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(1958) 03 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 315 of 1957

Neelappa Yallappa Madiger — APPELLANT

Vs

State of Mysore and Others — RESPONDENT

Date of Decision : 11-03-1958

Acts Referred:
Bombay Village Panchayat Election Rules, 1948 — Rule 3, 4
Bombay Village Panchayats (Amendement) Act, 1956 — Section 7 B

Citation : AIR 1959 Kar 210 : (1958) 36 MysLJ 644

Hon'ble Judges : S.R. Das Gupta, C.J;H. Hombe Gowda, J

Bench : Division Bench

Advocate : N.H. Naik, for the Appellant; D.M. Chandrasekhar, High Court Govt. Pleader and H.F.M. Reddi, for the Respondent

Judgement

H. Hombe Gowda, J.—This is a petition under Article 226 of the Constitution of India praying for the issue of a Writ quashing the order dated 9-12-1957 passed by the State of Mysore confirming the order dated 16-9-57 passed by the Collector of Belagum in GB/PCII/APPL2, rejecting the application filed by the petitioner for a declaration that the election to the panchayat of Kerur Village. Taluka Chikodi held on 23-8-1957 as invalid.

2. The election to the village panchayat committee of Kerur village was held on 23-8-1957. The petitioner and respondents 2 to 5 amongst others contested the election from Ward No. 3. Respondents 2 to 5 were declared elected and the petitioner was unsuccessful. The petitioner then presented a petition u/s 9 of the Bombay Village Panchayats Act to the Collector for a declaration that the election conducted on 23-8-1957 was invalid.

The main ground urged by him in his petition was that the electoral roll had not been prepared and published by the Deputy Commissioner in accordance with Rules 3 and 4 of the Village Panchayat Election Rules of 1948 and consequently many persons who were duly qualified to vote at the election had no opportunity to get their names included in the list and therefore, the result of the election

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had been materially affected.

Ho also urged two other grounds viz., that there was a disturbance at the time of the election and that respondents 2 to 5 had adopted corrupt practices at the election. The Deputy Commissioner of Belgaum District, who heard the arguments address- , ed on behalf of the petitioner held that the petitioner''s contention that the provisions of Rules 3 and 4 of the Bombay Village Panchayat Election Rules were operative even after the legislature passed Act XXIII of 1956 and added Section 7-B which prescribed the voters'' list prepared for the purpose of the Elections to the Legislative Assembly for the time being ,as the voters'' list for he Village Panchayat Act also was untenable.

The learned Deputy Commissioner was of the opinion that the provisions of Rules 3 and 4 of the Bombay Village Panchayat Election Rules had become inoperative after Section 7-B was added to the Statute and that applications for additions and deletions in the electoral rolls were regulated by the provisions of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956.

Being aggrieved by this order, the petitioner preferred a revision petition u/s 107 (4) of the Bombay Village Panchayat Act before the Government of Mysore at Bangalore, Respondents 2 to 5 inter alia contended before the Government that the Government had no jurisdiction to entertain an application for revision of an order passed by the Collector u/s 9 of the Bombay Village Panchayat Ac. The Government rejected that objection and heard the petition on merits.

The Government agreed with the conclusions arrived at by the Deputy Commissioner that Rules 3 and 4 of the Bombay Village Panchayat Election Rules of 1948 had been superseded by the amendment of Section 7-B of the Bombay Act XXIII of 1956 and therefore the contention of the petitioner that because the electoral roll had not been prepared and published in accordance with the said rules, the election conducted on the basis of the electoral roll was invalid was untenable and dismissed the revision petition on 9-12-1957. It is the legality of this order that is now challenged by the petitioner in this petition.

3. It is interesting to note that the petitioner has not produced a copy of the order passed by the Government, the legality of which is challenged. Sri Naik, the learned Counsel for the petitioner submitted before us that the Govt., hart not issued any endorsement to the petitioner and that the Government had rejected the petition on almost the very same grounds on which the Deputy Commissioner had done, the copy of which has been produced and therefore, we may examine ;he legality of the original order passed by the Deputy Commissioner.

4. The short point for consideration is whether there is any force in the contention of the petitioner that the provisions of Rule. 3 and 4 of the Bombay Village Panchayat Election Rules of 1948, are yet in force and whether the Deputy Commissioner was bound to prepare and publish a separate voters'' list for the purposes of the Village Panchayat Election. It may be stated here that the

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Bombay Village Panchayat Act of 1933 had prescribed certain property or taxation qualifications (in addition to the residential qualification) for being a voter.

The State Government had framed certain rules on the authority of Section 108 of the Act in respect of the preparation and publication of Voters'' list for the election of the Village Panchayat Committee. The collector or the Deputy Commissioner had been authorised to prepare such lists and publish them as per the calendar of events before each election.

But the Legislature passed the Bombay Village Panchaya''s (Amendment) Act, 1956 and added Section 7-B adopting the State Legislative Assembly Roll for the village panchayat elections and doing away with the property or taxation qualifications. Section 7-B of the Act runs thus;

"7-B. List of voters -- (1) The electoral roll of the Bombay Legislative Assembly prepared under the provisions of the Representation of the People Act, 1950 (XLIII of 1950) and for the time being in force for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village."

(2) The officers designated by the Collector in this behalf shall maintain a list of voters for each ward or village."

It is clear from the above that there is no substance in the contention of the petitioner that the Deputy Commissioner was bound to prepare and publish a separate list of voters for the purpose of Village Panchayat Elections. The election rules framed by the Government on the authority conferred by Section 108 of the Village Panchayat Act do not and cannot override the statutory provisions.

The amended Section 7-B of the Bombay Act XXIII 1956 makes it perfectly clear that the electoral roll of the Legislative Assembly should be adopted for the Village Panchayat Elections. So the electoral rolls prepared under the Representation of the People Act and the Rules framed thereunder, that are valid for the purposes of elections to the village panchayats. There is therefore, no substance in the contention of the petitioner that the election to the 3rd ward of Kerur Village Panchayat held on the basis of the invalid electoral roll prepared is invalid. No other point was urged before us.

5. For the reasons stated above, this petition rails and is dismissed with cost. Advocate''s fee Rs. 100/- (Rs. one hundred).

6. S.R. Das Gupta, C.J.

I agree.

7. Petition dismissed.

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