

(1957) 11 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 978 of 1957

Lekh Raj

APPELLANT

Vs

The Cantonment Board, Jullundur Cantonment and Others

RESPONDENT

Date of Decision : 12-11-1957

Acts Referred:

Cantonments Electoral Rules, 1945 — Rule 10, 11, 12, 13, 42
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 3, 5

Citation : AIR 1958 P&H 356

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Advocate : H.S. Doabia and Anand Sarup, for the Appellant; F.C. Mittal and J.N. Puri, for the Respondent

Judgement

A.N. Grover, J.—This petition under Article 226 of the Constitution raises an important question with regard to the validity and legality of the holding of elections to the Cantonment Board. Jullundur Cantonment, which are scheduled to be held on the 11th, 12th, 13th and 14th of November 1957.

2. The petitioner claims to be a voter duly qualified to vote in the election of members to the Cantonment Board, Jullundur Cantonment. He is entered as a voter in ward No. III in the electoral roll for the elections. He has also been an elected member of the Board for the years 1946 to 1954 and he was Vice-President of the said Board for about three years during that period.

According to the Cantonments Electoral Rules, 1945, as amended and published in Gazette of India, part II, on 2-10-1954, provisions have been made for preparation of the electoral rolls on the basis of which election of the elected members is to take place. Rule 6 provides that the Board, or where a Board is not constituted, the Officer Commanding the Station, shall have prepared by the 1st July of each year an electoral roll in Form I drawn up on street basis, and divided into separate parts for each ward.

The revision of electoral rolls is an annual obligation in view of Section 26 of the Indian Cantonments Act, 1924 (Act II of 1924), hereinafter referred to as the Act. According to the petitioner the Executive Officer without obtaining the decision of the Board ordered the preparation of the rolls under Rule 6 which he had no power to do. The roll as prepared was published on 1-7-1957 and objections were invited as also claims within a period of twenty days.

It is stated that after the publication of the rolls and giving of notice inviting objections and claims under Rule 8 no further names could be added or deleted, but it is alleged that the Executive Officer of the Board included the names of 156 persons in ward No. V and 336 persons in ward No. VI many days after the roll was published under Rule 8. It is further mentioned that u/s 27 of the Act the Central Government issued a notification dated 6-6-1953 (Annexure "B" to the petition) by which the 1st day of March was fixed as the "qualifying date."

Instead of the said date, the Executive Officer directed that in preparing the list the qualifying date for the purpose of residence of the persons entitled to be recorded as voters should be taken as 1-4-1957. This mistake in preparation of the preliminary went to the root of the matter and no election can take place on the basis of such rolls:--The validity of the meeting of the Board held on 10-10-1957, which was presided over by Col. J. Section Sekhon, at which the election programme was drawn up, was also attacked on various grounds set out in paragraphs 14 and 15 of the petition.

It is thus asserted by the petitioner, who is contesting the seats from wards III and V, that the elections which are sought to be held on the basis of the rolls as prepared would be wholly illegal and the entire elections will be vitiated. The respondent filed a written statement, dated 19-10-1957, in which certain preliminary matters were raised, apart from objections on merits. It was objected inter alia that the petitioner had an adequate and proper remedy provided by the Electoral Rules and therefore the petition ought not to be entertained.

Reliance was placed on Section 24 of the Act for the authority of the Executive Officer to take proper proceedings for the revision of electoral rolls. It was stated that the provisions of Rule 8 had been strictly complied with and that the rolls were revised in accordance with law. Moreover the petitioner had by his conduct accepted the same and it was not open to him to agitate the matter. In paragraph 11 of the written statement some important matters were stated.

It was admitted that for the inclusion of the names of the military personnel a letter dated 21-3-1957 (Annexure "1" to the written statement) was issued in which by a typing mistake the qualifying date was mentioned as 1-4-1957 instead of 1-3-1957. Information was received from the respective Officers Commanding Units by April 1957 and the names supplied by them were included in the voters' lists.

The mistake with regard to the qualifying date was admitted, but it was

explained that when the aforesaid mistake was discovered, letters were addressed to Officers Commanding the Units to inform whether the persons mentioned in their lists were twenty-one years of age or over and whether they had resided in the cantonment for six months or more as on 1st March, 1957. After the replies had been received, a thorough checking was done and the rolls were prepared according to law.

3. It is significant that along with the written statement affidavits of certain persons were filed. Out of these, the affidavits of Joginder Singh Jogi, Mohinder Singh, Tarsem Lal, Bhagwan Das, and Kripa Ram are of teachers working in the Cantonment Board High School. It was sworn by them that they had been directed by the Executive Officer to carry out the preparation of the electoral rolls of certain wards and that they had collected particulars for preparation of the lists of voters as regards their age and residence taking the qualifying date to be the 1st March, 1957.

The affidavit of Rakha Ram, Sanitary Officer, was filed in similar terms. The affidavit of Shiva Shankar, Electricity Sanitary Superintendent of the Board, contained a statement that the revision of the rolls had been completed by the 26th June, 1957 and that the teachers deputed to prepare the voters' lists had been directed to take the qualifications for age and residence as on the 1st March, 1957. To the same effect was the affidavit of O. P. Gupta, Second Clerk of the Board.

It is curious that on the 21st October, 1957, Bhagwan Das, one of the teachers, sent a telegram to this Court making certain allegation of his affidavit having been obtained under pressure.

I have before me further affidavits of all the aforesaid teachers of different dates subsequent to the 22nd October, 1957, wherein an allegation is made that they had been asked on the previous occasion to sign a prepared affidavit by the Executive Officer and that the latter had put pressure on them to sign without asking to see the relevant documents.

It was further stated that the particulars of age and residence of the voters collected by the aforesaid teachers were on the basis of the 1st April, 1957 as being the qualifying date and not the 1st March, 1957 as stated in the previous affidavits. Along with these affidavits a printed form, in which it is stated as follows, has been attached :--

"I give below a declaration containing the names of persons whose age is 21 years or more as on 1st April, 1957 who are residing at the address noted below:

"I request you to kindly register the names in the electoral rolls of the cantonment for elections to Cantonment Board."

4. Mr. Faqir Chand Mital, who appears for the respondents, has raised a strong objection to my entertaining the petition under Article 226 of

the Constitution on the which it has been founded. According to him the preliminary roll had admittedly been published on the 1st July, 1957 and it was open to the petitioner to file objections under Rule 9 objecting to the inclusion of the names of various persons whose names should not have been included in the roll and this he could do within twenty days from the date of publication of a notice under Rule 8, which admittedly had been given.

Rule 11 provides for the publication of list of claims and objections and the time and place of their hearing. Rule 12 provides for hearing of claims and objections and orders to be made thereon. Sub-rule (3) of Rule 12 provides--

"The President or his nominee, after hearing the party or parties to a claim or objection, shall pass orders in writing thereon,and such orders shall be final, when passed by the President, but subject to the result of an appeal, if any, made within two days to the President when passed by his nominees."

Rule 13 provides for final publication of the electoral rolls and it is enjoined on the Executive Officer to correct the same in accordance with the orders passed under Rule 12. It is stated that the rolls were finally published on the 5th October, 1957. Mr. Mital's argument is that it was open to the petitioner to file objections to the rolls as finally prepared in accordance with the Rules, and as the petitioner never did so, he was not entitled to raise them after the final publication of the rolls.

He further submits that the only mode and manner in which the petitioner can agitate the questions now sought to be raised is by way of an election petition after the elections have been held. He has referred to Rule 42 which provides as follows :--

"42. No election shall be called in question except by an election petition presented in accordance with these Rules." Rule 47 gives the grounds for declaring the election void, and ground No. (iv) is --

(iv) the failure to comply with any provision of the Act or of these Rules."

Mr. Mital invites attention to a decision of the Supreme Court, Narayan Bhaskar Khare Vs. The Election Commission of India, in which the question of the remedy and the point of time at which that remedy can be availed of in matters of elections was considered in connection with the Presidential election which had been fixed for the 6th May, 1957.

There were two petitioners who had moved the Supreme Court to exercise the jurisdiction and power vested in it by and under Article 71(1) of the Constitution of India to inquire into and decide what had been described as a "grave doubt" in connection with the election of the President of India and to direct the Election Commission not to proceed with the polling in connection with the said election, but to hold the same after duly completing all the elections to the Lok Sabha and the Legislatures in all the States of the Indian Union including the Union territory. In the second petition before their Lordships the petitioner had alleged that as a

prospective member of Lok Sabha he would be deprived of his right to vote for the election of the President of the Union if the Presidential election was held before the election to the Lok Sabha which had not been held from the Kan-gra Parliamentary constituency in the State of Punjab till then. A reference was made to the previous decision in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, in which it had been observed that in the wide sense the word "election" had been used to connote the entire process culminating in a candidate being declared elected.

5. While examining the meaning of the word "election" as used in Article 71 the Supreme Court saw no reason why the accepted meaning should not be given to the critical word. Reliance was placed on the Presidential and Vice-Presidential Act, 1952. Section 14 of which provided that no election shall be called in question except by an election petition and that one of the grounds for declaring the election to be void would be non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act. Their Lordships observed as follows at page 698 of the report (*Narayan Bhaskar Khare Vs. The Election Commission of India*, : --

"In our judgment Article 71 postulates an election and the word "election" occurring in Article 71 means the entire election process culminating a candidate being declared elected and doubts and disputes arising out of or in connection with any of the stages of such completed election have to be inquired into and decided by this Court which, in point of time must necessarily be after the completion of the entire process compendiously called the election."

6. Basing himself on the above decision, Mr. Mital contends that the only remedy which the petitioner can seek is by challenging the election by way of an election petition after the elections are over, and if he can make out the grounds as alleged by him it will be open to the Election Tribunal to set aside the election. The reply on behalf of the petitioner is that in the present petition the entire foundation and basis on which elections are to be held is being challenged and that the petitioner as a voter and as a candidate is fully competent to agitate the matter at this stage. He submits that on the contentions raised by Mr. Mital himself the final roll as published has become immune from all attack and that it will not be possible for the petitioner to agitate the question of the legality and validity of the electoral roll before the Election Tribunal at a later stage. He relies on a statement contained in Parker's Elections Agent and Returning Officer (Fifth Edition) in the following terms :--

"The register is conclusive on the on the questions: whether or not a person registered therein was on the qualifying date resident at the address shown; whether that address is in any constituency or any particular part of a constituency; and whether or not a person registered is registered as a service voter."

In answer to the other contentions raised on behalf of the respondents Mr.

Doabia strongly relies on another recent decision of the Supreme Court, Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, . In that case it was observed that it was of the essence of elections that proper electoral rolls should be maintained and in order to do so it was 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. There should also be a provision for the revision of the electoral roll and unless opportunity was given for such a revision and for the adjudication of claims and objections, the entire obligation cast upon the authorities holding the election was not discharged and the elections held on such imperfect rolls would be invalid and would be liable to be challenged at the instance of the parties concerned.

7. According to the contention of Mr. Doabia the entire elections in the Ajmer case (C) had been set aside on the ground that they could not be held on the imperfect electoral rolls, and this had been done on a petition under Article 226 of the Constitution filed by a person who claimed to be a voter of the Ajmer Municipality. It will be noticed that in the aforesaid decision of the Supreme Court the main reason for which the elections were held to be void was that no rules had been framed by the Chief Commissioner providing for the revision of the electoral roll after giving proper opportunity to the parties concerned for scrutinizing whether the persons enrolled possessed the necessary qualifications.

8. It cannot be said in the present case that the rules are defective and do not provide for the revision of electoral rolls. Rules 6 to 13 contain a complete machinery for revision after entertaining the claims and objections at the Instance of the parties concerned. But the decision in the Ajmer case (C) certainly helps the present petitioner to this extent that the entire elections were declared to be void on the ground of imperfect rolls. In the present case if it can be determined that the rolls as prepared were highly defective and had been made on wholly incorrect basis, it will be possible to apply the ratio of the Supreme Court decision and decide the matter in the light of the same. I have been referred to a recent decision of the Rajasthan High Court, Prabhudayal Vs. Chief Panchayat Officer, Jaipur and Others, In that case Wanchoo, AIR and Bapna, J., held in a matter of election of Panches that a notice announcing the election for a Panchayat on a particular date which did not conform to the mandatory provisions of Rule 4 of the Rajasthan Panchayat Raj Rules was no announcement under the law and a subsequent election in consequence of such an announcement was no election at all. The entire election was set aside. It was further held that where by a petition under Article 226 it was not the election of any individual that was attacked, but that the entire election was challenged as void on the ground of a fundamental deficiency in the procedure, the High Court was entitled to interfere in the exercise of its extraordinary jurisdiction. This case certainly seems to be very much in point because the argument of Mr. Doabia is that the entire election will be void if his contentions are accepted.

9. Another point that has to be determined in this connection is whether it will be at all possible for the present petitioner to agitate the question of defective and improper rolls after the elections by way of an election petition. The proviso to Rule 43 of the Rules is in the following terms:--

"Provided that no such petition shall be presented on the ground either that the name of any person qualified to vote has been omitted from the electoral roll or that the name of any person not so qualified has been inserted in the roll."

Reading Rule 43 together with Rule 12 (3) it seems that it will not be possible for the petitioner to agitate the question whether the name of any person not qualified has been inserted in the roll in an election petition. Mr. Mital's argument is that the proviso to Rule 43 does not debar such questions being raised before the Election Tribunal and the bar operates against a petition being presented on the sole grounds given in the proviso. He has referred to the Law of Elections by Nanak Chand Pandit wherein it is stated at page 19 that the Election Tribunal is entitled to go behind an electoral roll, and to enquire into the correctness of any entry therein and that it is open to the Tribunal, in spite of the entry in the electoral roll, to enquire whether a voter is qualified or disqualified or is entitled to vote. This is based on some election cases which it will not be proper to consider authoritative for the purposes of the present petition. Moreover there are other authoritative statements which do not support the contention of Mr. Mital.

In the law of Municipal Corporations in British India by P. Duraiswami Aiyangar (1924 edition) it is stated at page 40 that the orders of the appellate or revising authority as to entries on the electoral register are final and instances are given from England where in the general elections of 1922 a boy aged 5 years voted at Heywood and a boy of 12 in South West Hull, and the vote of an infant aged 2 years was allowed to be recorded at Portsmouth on the view that the presiding officer had no authority to enquire into the capacity of any voter on the register, the same being conclusive.

It is further stated that the entries in the roll are final even as regards a returning officer at the time of nomination, or an election Court of enquiry. In the well-known book of Rogers on Elections, Volume II, 1928 edition, it is stated at page 221 that the votes of persons on the register cannot be struck off on a scrutiny on the ground that their names ought not to be on by reason of non-residence, insufficiency of qualification, etc.; but the votes of persons who are under a personal disqualification may be struck off although their names are on the register.

I have already referred to the view expressed by Parker. In *Stowe v. Jolliffe* (1874) 9 CP 734 it has been held that notwithstanding the Ballot Act has repealed Sections 68 and 70 of the Reform Act and Section 19 of the Registration Act, the register is conclusive not only on the returning officer, but also on every tribunal which has to enquire into elections except only in the case of persons

prohibited from voting by any statute or by the common law of parliament.

The Madras High Court held in *R.V. Palanisami Pillai Vs. R. Srinivasarangachariar*, that a Judge inquiring into an election dispute could not go behind the electoral roll which was final and inquire into alleged defects in the procedure followed by the authority revising the roll. This case, however, may be distinguishable on the ground that there was a special rule under the Madras District Municipalities Act which made a provision to that effect.

10. It seems to me that one of the main principles which has been generally accepted in the law of elections is that the roll or the register of electors or voters has to be treated as final and the finality has been extended even, qua the Election Tribunal. The Rules in the present case appear to contemplate that finality would attach to the roll as prepared and published after following the machinery given in Rules 6 to 13, and this seems to be particularly so in view of the proviso to Rule 43.

Thus it is difficult to see how the petitioner cannot agitate the question of defective and improper rolls at this stage 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 which have been raised.

11. There is no doubt that the decision of the Supreme Court relied upon by *Narayan Bhaskar Khare Vs. The Election Commission of India*, the facts of which have been fully stated before, seems to lend support to the contention of Mr. Mital, that since no election can be called in question except by an election petition, the petitioner must agitate the matter in that manner alone after the election has been held, but on a closer examination it appears that there are many points of distinction.

Their Lordships of the Supreme Court in, that case were considering the true import and scope of Article 71 of the Constitution which made the Supreme Court itself the forum for deciding all doubts and disputes arising out of or in connection with the election of the President. The grievance of the petitioners was primarily individual and no such question as a fundamental mistake in the preparation or publication of the rolls had been raised, nor could it be raised.

The question of entertaining a petition under Article 226 of the Constitution was not the issue and one of the main points which naturally was of importance was that the election of the President could not be held up as the President's term was to expire on the midnight of the 12th of May, 1957, and it was not possible to hold up the election under the Constitution whose peremptory requirement was that the election to fill up the vacancy caused shall be completed before the expiration of his term.

I would, therefore, hold that the petition under Article 226 of the Constitution can be entertained and ought to be entertained in case the contentions of the

petitioner are well-founded.

12. Even if it be assumed that it will be possible for the petitioner to agitate the questions raised by him with regard to the rolls being defective In an election petition, it only means that he can avail of an alternative remedy and therefore there should be no interference under Article 226. The existence of such a remedy is not an insuperable bar. The powers of the High Court under the aforesaid 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 the 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. I am fortified in this view by the judgment of the Pull Bench In *Kanglu Baula v. Chief Executive Officer* AIR 1955 Nag 49 . The Calcutta High Court in *Provat Chandra Sircar Vs. R.C. Sen, Administrator of the Budge Budge Municipality and Others*, also interfered under Article 226 where an election had been held contrary to the law.

It was decided in that case that where a public body was going to be constituted wrongly and in violation of the provisions of law, the Court is bound to intervene and put the matter right. The objection, therefore, raised by Mr. Mital to entertaining the present petition at this stage cannot be sustained.

13. The main and the principal point that has been raised by Mr. Doabia relates to the electoral rolls being wholly defective and illegal with regard to all the wards and, in particular, with regard to wards V and VI. I should like to decide the matter with regard to the particular wards first. (After discussing the matter, His Lordship concluded as under :) For all the aforesaid reasons, the roll of ward No. V must be regarded as not having been prepared according to law.

14. The case of ward No. VI will be considered along with other wards.

15. With regard to the other wards including ward VI, very little material has been placed on the record which is of a specific nature. There is no doubt that one common feature exists, namely that even with regard to those wards it is admitted that by mistake when letters were addressed to the Administrative Commandant, the qualifying date was mentioned as the 1st April, 1957 instead of the 1st March, 1957, and it has further been stated in the written statement that when the mistake was discovered letters were addressed to Officers Commanding the units to verify whether the persons mentioned in their lists were twenty-one years of age or over or whether they resided in the cantonment for six months or more as on the 1st March, 1957.

Replies were received from them that all the persons mentioned in the lists supplied by them had the qualifications of age and residence as on the 1st March, 1957. It is to be noticed that even with regard to these rolls, the period of

residence was to be computed as on 1st March, 1957 whereas it should have been a day immediately preceding the said date. However, there is no material showing how many mistakes occurred in this manner.

I have already mentioned that already mentioned that certain affidavits were filed by various teachers along with the written statement, all in identical nature and terms, bearing the same date, i.e., the 19th October, 1957, wherein it was stated that the list had been prepared taking the 1st March, 1957 as the qualifying date. Out of these teachers, in addition to Tarsem Lal, Joginder Singh Jogi, Mohinder Singh, Kirpa Ram and Bhagwan Das have filed affidavits subsequent to the 22nd October 1957 making allegations of pressure in similar terms as made in the affidavit of Tarsem Lal mentioned by me before.

The Executive Officer has also filed an affidavit dated the 3rd November, 1957 in which he has denied having put any pressure on the aforesaid persons and has controverted the other allegations of the aforesaid teachers. On the material before me it is very difficult to say as to where the truth lies. However much suspicion may be raised, it cannot take the place of proof.

16. There is another matter which has to be taken into consideration in connection with the electoral rolls of the wards except ward No. V. The facts alleged with regard to the lists of these wards are more or less contested. and I am bound by the decision of the Division Bench reported in State of Punjab Vs. S. Sukhbans Singh, according to which there should be no interference under Article 226 of the Constitution where facts are in" dispute or are contested.

Even otherwise no specific correspondence or material has been placed with regard to the electoral rolls of these wards as has been done in the case of ward No. V, with regard to which, apart from the mistake of the qualifying date other irregularities have been found to exist. In these circumstances I consider that so far as the electoral rolls of the other wards are concerned, they cannot be held to be irregular and improper or illegal on the material placed before me. No other point of substance was pressed by Mr. H. Section Doabia.

17. The result is that I allow the petition to the extent of granting it with regard to the elections to ward No. V only. That I can do so with regard to one ward alone was not disputed by Mr. Mital. A writ will therefore issue directing that elections to ward No. V on the basis of the electoral roll as prepared shall not be held until there has been compliance with the provisions of the Act and the Rules framed there under. In all other respects, the petition will stand dismissed. In the circumstances I leave the parties to bear their own costs.