it would have been futile on their part to approach the Returning Officer with the nomination papers. It has also been argued that the Director of Local Bodies Election Punjab, Chandigarh has no jurisdiction to amend the statutory rules by issuing the orders of the type which are stated by the respondent to have been published in the "Daily Tribune" on the 7th of May, 1972. I am not impressed with these submissions. At best, it is a case in which the names of the petitioners were not entered in the electoral rolls and as a consequence their votes were illegally refused. Since, in spite of the opportunity given to them, they did not file the nomination papers, it cannot be said that it is a case of wrongful rejection of nomination papers. Rule 51 of rules defines "material irregularity" as under:

" material irregularity " in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or noncompliance with the provision of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election.

A reading of this rule shows that an election cannot be set aside merely because the authorities concerned refused to accept a person as a voter. It has further to be established that this non-observance of the rule materially affects the result of the election. Had the petitioners filed the nomination papers and the same had been rejected then there would have been some scope for urging that a person who is eligible to participate in the election had been kept out and thus electorate had not been able to exercise his choice. No such question arises in this case. Adverting now to the action taken by the Director of Election, Local Bodies, Punjab, Chandigarh, I might add that if elections are ordered to be held in a large number of Municipal Committees, obviously a large number of persons would come forward with the claim petitions praying that their names should be included in the electoral rolls. Such objections cannot be effectively decided within the limited time available to the concerned authorities. The only step which the authorities could take in order to have maximum participation of the eligible persons in the elections was to order that the persons who had applied for inclusion of their names in the rolls would be allowed to contest the elections by filing nomination papers on provisional basis. Even though this course is not permitted by the rules, yet it cannot be said that this course did not advance the cause of justice in the elections. In my considered opinion, no fault can be found with the procedure adopted by respondent No. 2.

4. Since the petitioners did not avail of the opportunity of filing nomination papers on provisional basis and they did not approach this Court with a petition under Article 226 of the Constitution at any time prior to actual conduct of election, I hold that no injustice much less manifest injustice has accrued to them. It is not a case in which I should exercise my discretion under Article 226 of the Constitution.

5. In view of what has been stated above, this petition fails but, in the

circumstances, without any order as to costs.