

(1958) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 57 of 1958

K.G. Khanna

APPELLANT

Vs

Prakash Chand and Others

RESPONDENT

Date of Decision : 30-08-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 12
Punjab Municipal Election Rules, 1952 — Rule 10, 8

Citation : AIR 1959 HP 20

Hon'ble Judges : T. Ramabhadran, J.C.

Bench : Single Bench

Advocate : H.S. Doabia and Yog Raj Sethi, for the Appellant; Kedar Ishwar, Government Advocate for Nos. 1, 2 and 3 and Rajendra Sachar, for No. 4, for the Respondent

Final Decision : Allowed

Judgement

T. Ramabhadran, J.C.

1. This petition under Article 226 of the Constitution arises under the following circumstances:- Election of members to the Municipal Committee, Solan, was due to take place on 26-6-1958. For this purpose, the Municipal area of Solan had been divided into five wards. We are concerned in this petition only with Ward no. 1, from which a single member was to be elected. The petitioner, Shri K. G. Khanna was a candidate for election from Ward No. 1, his nomination paper having been duly accepted. Respondents 4, 5 and 6, namely. M/s. Radhey Shyam, Hari Saran and Murali Lal Gupta, were rival candidates and their nomination-papers had also been accepted.

On 24-6-1958, i.e. two days before the election was due to take place, this petition was put in by Mr. K. G. Khanna, wherein I was requested to issue a writ of mandamus to the Returning Officer (Shri Prakash Chand, respondent no. 1), the Deputy Commissioner of Mahasu, respondent no. 2, and the Union of India,

respondent no. 3, directing them to hold the election from this ward only after amending the electoral roll pertaining to this ward, i.e. by excluding therefrom the names of persons residing within the limits of the so-called "Solan Cantonment." According to the petitioner, the above persons were not entitled to vote in the Municipal elections, because they were not residents of the Municipal area, i.e. since a military cantonment could not be included in the area of any Municipality, vide the proviso to Section 4, Punjab Municipal Act, as applied to Himachal Pradesh.

2. Along with this writ petition, there was a petition for stay of the election from Ward No. 1. Therein, it was urged that unless stay was granted, the writ petition would become infructuous and would result in undue expenditure of public money and time. Notices of both the petitions were immediately issued to the other side and arguments on the stay application were heard on 25-6-1958. On behalf of the respondents, it was urged that the petitioner was not entitled to any relief, as he had come to Court at a very late stage, i.e. on the eve of the election.

It was also suggested that the election should be permitted to proceed and the petitioner could seek his remedy, if so advised, and if necessary by means of an election petition. On behalf of the petitioner, the rejoinder was that the ground taken in this writ petition was beyond the scope of an election petition and as such, the latter was neither an efficacious, nor an alternate remedy.

I considered that the point raised in the writ petition was a substantial one and the stay application could not be rejected in toto. Accordingly, on 25-6-1958, I directed that while the election from Ward No. 1 would take place on the following day, as already arranged, the result thereof would not be announced till further orders. Accordingly, the election took place, but the result has not been announced.

3. Written-statements on behalf of respondents 1, 2 and 3 were filed in this Court on 7-8-1958. Therein, the writ petition was opposed, not only on its merits, but also on certain preliminary points. Inter alia, it was urged that the proper course for the petitioner was to file an election petition, as provided by the Election Rules. Another ground taken was that the petition had become infructuous as polling, had taken place and only the result had to be announced.

In the third place, it was stated that the petitioner was a sitting member of the Committee and the disputed electoral roll was prepared during his tenure of office, to which he raised no objection. Consequently, it was contended that he was estopped from challenging the same.

4. On merits, it was stated, that the so-called cantonment area of Solan ceased to be such, when a notification, in this regard, was issued by the Punjab Government on 6-3-1931 A.D. After that, this area reverted to the Baghat State. After the merger of Baghat State in the Union of India, it was included in the Municipal area of Solan, vide Notification dated 15-3-1958, issued by the

Himachal Pradesh Administration.

The officers and employees of the Punjab University used to reside in this area till they shifted to Chandigarh. Hence, these respondents maintained that this area was rightly included in Ward No. 1. Another point taken was that the electoral roll in question had been prepared on the basis of the Parliamentary electoral roll and the names of the voters, recorded therein, could not be removed, without notice to them.

Respondent no. 1, Shri Prakash Chand, Returning Officer, filed an affidavit in support of his written-statement. Shri Radhey Shyam, respondent no. 4, also filed a written-statement, wherein the position taken by him was, more or less, similar to that of respondents 1, 2 and 3.

5. No written-statement was filed by respondents 5 and 6. They were proceeded against ex parte.

6. Now, we come to an amazing somersault aken by respondents 1, 2 and 3. On 14-8-1958, i.e. 7 days after thel written-statements of respondents 1, 2 and 3 and the affidavit of respondent no. 1 (referred to earlier) had been filed, an application was put in by the learned Government Advocate, wherein I was requested to permit them to withdraw the written-statement filed by them, 7 days earlier, and to permit them to file another written-satement.

This request was based on an honest mistake, alleged to have been committed by the respondents, in sifting the facts. In this Court's order dated 13-8-1958, on the oral request of the Government Advocate I remarked that it was difficult to understand why an incorrect written-statement should have been filed by respondents 1, 2 and 3 after taking so much time. Permission was, however, granted to file the amended written-statement, as it was essential that all material facts should be correctly placed before this Court.

The amended written-statement, put in on behalf of respondents 1, 2 and 3, can be split into two parts: (a) preliminary objections and (b) reply on facts. The preliminary objections are similar to the ones taken in the earlier written-statement, i.e. to the effect that the petitioner could seek his remedy by way of election petition and, under the circumstances, a writ petition was not maintainable.

Further, it was suggested that the petitioner was precluded from challenging the electoral rolls as he had raised no objection at the time they were prepared. On facts, however, the stand taken by respondents 1, 2 and 3 underwent a complete change. It was admitted by them that in the year 1931 A.D., there was a local body known as Solan Development Board.

The town of Solan was a part of the erstwhile Baghat State. In 1948, when Baghat State was merged in the Union of India a Notified Area Committee was set up at Solan in place of the Development Board. For several years before merger, there used to be Cantonment Board at Solan with its own defined area.

The same, however, was denotified by means of a notification issued by the Punjab Government on 6-3-1931 A.D.

The denotified area, however, continued to be under the civil and criminal jurisdiction of the East Punjab Government till 25-1-1950, when the Provinces and States (Absorption of Enclaves) Order, 1950, came into force. The respondents frankly admitted that the so-called cantonment area was not and could not have been included in the limits of the Solan Notified Area Committee, when it was set up in 1949.

On 22-1-1953, by means of a Government Notification, the Notified Area Committee, Solan, was converted into a second class Municipality. The so-called cantonment area, however, was not included in the Municipal area and there was no notification either u/s 4 or u/s 5 of the Punjab Municipal Act, as applied to Himachal Pradesh, including the so-called cantonment area within the jurisdiction of the Solan Municipal Committee.

7. The respondents further admitted that during the elections to the Municipal Committee held in 1954, the so-called cantonment area did not form part of Ward No. 1. In paragraph 7 of their written-statement, respondents have admitted that when the electoral roll of Ward No. 1 was prepared on the basis of the Parliamentary electoral roll and published on 27-7-1957, the so-called cantonment area was wrongly included within the limits of Ward No. 1. No objection thereto was, however, taken by the petitioner and it was contended that, accordingly, he was estopped from challenging the same.

8. An affidavit by the Superintendent, Law Department, Himachal Pradesh Administration, was filed in support of the amended written-statement put in by respondents 1, 2 and 3.

9. A replication was filed by Shri K. G. Khanna, petitioner, on 18-8-1958, wherein it was stated that the writ petition was the only remedy open to him. Another point taken was that the rules framed under the Punjab Municipal Act, as applied to Himachal Pradesh, do not provide for the publication of the electoral roll and for inviting objections thereto.

In view of the amended written-statement filed by respondents 1, 2 and 3, it was claimed that the election from Ward No. 1, which took place on 26-6-1958, was bad in law and the situation could be remedied only by preparing a fresh electoral roll after excluding the so-called cantonment area, wrongly included in Ward No. 1, and then holding a fresh election.

10. Arguments of the learned counsel for the contesting parties were heard at considerable length on the 21st instant. Judgment was reserved to-day, I now proceed to deliver the same.

11. (A). As far as facts are concerned, the amended written-statement filed by respondents 1, 2 and 3 makes it quite clear that the so-called "cantonment area" was never a part of the Municipal area. Solan, and the same was wrongly

included in Ward No. 1, when the relevant electoral roll was prepared last year. It is creditable that after having filed an incorrect written-statement, respondents 1, 2 and 3 resiled from the same and, very properly, obtained leave from this Court to file an amended written-statement setting forth the correct factual position. Respondent No. 4, no doubt, has contended in his written-statement that the so-called cantonment area does form part of the Solan Municipal area, but, in view of the clear and categorical admission of respondents 1, 2 and 3 (who are best qualified to speak on the subject), it must be held that the so-called "cantonment area" never formed part of Solan Municipality.

12. (B). In view of this finding, we have now to see whether any interference by this Court, in the exercise of its writ jurisdiction, is called for, or the petitioner should be driven to the necessity of filing an election petition. On behalf of the respondents, it was suggested that since polling from Ward No. 1 has already taken place, there would be no harm, if this Court permits the result thereof, to be announced leaving the petitioner (in case he felt aggrieved) to file an election petition, as provided by rule 54 of the Municipal Election Rules, 1957 (Published in the Himachal Pradesh Gazette dated 27-7-1957).

Mr. Doabia for the petitioner argued and in my opinion with considerable justification that such an election petition could not provide the petitioner the necessary relief and, in any case, would not be an equally efficacious remedy. Mr. Doabia pointed out that the scope of an election petition under rule 54 supra would be confined to the grounds for declaring an election to be void, as detailed in Rule 65 of the above Rules. These, grounds refer to the commission of corrupt practices by the returned candidate, or to any material irregularity. It is doubtful whether a defect in the electoral roll, as has been admitted in this case, would be covered by the expression "any material irregularity," referred to above. Mr. Doabia referred me to the following case law : (i) Nisar Ahmad Vs. Additional Commissioner, Jodhpur Division and Another, Therein, a Division Bench of that High Court, in dealing with an application under Article 226, put in by a candidate seeking election from Ward No. 8 to the Jodhpur Municipality, whose nomination paper had been rejected, observed as follows :

"It would not be right to leave the applicant to the remedy of an election petition against the order of what could be considered at the best busy bodies when the order of a properly constituted authority, namely, the Officer-in-charge of the elections was in his favour. There was also another danger if the) High Court were to follow the principle that it should not interfere in a case like the present, because it was possible to get redress by an election petition. That danger was that if some authority decided to interfere with the decisions of the Officer-in-charge of elections or the returning officer and rejected all nomination papers accepted by him of candidates belonging to particular parties, the result would be that candidates of one particular party might get elected unopposed. It was possible to have a wholesale abuse of this kind and it was, therefore, necessary for the High Court to interfere at this stage so that no authority may ever be

disposed to take the course mentioned above. Therefore, even though the applicant might be able to get his remedy in this case through an election petition, there was good reason why the High Court should grant him relief at this stage."

13. (ii) *Kanglu Baula Kotwal v. Chief Executive Officer, Janpad Sabha, Durg* AIR 1955 Nag 49 There, a Full Bench of the Nagpur High Court remarked as follows:

"The powers of the High Court under Article 226 are untrammelled by a law made by the Legislature and even though Section 22 of the C. P. and Berar Local Government Act says that elections can be challenged only by way of an election petition before a Tribunal created by the Act, the jurisdiction of the High Court which is derived from the Constitution, can in no way be affected."

"No doubt, the High Court would not ordinarily interfere under Article 226 where another remedy, which is equally convenient, is open to the petitioner. But the existence of another remedy is not in every case, a bar to the exercise of the powers of a High Court under Article 226, and the Court can interfere, if the circumstances of the case demand interference."

14. (iii) *Provat Chandra Sircar Vs. R.C. Sen, Administrator of the Budge Budge Municipality and Others*, There, Sinha J. indicated that:

"If the State or the public Officers concerned seek to hold an election contrary to the law, a voter has a right to come to the High Court for the issue of a writ in order to stop the same."

"The right to hold an election, to stand in an election and to be elected thereto as Commissioner, are all rights which spring up under the statute. There is no common law right which is involved. Therefore, the provisions of the Act and the Rules made thereunder must be strictly followed in constituting the Municipality and in regulating the functioning thereof: and this includes the question of the election of Commissioners constituting the Municipality."

15. (iv) *Prabhudayal Vs. Chief Panchayat Officer, Jaipur and Others*, wherein a Division Bench of that High Court pointed out that:

"Rule 19 contemplates election petition against individual Panches. It does not contemplate an election petition asking the tribunal to declare the entire election invalid on the ground of a fundamental deficiency in carrying out the mandatory rules relating to the holding of the election. Where by the petition under Article 226 it is not the election of any individual panch or Sarpanch or Upsarpanch that is challenged but that the entire election is void on the ground of a fundamental deficiency in the procedure preceding the election, the High Court is entitled to interfere in the exercise of its extraordinary jurisdiction."

16. (v) *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, There, the facts were: "The respondent claimed to be a voter of the Ajmer Municipality. By an order dated March 12, 1953, the Ajmer Municipal Committee had been

suspended and that suspension was to continue till September 11, 1955."

In view of the impending elections after the period of suspension was over, the Chief Commissioner, Ajmer, the appellant before us, framed the Ajmer State Municipalities Election Rules, 1955, in exercise of the powers conferred by S. 43 of the Ajmer-Merwara Municipalities Regulation 1925 (VI of 1925) and published them in the Government Gazette dated August 4, 1955.

On August 8, 1955, he notified an election programme and also authenticated and published an electoral roll. This electoral roll had been corrected and altered by the orders of the Sub-divisional Officer on certain days prior to August 8, 1955, but the respondent's name was alleged to have been incorrectly described therein, his father's name having been mentioned as Ratan Lal instead of Chitar Mal.

On August 10, 1955, he applied for the correction of his father's name in the Parliamentary Electoral Roll and on August 16, 1955, he filed his nomination paper. His nomination was, however, rejected on August 17, 1955, the Returning Officer stating that he was not one of the electors according to the roll.

His application for rectification of the mistake in the Parliamentary Electoral Roll was also rejected on August 18, 1955, by the Electoral Registration Officer on the ground, that the roll of the Municipal elections had been finally published on August 18, 1955, and therefore no correction could be made.

The respondent thereupon filed on August 26, 1955, a writ petition being Civil Writ Petition No. 108 of 1955 in the Court of the Judicial Commissioner at Ajmer against the appellant and the District Magistrate, Ajmer, inter alia, for a mandamus against the appellant to reconstitute the Ajmer Municipal Committee by a properly made and published notification u/s 8(1) of the Regulation and an order against the District Magistrate, Ajmer, restraining him from holding the elections and poll to the Ajmer Municipal Committee on September 9, 1955, as "notified." Upholding the decision of the Judicial Commissioner, Ajmer, in issuing a writ their Lordships of the Supreme Court held that:

"It is of the essence of the 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 instance of the parties concerned."

"The object of amendment of Sub-section (2) of Section 30 in 1950 is to adopt

the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality. It does not eliminate the further steps in the matter of the revision of such electoral roll as also the adjudication of claims to be enrolled therein and objections to such enrolments. By treating the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality, the trouble and expenses involved in the preparation of the electoral roll for the Municipality are saved but the Municipality is not absolved from the obligation of providing for the revision of such electoral roll as well as the adjudication of claims to be enrolled therein and objections to such enrolment. If Rules 7 and 9 of the Ajmer State Municipality Election Rules, 1955, are intended to form a complete code for the finalisation of the electoral roll of the Municipality, they do not setve the intended purpose and are either inconsistent with the provisions of S. 30, Sub-section (2) of the Ajmer Merwara Municipalities Regulation or are defective in so far as they fail to provide the proper procedure for taking of the steps for finalizing the electoral roll of the Municipality."

"The electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner on 8-8-1955 was not in conformity with the provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee."

17. Mr. Doabia for the petitioner submitted--and in my opinion with great justification--that the Municipal Election Rules, 1957, made by the Himachal Pradesh Administration and published in the Himachal Pradesh Gazette on 27-7-1957 suffer from the same defect as the Ajmer State Municipality Election Rules, 1955. It is noteworthy that while under the Punjab Municipal Election Rules, 1930, provision has been made for preparation for a preliminary electoral roll and for presentation of claims and objections thereto (vide Rules 8 and 10 thereof) no corresponding provision has been made in the Himachal Municipal Election Rules. I

It is to be hoped that the authorities will look into this matter. At the risk of repetition I may point out that in paragraph 7 of their amended written-statement respondents 1, 2 and 3 have frankly admitted that the so-called cantonment area was wrongly included within the limits of Ward No. 1, when the electoral roll was prepared on the basis of the Parliamentary roll in 1957. The so-called cantonment area may form part of the Parliamentary constituency, but not of a Municipal Ward.

Mr. Sachar for respondent No. 4 submitted that since the so-called cantonment area ceased to retain that character after 6-3-1931, no objection could be raised. This argument, however, is untenable, because even if the area in dispute did not retain the character of a military cantonment, still admittedly, it was not included in the Municipal area of Solan, as contemplated in Sections 4 and 5 of the Punjab Municipal Act, as applied to Himachal Pradesh.

18. The Aimer case, referred to above, is applicable to the facts of the present

case on all fours. I may also point out that in the above case, before the Judicial Commissioner's decision, the Chief Commissioner of Ajmer decided to reconstitute the Ajmer Municipal Committee by a proper notification u/s 8(1) of the Ajmer Municipal Regulation. Consequently, as their Lordships of the Supreme Court pointed out, the appeal to that Court became academic.

19. (vi) *Shiam Sunder and Another Vs. The State of Punjab and Others*, That case arose out of elections to the Barnala Municipality in the Sangrur District (sic) voters challenged the election of the returned candidates by means of a petition under Article 226. The grounds taken in that petition, inter alia, related to alleged irregularities in the preparation of the electoral roll and defects therein. Allowing the petition, a learned Judge of that High Court remarked that:

"Undoubtedly, a statutory remedy displaces a writ in the nature of quo warranto, but it is not so displaced if the objection taken falls outside the scope of the statutory remedy. Further, an election petition may be maintained by a defeated candidate or by five voters in enforcement of their right under the Pepsu Election Rules, but a quo warranto can also be invoked by the people in their sovereign capacity as an inherent right. After all every subject has inherent right in seeing that public duties are performed by those competent to exercise them."

20. (vii) *Lekh Raj Vs. The Cantonment Board, Jullundur Cantonment and Others*, There, the facts were that many days after the electoral roll under rule 8 had been framed under the Cantonments Act, the names of 156 persons were included in Ward No. 5. Thereupon, one Lekh Raj claiming to be a duly qualified voter filed a petition under Article 226 in the Punjab High Court. Allowing that petition and directing the issue of a writ forbidding elections from Ward No. 5, until and unless the provisions of the Act and rules framed thereunder had been complied with, Grover, J. observed as follows:

"The petitioner, under Article 226 of the Constitution can agitate the question of defective and improper rolls, and there seems to be no reason, why he should wait till the entire elections are over and file an election petition in which he may be completely precluded from taking up the grounds challenging the validity of the electoral roll."

"The existence of an alternative remedy is not an insuperable bar to the maintainability of a petition under Article 226 of the Constitution. The powers of the High Court under this Article are untrammelled by law and even though there is a provision that elections can be challenged only by way of an election petition before a Tribunal created by Rules, the jurisdiction of the High Court, which is derived from the Constitution, can in no way, be affected. Where the point raised is of fundamental character and will affect the elections as a whole, the High Court can interfere in a suitable case in exercise of extraordinary jurisdiction conferred by Article 226."

21. Mr. Doabia for the petitioner pointed out that the respondents 1, 2 and 3 have admitted that the electoral roll is defective. He further urged that this

defect is not of a formal or of insignificant nature. According to him, as a result of this mistake about 362 persons, who are not qualified to vote in Ward No. 1, have been included in the list of voters and this figure includes the employees of the Punjab University, who were formerly stationed at Solan and who shifted permanently to Chandigarh more than a year ago. Learned counsel submitted that this would make a substantial difference, because the total number of voters from this ward came to 900 approximately.

22. Mr. Sachar for respondent No. 4, in his reply, submitted the following points:-- (a) His first contention was that the petitioner had never requested respondents 1, 2 and 3 to amend their electoral roll and, therefore, no relief should be afforded to him. He relied upon *Naubat Rai Vs. Union of India (UOI)* and *Another, There*, the facts were:

"The petitioner, who was in the service of the Military Farms Department and was removed from service by the departmental head applied for a writ of mandamus, but it was not shown that he had applied for reinstatement or that he even appealed under the rules against the order of removal and that such a demand was denied.""

Under those circumstances, a Division Bench of that High Court held that an application under Article 226 was not maintainable.

23. Mr. Doabia, for the petitioner, rightly submitted that this ruling, has no applicability to the facts of the present case. He pointed out that in (S) *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, their Lordships of the Supreme Court had pointed out the necessity of maintaining a proper electoral roll and giving of an opportunity to those concerned to file claims and objections thereto and making provision for the disposal of such claims and objections. The duty is cast on those responsible for holding the election. They cannot be relieved of this burden on the strength of the argument that the petitioner did not file any objections with them. Consequently, this contention, put forward by Mr. Sachar, is untenable.

24. (B). In the next place, Mr. Sachar submitted that the petitioner has been guilty of serious laches and, therefore, no relief should be granted. He elaborated his argument by pointing out that the election programme was notified on 9-5-1958. Scrutiny date was 30-5-1958 and the last date for withdrawals was 2-6-1958. Similarly, revisions could be filed before the Deputy Commissioner by 4-6-1958.

No steps were taken by the petitioner to file any objection or revision to the Deputy Commissioner. Under these circumstances, it was contended that no indulgence should be shown to the petitioner. Reliance was placed on *R. v. Lofthouse (1866) 1 QB 433* There, the facts were:

"Previous to an election voting papers were delivered, duly filled up. except that the column for the number of votes was left in blank. After the election a rule for

a quo warranto was obtained by M., one of the unsuccessful candidates, against two of the persons declared elected, on the ground that the voting papers having been left in blank the election was void. M had himself voted with a voting paper left in blank, and had also taken part at former elections, when a similar course had been pursued, and had been himself so elected."

Their Lordships held:

"M was disqualified from becoming relator." "Although it was the Chairman's duty to fill up the voting papers with the number of votes, the omission did not vitiate them and render the election void."

25. Mr. Doabia for the petitioner, on the other hand, submitted that it was not an inflexible rule that relief should be denied to the petitioner merely on account of laches. He pointed out that in the case, reported in *Lekh Raj Vs. The Cantonment Board, Jullundur Cantonment and Others*, a writ was granted on the eve of the election.

26. (C) *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, There, in a case, arising out of grant of permits under Motor Vehicles Act, their Lordships of the Supreme Court held that the High Court of Madras exceeded its powers and jurisdiction in directing the Regional Transport Authority to grant to the petitioner permits in respect of five buses in respect of which a joint application had been made and in case the above buses had been condemned to permit the petitioner to provide substitutes within a reasonable time. This has hardly any application to the facts of the present case.

27. In the end, I may point out that u/s 12 of the Punjab Municipal Act (which applies to Himachal Pradesh) a Municipal Committee shall consist of members appointed by the Government, either by name or by office, or of members elected from among the inhabitants in accordance with rules made under this Act, or partly of the one and partly of the other as the Government may, by notification direct.

It is obvious, therefore, that the members have to be inhabitants of the Municipality and similarly those, who elect such members, must also belong to the locality. It does appear incongruous that persons living outside the limits of Ward No. 1 should be permitted to elect the representatives of that ward in the Municipal Committee, and it is still more anomalous that persons, e.g., employees of the Punjab University, who shifted permanently to Chandigarh more than a year ago and who have no connection with Solan, should be permitted to come back and cast their votes in Ward No. 1 merely because their names through an error (which is admitted) happen to find a place in the electoral roll.

28. In view of all facts and circumstances, stated above, I am clearly of the opinion that, despite the fact that this writ petition was made at a late stage, it should be allowed and a writ of mandamus should be issued to respondents 1, 2

and 3, directing them (a) not to declare the result of the election, which took place on 26-6-1958 and (b) to hold a fresh election for Ward No. 1 after amending the electoral roll by excluding the so-called cantonment area from Ward No. 1 and giving an opportunity to those concerned to file claims and objections to the revised rolls and providing for disposal of the same.

ORDER

29. I allow this petition and direct that a writ of mandamus be issued to respondents 1, 2 and 3 to the following effect:-- (a) They are perpetually restrained from declaring the result of the election to Ward No. 1 held on 26-6-1958, (b) They will hold a fresh election to Ward No. 1 according to law after preparing a fresh electoral roll for that ward in the light of the aforesaid observations, i.e., by excluding the so-called cantonment area from Ward No. 1 and after giving an opportunity to those concerned to prefer claims and objections thereto and providing for disposal of the same.

30. There remains the question of costs. Ordinarily, the petitioner should have been entitled to his costs. But this writ petition was filed in this Court only two days before the date of poll. Further, respondents 1, 2 and 3 in their amended written statement admitted the factual position set up by the petitioner.

Respondent No. 4 doubtless contested the petition, but, as a result of this Court's order he will be faced with the prospect of contesting a fresh election. Under these circumstances, it seems only fair and equitable that parties should be left to bear their respective costs of this petition. I order