

(2009) 01 MP CK 0016
In the Madhya Pradesh High Court

Jitendra Yadav and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2009 MP 92 : (2009) ILR (MP) 771

Hon'ble Judges : A.K. Patnaik, C.J;P.K Jaiswal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.—The petitioners are residents of Jabalpur Cantonment area and have filed this writ petition under Article 226 of the Constitution of India praying for a declaration that public notice dated 11th December, 2008 issued by the President, Cantonment Board, Jabalpur, notifying the date of polling for Jabalpur Cantonment Board election as 18th January, 2009 is illegal and further praying for a direction to the respondents to issue fresh election notice as per law.

2. The relevant facts very briefly are that by notification dated 10th September, 2008 issued by the Government of India, Ministry of Defence, New Delhi, under Sub-section (1) of Section 15 of the Cantonments Act, 2006 (for short 'the Act?'), 9th November 2008 was fixed as the date on which the elections to the Cantonment Boards of Jabalpur, Saugor and Mhow shall be held. Thereafter, the Government of India, Ministry of Defence, New Delhi, issued another notification dated 3rd October, 2008 under Sub-section (1) of Section 15 of the Act read with Rule 20 of the Cantonment Electoral Rules, 2007, (for short 'the Rules?') fixing 14th December, 2008 to be the date on which elections to the Cantonment Boards of Jabalpur, Mhow and Saugor shall be held. It was stated in the notification that the Assembly elections for the Madhya Pradesh State was expected to be held very shortly and the elections had to be postponed to avoid administrative problems which would arise in view of the proximity of the

Assembly elections. But the Government of India, Ministry of Defence, again issued a notification dated 17th November, 2008 under Sub-section (1) of Section 15 of the Act read with Rule 20 of the Rules, fixing the date of elections of the Cantonment Boards Jabalpur, Mhow and Saugor as 18th January, 2009 instead of 14th December, 2008. The President, Cantonment Board, Jabalpur accordingly issued a public notice dated 11th December, 2008 notifying the date, time and places of polling, number of persons to be elected and details of wards reserved for Scheduled Castes or Scheduled Tribes or women, the time and place for receipt of nominations, the time and place for scrutiny of nominations, the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject and the detailed election programme. Aggrieved, the petitioners have filed this writ petition under Article 226 of the Constitution of India.

3. Mr. Umesh Tripathi, learned Counsel appearing for the petitioners, submitted that under the proviso to Rule 20 of the Rules, the Central Government could postpone the date of elections to a Cantonment Board to a later date by not more than forty days. He submitted that by the first notification dated 10th September, 2008 issued under Sub-section (1) of Section 15 of the Act, the date of elections to the Cantonment Boards was fixed as 9th November, 2008 and forty days from 9th November, 2008 expired around 20th December, 2008 and therefore, the Central Government has exceeded the time limit of forty days prescribed in the proviso to Rule 20 of the Rules by fixing the date of elections to the Jabalpur Cantonment Board as 18th January 2009 and for this reason, the impugned public notice fixing the date of elections as 18th January 2009 is illegal and is liable to be quashed.

4. We are unable to accept the aforesaid submission of Mr. Tripathi. Section 15 of the Act and Rule 20 of the Rules are quoted hereinbelow:

Section 15. Filling of vacancies.- (1) Vacancies arising by efflux of time in the office of an elected member of a Board shall be filled by an ordinary election to be held on such date as the Central Government may, by notification in the Official Gazette, direct.

(2) A casual vacancy shall be filled by a casual election the date of which shall be fixed by the Central Government by notification in the Official Gazette, and shall be, as soon as may be, after the occurrence of the vacancy:

Provided that no casual election shall be held to fill a vacancy occurring within six months of any date on which the vacancy will occur by efflux of time, but such vacancy shall be filled at the next ordinary election.

Rule 20. Public notice of election,- As soon as possible after the notification by the Central Government of the date of an election u/s 15 of the Act, the Board or where a Board has not been constituted, the Officer Commanding the station shall draw up and publish in the same manner as in Rule 12, a public notice setting out?

- (a) the date, time and places of polling,
- (b) the number of persons to be elected and details of wards reserved for Scheduled Castes or Scheduled Tribes or women,
- (c) the time and place for receipt of nominations,
- (d) the time and place for scrutiny of nominations,
- (e) the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject, and
- (f) any other matter which may be necessary for information and assistance of voters and candidates :

Provided that the Central Government may, on receipt of a recommendation to that effect from the President, postpone, by not more than forty days, the date of such election to a later date if?

- (i) the date of election coinciding with or is in close proximity of the date of election for the Lok Sabha, State Assembly or any adjacent local authority;
- (ii) a riot or open violence breaks out or there is tension in the Cantonment on account of such riot or violence; or
- (iii) some natural calamity affects the Cantonment:

Provided further that, in respect of items (ii) and (iii) of the preceding proviso, the President may, if deemed necessary, on receipt of a report from the Returning Officer, adjourn the polling in any ward of the Cantonment in case?

- (a) a riot or open violence breaks out in that ward or any of the polling stations on the eve of, or on the date of polling; or
- (b) some sudden natural calamity affects the Cantonment :

Provided also that on receipt of a report of such adjournment of election or polling, the Central Government may appoint the day on which such postponed election or polling will be held by publishing a notification to that effect in the Official Gazette and after the date is so notified, the President shall notify locally, in the manner specified in this rule, the place and time of polling for the election so postponed without de novo compliance of formalities specified in these rules.

5. It will be clear from Sub-section (1) of Section 15 of the Act that vacancies arising by efflux of time in the office of an elected member of a Board shall be filled by an ordinary election to be held on such date as the Central Government may, by notification in the Official Gazette, direct. Hence, the Central Government has been empowered under Sub-section (1) of Section 15 of the Act to fix the date of ordinary election to be held to the vacancies in the office of an elected member of a Board. Neither Section 15 nor any other provision of the Act, however, provides for postponement of the date of election so fixed by

notification issued under Sub-section (1) of Section 15 of the Act. Section 31 of the Act, however, provides that the Central Government may, either generally or specially for any cantonment or group of cantonments, after previous publication, make rules consistent with this Act to regulate all or any of the matters specified in this Section for the purpose of holding elections under the Act. Under Clause (h) of Section 31 of the Act, the Central Government has been empowered to make rules on any other matter relating to elections in respect of which the Central Government is empowered to make rules under the Chapter in respect of which the Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary. In exercise of such power under Clause (h) of Section 31 of the Act, the Central Government has made a provision in the proviso to Rule 20 of the Rules that the Central Government may on receipt of a recommendation to that effect from the President, postpone, by not more than forty days, the date of such election to a later date if inter-alia the date of election coinciding with or is in close proximity of the date of election for the Lok Sabha, State Assembly or any adjacent local authority.

6. It is in exercise of this power conferred on the Central Government in the proviso to Rule 20 of the Rules that the Central Government postponed the date of elections once under the notification dated 3rd October 2008 from 9th November 2008 to 14th December 2008 and again by notification dated 17th November, 2008 from 14th December, 2008 to 18th January, 2009. The question which arises for consideration is whether the postponement of date of an election which was first notified to be 9th November 2008 beyond forty days to 18th January 2009 by the Central Government in exercise of its powers under proviso to Rule 20 of the Rules will make the elections scheduled to be held on 18th January 2009 to be null and void. The answer to this question would depend upon the object of the rule making authority in providing the maximum limit of forty days for postponement in the proviso to Rule 20 of the Rules. A reading of the preamble of the Act would show that the Act has been made inter alia to impart greater democratization in cantonment administration. Accordingly in Section 12 of the Act, provision has been made for having elected members in the Cantonment Boards of different categories of cantonments. If vacancies arising by efflux of time in the office of the elected member of the Board are not filled up within a short time then the entire purpose of democratization of the cantonment administration would be frustrated. It is for this reason that Sub-section (1) of Section 15 of the Act provides for filling up of the vacancies arising by efflux of time in the office of an elected member of the Board by an ordinary election to be held on such date as the Central Government may, by notification, direct and Sub-section (2) of Section 15 of the Act provides for filling up of casual vacancy by a casual election on such date as may be fixed by the Central Government by notification issued, as soon as may be after the occurrence of the vacancy. There could, however, be contingencies in which an election cannot be held on the date so fixed by the Central Government by a notification issued

under Sub-section (1) of Section 15 of the Act. To take care of such contingencies, the proviso to Rule 20 of the Rules provides that the Central Government may postpone the elections of the Cantonment Board in the contingencies mentioned therein, but to ensure that the election takes place as early as possible, the outer limit of forty days postponement has been fixed in proviso to Rule 20 of the Rules otherwise elections to the Cantonment Board may be indefinitely postponed resulting in non-filling of vacancies in the office of an elected member of the Board, thus, frustrating the democratization of cantonment administration.

7. In our considered opinion, therefore, if the election is postponed by more than forty days by the Central Government, such postponement is contrary to the provision in the proviso to Rule 20 of the Rules and if a party approaches the Court for directing holding of elections within forty days from the original date of election as notified under Sub-section (1) of Section 15 of the Act, the Court may promptly issue a direction to hold the elections within a period of forty days as provided in the proviso to Rule 20 of the Rules, but if, for some reason or other, the Central Government postpones election for more than forty days from the original date of election notified under Sub-section (1) of Section 15 of the Act, the Court will refuse to declare the election scheduled to be held after 40 days from the original date of election as null and void because such declaration would be contrary to the object of the Act as discussed above, namely the early elections to the vacancies in the offices of elected members of the Board for ensuring a democratic cantonment administration.

8. Mr. Umesh Tripathi, however, submitted that the real object of providing the maximum limit of 40 days for postponement of election in the proviso to Rule 20 of the Rules is to ensure that a fresh electoral roll is prepared if the election is postponed beyond 40 days so that persons who are entitled to vote but have not been included in the electoral roll are included in the electoral roll and this would be clear from Rule 19 of the Rules.

9. Rule 19 of the Rules, on which Mr. Tripathi relies on, is quoted herein below:

19. Inclusion of names in the electoral roll?

(1) Where, a notification regarding election to fill any vacancy has been issued by the Central Government under Sub-section (1) or Sub-section (2) of Section 15 of the Act, every person whose name is not included in the electoral roll as finally published under Rule 17, may apply as provided hereinafter for the inclusion of his name in the roll.

(2) Every application under Sub-rule (1) shall be made in duplicate in Form III to the President after the Central Government directs the date of election to be held by notification u/s 15 of the Act and before the expiry of three days after the publication of the public notice as required under Rule 20.

(3) The President shall immediately on receipt of the application referred to in

Sub-rule (1), cause one copy thereof to be posted at the notice Board of the office of the Cantonment Board with a notice inviting objections to such application within a period of three days from the date of such posting.

(4) After the expiry of the period referred to in Sub-rule (3), the application and the objections received thereto shall be heard and disposed of in the manner laid down in Rule 16.

(5) The President, on such hearing if satisfied that the applicant is entitled to be registered in the roll, shall direct the Chief Executive Officer to include the name of the applicant in the electoral roll.

(6) Every direction made under Sub-rule (5) shall be final.

(7) The Chief Executive Officer shall comply with the directions made under Sub-rule (5) where no appeal has been preferred under these rules.

10. Sub-rule (1) of Rule 19 of the Rules provides that where a notification regarding election to fill any vacancy has been issued by the Central Government under Sub-section (1) or Sub-section (2) of Section 15 of the Act, every person whose name is not included in the electoral roll as finally published under Rule 17, may apply as provided in Rule 19 of the Rules for inclusion of his name in the electoral roll. Sub-rule (2) of Rule 19 states that every application under Sub-rule (1) shall be made in duplicate in Form III to the President of the Cantonment Board after the Central Government directs the date of election to be held by notification u/s 15 of the Act and before the expiry of three days after the publication of the public notice as required under Rule 20 of the Rules. Sub-rule (3) of Rule 19 of the Rules states that the President shall immediately on receipt of the application as referred to in Sub-rule (1), cause one copy thereof to be posted at the notice Board of the office of the Cantonment Board with a notice inviting objections to such application within a period of three days from the date of such posting. Sub-rule (4) of Rule 19 provides that after the expiry of the period of three days period of inviting objection, the application and the objections received shall be heard and disposed of in the manner laid down in Rule 16, and Sub-rule (5) of Rule 19 provides that the President, on such hearing if satisfied that the applicant is entitled to be registered in the roll, shall direct such person to be included in the electoral roll.

11. Hence, Rule 19 does not provide for preparation of fresh electoral roll, as contended by Mr. Tripathi, but provides that any person whose name has not been included in the electoral roll may apply in Form III to the President of the Cantonment within three days after publication of the public notice as required under Rule 20. The public notice under Rule 20 was published on 11th December, 2008 and the petitioners have not stated in the writ petition that any person, either the petitioners or any other person, whose name was not included in the electoral roll finally published under Rule 17, applied within three days in Form III as prescribed under the Rules, to the President of the Jabalpur Cantonment Board. In course of hearing, however, Mr. Tripathi filed a copy of letter dated

16.12.2008 which is not in Form III addressed to the Chief Executive Officer, generally stating that the electoral roll should be prepared for including the names of persons who have attained the age of 18 years. The said letter dated 16.12.2008 is not addressed to the President of the Jabalpur Cantonment Board and is not in Form III and does not state the names of persons who have not been included in the electoral roll and was not within three days of the public notice dated 11.12.2008. The letter dated 16.12.2008 was not an application in accordance with Sub-rule (2) of Rule 19 of the Rules and, therefore, could not be considered by the President of the Jabalpur Cantonment Board under Sub-rule (3) of Rule 19 of the Rules quoted above.

12. For the aforesaid reasons, we are not inclined to admit this writ petition and we accordingly dismiss this writ petition.