

(1961) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 21 of 1960

Parmatma Ram and Others

APPELLANT

Vs

Siri Chand and Others

RESPONDENT

Date of Decision : 14-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Municipal Election Rules, 1957 — Rule 3, 55, 6, 7, 9
Punjab Municipal Act, 1911 — Section 240, 258

Citation : AIR 1962 HP 19

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : R.N. Malhotra, for the Appellant; Kedar Ishwar, Government Advocate for Respondents 6 to 8 and Yograj Sethi, for Respondents 3 to 5, for the Respondent

Judgement

C.B. Capoor, J.C.

1. This is a petition under Articles 226 and 227 of the Constitution of India. The learned counsel for the petitioners has conceded that Article 227 of the Constitution is not applicable and that it is only under Article 226 that the petition can lie.

2. The municipality of Solan was divided into five wards for the purposes of election to the Municipal Committee, Each one of the petitioners is a voter registered in the electoral rolls of one of those Wards. At the elections held in 1958 respondents 1 to 5 were elected to the Municipal Committee from four of the wards, namely 2 to 5. This was so as one of those constituencies was a double member one. So far as ward No. 1 was concerned, elections were held but the result of the election was not announced in obedience to a writ of mandamus issued by this Court in pursuance of the writ petition No. 57 of 1958 filed by one Shri K.G. Khanna, hereinafter to be referred as "Khanna's petition". The direction of this Court was that a fresh electoral roll be prepared for ward

No. 1 after giving an opportunity to those concerned to prefer claims and objections and after providing for the disposal of the objections etc. that may be preferred and thereafter a fresh election to that ward be held. The authorities framed a programme for the bye-election to ward No. 1 and the petitioners filed the petition under consideration for the issue of a writ in the nature of mandamus or quo warranto or any other suitable writ to hold fresh elections to all the wards of the Solan Municipal Committee according to law after due formulation of the rules and preparation of electoral rolls after giving an opportunity to the petitioners and others concerned to prefer claims and objections and providing for their adjudication.

3. The grounds on which the aforesaid prayers are based are (a) that in the rules framed by the Lieutenant-Governor in exercise of his powers under Sections 240 and 258, Punjab Municipal Act, 1911, as applied to Himachal Pradesh, there is no provision for the preferment of objections to the electoral rolls or for their disposal; (b) that the electoral rolls on the basis of which elections were held in the year 1958 were hopelessly defective inasmuch as many of the persons who had left Solan about two years back due to the shifting of the University to Chandigarh were entered in the electoral rolls as voters, that the name of one single voter found place in the electoral rolls for more wards than one, that the name of Shri Itwari Lal, respondent No. 3, was shown in the electoral roll at Otari and that the names of voters were added in the electoral rolls after 9-5-19,58, the date on which they had become final; (c) that even after the issue of writ in Khanna's petition no rule was framed by the Administration providing for the filing of and disposal of objections against the inclusion or exclusion of names in the electoral rolls; and (d) that it would be incongruous if the election of the other members is allowed to stand when the election of one member has been declared to be null and void on the ground of the electoral rolls being defective;

4. After the filing of the present writ petition an application for stay of the bye-election to ward No. 1 was moved by the petitioners but by an order dated 6-10-1960 it was rejected. Election was held to ward No. 1 according to schedule and the result of the election was declared in October and the Municipal Committee was constituted on 16-11-1980 but no application for amendment was made with a view to seek relief against the returned candidate. During the course of argument an application was made on behalf of the petitioners for adding Shri K.G. Khanna the successful candidate from ward No. 1 as a respondent but, for reasons given in my order dated 8-8-1961, that application was rejected.

5. The respondents to the petition are the successful candidates from wards Nos. 2 to 5, Shri Prakash Chand, Treasury Officer Kasumpti, Returning Officer for Municipal election of Solan held in 1958, the Deputy Commissioner Mahasu district at Kasumpti and the Union of India.

6. The petition has been resisted by respondents Nos. 3 to 8. Respondents 6 to 8 have filed one written-statement and each one of the respondents 3 to 5 has

filed a separate written-statement. The pleas common to the written-statements are that the petition has been filed after an inordinate delay inasmuch as elections were held as far back as 1958 and that another remedy by way of a petition challenging the election of the successful candidates was available to the petitioners but the same has not been availed of and the petition is not maintainable. In the written-statement filed by respondents Nos. 6 to 8 it has also been pleaded that the headquarters of the Union of India were beyond the territorial limits of this Court and as such no writ can issue to that respondent.

It has further been pleaded by them that the writ issued by this Court in pursuance of Khanna's petition has been substantially complied with and a notification dated 24-7-1959 was issued by the Administrator providing the requisite machinery for revising the electoral rolls in respect of ward No. 1 and for hearing the objections that may be filed by the persons concerned, that in pursuance of the aforesaid notification the Deputy Commissioner Mahasu issued notice dated 6-5-1960 inviting objections to the publication of the preliminary electoral rolls for ward No. 1, that such objections as were received were duly disposed of and the electoral rolls for the aforesaid ward were finally published on the 16th August, 1960: vide Annexures "A" to "D" to the written-statement.

7. Respondents Nos. 6 to 8 have not questioned the allegation made in the petition that certain names were added in the electoral rolls after 9-5-1958 and that the names of the voters referred to in paragraph 8 of the petition found place in the electoral rolls. The aforesaid respondents have expressed their ignorance of the fact if the aforesaid voters had shifted to Chandigarh or Chandi Mandir or as to whether they had voted at the election. It has also been admitted by them that the name of Shri Madan Lal Jain, respondent No. 2, did not appear in the electoral rolls upto 9-5-1958. The respondents' case is that the aforesaid name was included by the order of the Deputy Commissioner dated 29-5-1958. It has lastly been urged that fresh elections to other wards could not be ordered by the Administrator unless the election was set aside by a competent authority. The main pleas raised by respondents 3 to 5 are substantially in the same tune as the pleas advanced by respondents Nos. 6 to 8. They have in addition pleaded that the result of election had not been materially affected as a result of the irregularities pointed out in the petition.

8. The following questions arise for decision :

1. Whether there has been inordinate delay in the filing of the writ petition?
2. Whether the petition is not maintainable in view of the fact that recourse was not had to the alternative remedy provided by the Election Rules?
3. Whether the petition is maintainable against the Union of India?
4. Whether the Administration has complied with the writ of mandamus issued by this Court in pursuance of Khanna's petition?
5. Whether any writ or direction can issue in respect of the bye-election held to

ward No. 1 in the absence of the returned candidate?

6. Whether the electoral rolls on the basis of which elections were held in 1958 were invalid or so defective as to justify the setting aside of the election of all or any one of the respondents Nos. 1 to 5?.

(Findings 9 to 16)

(After answering Question No. 4 in the affirmative, his Lordship held that in view of the finding on Question No. 4 Question No. 5 did not arise for decision. In respect of Question No. 3 it was conceded by the learned counsel for the petitioners that no writ or direction in the nature of writ could issue to the Union of India as its head-quarters were beyond the territorial jurisdiction of the Court.)

17. Question No. 1 : Acute controversy has centred round this question. On the one hand, it has been urged on behalf of the petitioners that since respondents Nos. 1 to 5 were not sworn in prior to the filing of the writ petition and the Municipal Committee was not constituted it was not necessary for them to have filed the present petition earlier. On the other hand, it has been contended on behalf of the contesting respondents that the elections were held in June 1958 and the petition for the setting aside of those elections should have been filed soon after the declaration of the result. On behalf of the respondents reliance has also been placed upon orders passed by this Court dismissing on the ground of inordinate delay the petitions filed by some other petitioners in 1958 and 1959 for the setting aside of the Solan Municipal elections held in 1958.

18. At first blush there appears to be a good deal of force in the contention advanced on behalf of the respondents, but on closer scrutiny the contention advanced on behalf of the petitioners will be found to be more forceful so far as the prayer for the issue of a writ of quo warranto is concerned. The aforesaid writ is a common law process of grant antiquity, a writ of right for the King against one who claimed or usurped any office, franchise or liberty to enquire by what authority he asserted a right thereto in order that it might be determined. An information in the nature of quo warranto is its modern form. It has been held in the case of *Pundlik Vishwanath Vs. Mahadeo Binjraj and Others*, that a petition for a writ of quo warranto against a councillor elected to a municipal corporation does not lie where the councillor has not assumed office.

Thus unless a person occupies an office an inquiry into the validity of the authority for the occupation of that office cannot be made and the present petition so far as it relates to the issue of a writ in the nature of quo warranto cannot be said to have been filed after inordinate delay. The aforesaid aspect of the matter does not appear to have been raised or considered in the earlier writ petitions dismissed by this Court on the grounds of delay. So far as the prayer for the issue of a writ of mandamus is concerned, there can be no doubt that the prayer is a belated one and must be refused.

19. Question No. 6 : According to the petitioners the electoral rolls on the basis

of which elections were held in the year 1958 had the following defects :

- (i) That the names of persons who had left Solan on the shifting of the University to Chandigarh continued in the electoral rolls.
- (ii) That additions were made to the electoral rolls after they had become final.
- (iii) That the names of certain persons appeared in the electoral rolls for more than one ward.

20. On behalf of the petitioners an affidavit has been filed that the persons who had left Solan about two years prior to the elections held in 1958 voted at the elections. On behalf of the respondents the aforesaid allegation has not been specifically countered and what has been alleged is that the ballot papers were kept in sealed packets and it could not, therefore, be said whether those persons actually voted or not. While in view of the affidavit filed by the petitioners it may be held that some of those persons voted at the elections, there is nothing to show that those persons had voted for the successful candidates and it cannot, therefore, be said that on account of the voting by those persons the result of the elections was materially affected. It was incumbent upon the petitioners to have shown that the result of the elections had been materially affected due to the exercise of the right of vote by the persons who had shifted to Chandigarh or Chandi Mandir.

21. It has also not been denied by respondents Nos. 6 to 8 and by respondents Nos. 4 and 5 that additions to the electoral rolls were made after 9-5-1958, the date on which the rolls had become final. Respondents Nos. 4 and 5 have stated that there was nothing to show that the persons whose names were added after 9-5-1958 cast their votes or that the result of the election was materially affected by their votes. The affidavits filed by the petitioners do not indicate that the persons whose names were added after 9-5-1958 did actually cast votes at the elections of 1958 or that they cast votes for the successful candidates. It cannot, therefore, be said that the result of the elections was materially affected on account of the casting of votes, if any, by those persons.

22. The name of respondent No. 2 was also added to the electoral rolls after 9-5-1958 and as he was a candidate for one of the seats his case stands on a different footing. According to Rule 7 of the Municipal Election Rules 1957 no person can be eligible for election as and for being a member of the Municipal Committee, who is not a qualified voter for any constituency of the Municipal Committee under Rule 6 and has not attained the age of 35 years. No person is entitled to vote unless the name of such person is included in the electoral rolls for the Parliament in relation to the constituency concerned, vide Rule 6. Rule 9 provides that the roll of each constituency of a Municipal Committee shall be the finally published electoral roll for the Parliamentary election to the said constituency operative at the time when the Deputy Commissioner frames election programme under Rule 3 unless otherwise directed by notification by the Administrator.

The conjoint effect of the aforesaid rules is that respondent No. 2 was not eligible for election to any of the wards of the Solan Municipal Committee at the elections held in 1958 for his name did not find place as a voter in the finally published electoral roll and the subsequent addition of his name in the electoral roll could not qualify him for membership. His election was, therefore, invalid and void being in violation of the Election Rules. It is unfortunate that respondent No. 2 has not entered up appearance and this Court has not had the advantage of hearing his version. The legal position, however, appears to be perfectly clear.

23. A writ in the nature of quo warranto is not issued as a matter of course and the question for consideration is as to whether in the instant case such a writ should be issued against respondent No. 2. It was held in the case of Bhairulal Chunilal v. State of Bombay, reported in Bhairulal Chunilal Vs. State of Bombay, that once the people have recorded their votes and expressed their confidence in their representatives the Court should be loath to interfere with the decision of the people merely because some technicality has not been observed or some irregularity has been committed. In more or less similar tune are the observations made in the Full Bench case of the Punjab High Court Dev Prakash v. Babu Ram, reported in (1981) 63 P&H LR 485 : AIR 1981 P&H 429. Dulat J., who had delivered the leading judgment, had observed as below :-

"An election is in its nature an expensive and time-consuming process, and, if it is to be disturbed after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely technical, breach of a technical rule. Everybody agrees that, if the foundation of the election, namely, the electoral roll is illegal, no election on its basis can proceed or be allowed to stand, but that does not mean that any kind of defect in the roll, however, technical in its nature, will suffice to reach such a conclusion."

I am in respectful agreement with the aforesaid observations.

24. The question that arises for consideration is as to whether the seeking of election by respondent No. 2 when his name did not find place in the finally published electoral roll was a mere irregularity or was an illegality which rendered his election void? The answer to the poser, in my opinion must be that the election was void.

25. It has been conceded on behalf of the petitioners that the entry of the name of a single voter in the electoral rolls relating to more than one ward would not be an irregularity if the voter did not cast his vote for more than one candidate at the election. It has not been shown in the instant case that at the elections of 1958 a particular voter cast his vote for more than one candidate. The contention that it would be anomalous that the election of one candidate is set aside on the ground of the electoral rolls being defective and the election of the other candidates returned is allowed to stand does not appear to have any force. It will have been noticed that the main ground on which the petition in Khanna's case

was allowed was that the cantonment area was included in Ward No. 1 whereas according to the rules such area could not have been included. It is not the petitioners' case that the cantonment area was included in Wards Nos. 2 to 5. The fact that the name of respondent No. 3 was not correctly described in the electoral roll is too trivial an irregularity to be noticed much less to justify the setting aside of his election.

26. On behalf of the petitioners reliance has been placed upon the Supreme Court ruling reported in (S) Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, Chief Commissioner of Ajmer v. Radhey Shyam Dani in support of the contention that if an electoral roll is defective election should be set aside. In the aforesaid case the electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner was not in conformity with the provisions of Section 30(2) of the Ajmer Merwara Municipalities Regulation No. 6 of 1925 as amended by Act 65 of 1950. The aforesaid ruling was considered in the Full Bench case reported in Dev Prakash Balmukand Vs. Babu Ram Rewti Mal and Others, and the following observations were made by Dulat, J. :

"On reconsidering the matter in the light of, arguments presented in the present case, it appears to me that the observations of the Supreme Court were considered apart from their proper context. I say this because it is conceded now, and the Supreme Court judgment also shows this, that apart from one broad proposition, about which there can hardly be any controversy, the Supreme Court said nothing which could be of much assistance in cases like the present. The broad proposition mentioned by the Supreme Court was that no election can be permitted to be held on the basis of an illegal electoral roll."

27. I am in respectful agreement with the interpretation placed by the learned Judge On the ruling of the Supreme Court. There is a vital difference between an electoral roll which is illegal and an electoral roll in the preparation of which there have been irregularities. Mere irregularities in the preparation of an electoral roll will not vitiate an election held on the basis of such an electoral roll.

28. It would thus appear that while the defects pointed out on behalf of the petitioners in the electoral rolls cannot be a ground for the setting aside of the elections so far as respondents Nos. 1 and 3 to 5 are concerned the election of respondent No. 2 was wholly void on account of being in violation with the fundamental rules under the election law.

29. Question No. 2: The first question that arises for consideration is as to whether the petitioners had an alternative remedy? The relevant provisions are contained in Rules 54 and 55 of the Municipal Election Rules, 1957. The material Portions of those rules run as below:

"54. No election shall be called in question except by an election petition presented in accordance with these rules."

"55. An election petition against the return of a candidate at a Municipal election

or on the ground of a corrupt practice or material irregularity in the procedure shall be in writing for such extension.'"

30. It will have been noticed that an election petition lies to challenge the election of a returned candidate either On the ground of a corrupt practice Or material irregularity in the procedure. In the instant case there is no allegation of the commission of a corrupt practice and what has to be seen is as to whether there was material irregularity in the procedure so far as the election of respondent No. 2 was concerned. Material irregularity in the procedure of an election according to Clause (xi) (e) of Rule 53 includes any such improper acceptance or refusal of a nomination. Since the name of respondent No. 2 did not find place in the finally published electoral roll for Ward No. 3 operative at the time when the Deputy Commissioner Mahasu framed election programme he was not eligible to seek election or to be nominated and the acceptance of his nomination paper was improper. There was thus material irregularity in procedure and the petitioners could have filed a petition challenging his election.

31. The next question that arises for decision is as to whether the omission on the part of the petitioners to avail of the aforesaid remedy was a bar to the maintainability of the petition under consideration? It is well settled that while the High Court would not ordinarily interfere under Article 226 where another remedy, which is equally convenient, is open to the petitioner the existence of another remedy is not in every case a bar to the exercise of the powers under Article 226 and that the Court can interfere if the circumstances of the case demand interference, vide *Kanglu Baula Kotwal v. Chief Executive Officer, Janpad Sabha Durg*, reported in AIR 1955 Nag 49 (FB) and *Lajpat Rai v. Khilari Ram* reported in (1960) 62 P&H LR 377. In view of the fact that this Court had ordered fresh elections to be held so far as Ward No. 1 was concerned and respondent No. 2 could not have assumed office unless the new committee was duly constituted and sworn in the petitioners may not have considered it advisable to file an election petition and in such circumstances the non-filing of a petition challenging the election of respondent No. 2 in accordance with the Municipal Election Rules, 1957 should not operate as a bar to the entertainability of the present petition.

32. In view of the findings recorded above, tile petitioners are not entitled to any relief against respondents 1, 3 to 5 and 8. Respondent No. 6 has been transferred from district Mahasu and no relief can be granted against him. According to the proviso to Sub-section (1) of Section 17 the Provincial Government has the power to direct that a casual vacancy occurring in the office of the member may remain unfilled. The Administrator again is not a party to the petition. No writ or direction can, therefore, issue for the filling up of the vacancy that will be caused as a result of the writ that this Court proposes to issue to respondent No. 2.

33. The petition is thus accepted in part and it is ordered that a writ in the nature of quo warranto be issued to respondent No. 2 declaring that his election

to the Municipal Committee Solan is null and void and that he is prohibited from functioning as Or exercising the rights of a member of the Municipal Committee Solan. The petitioners will bear their own costs and will pay to the con testing respondents the costs incurred by them.