
(1995) 01 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4413 of 1994

Pawan Kumar Shandilyakar

APPELLANT

Vs

Rajya Nirvachan Ayog and Another

RESPONDENT

Date of Decision : 17-01-1995

Acts Referred:

Constitution of India, 1950 — Article 243ZG
Madhya Pradesh Municipal Corporation Act, 1956 — Section 10(6), 433
Madhya Pradesh Municipalities Act, 1961 — Section 20, 22, 29, 29(6), 355
Madhya Pradesh Nagarpalika Nirvachan Niyam, 1994 — Rule 2, 21, 22, 23, 31(1)

Citation : (1995) 40 MPLJ 591 : (1995) MPLJ 591

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : A.S. Raizada, for the Appellant; S.L. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The order passed in this petition shall also govern the disposal of Writ Petition No. 4416 of 1994, Mohd. Sabir v. Rajya Nirvachan Ayog and another.

The two petitioners by their separate petitions under Article 226 of the Constitution of India have challenged the order of the Election Commission for postponing the election and the order dated 16-12-1994 for holding the poll on 28-12-1994.

The two petitioners are the members of the political party by name Krantikari Samajvadi Manch. The petitioner of Writ Petition No. 4413/94 was a candidate for the election of the councillor from ward No. 21 and the petitioner in Writ Petition No. 4416/94 was the candidate for the election of Nagar Palika, Balaghat from Ward No. 11. The petitioners applied for the symbol of the party "Teer Kaman" in accordance with Election Symbol (Reservation and Allotment) Order, 1968 (for short called "Order of 1968") but that symbol was not allotted to the

candidates of the said party. Some of the candidates challenged the order of the Returning Officer by Writ Petition No. 3727/94, wherein, this Court vide order dated 11-11-1994 directed the Returning Officer to allot the symbol to all the candidates belonging to a recognised political party in accordance with the Order of -1968. Against that order the Election Commission preferred a review petition and postponed the date of poll, some of the contesting candidates also preferred, the review petitions, the review petitions were numbered as M.C.C. Nos. 649/94, 457/94 and 660/94. In review petition it was pointed out that the Order of 1968 was not applicable as the elections of Nagar Palika are governed and are to be conducted in accordance with the Rules known as "M. P. Nagarpalika Nirvachan Niyam, 1994" (for short the "Rules") framed by the State Government in consultation with the State Election Commission in exercise of powers conferred by sub-section (6) of Section 10 read with Section 433 of the M. P. Municipal Corporation Act, 1956 and sub-section (6) of Section 29 read with Section 355 of the Madhya Pradesh Municipalities Act, 1961. As there was a mistake on the face of record, the order passed in W.P. No. 3727/94 was recalled vide order dated 16-12-1994 and the petition was directed to be heard on merits. At the time of hearing of the petition, in that, the petitioner did not press the petition; hence the petition was dismissed, as not pressed. After dismissal of the said petition, the Election Commission by order dated 16-12-1994 amended the date of poll from 27-11-1994 to 28-12-1994.

Shri A. S. Raizada, learned counsel for the two petitioners contended that there is no power vested in the Election Commission to postpone the election on the ground that against some order passed in a writ petition, the Election Commission has preferred a review petition. Even if it had the power, after postponement of election clear notice of 20 days ought to have been issued in accordance with Rule 22. Learned counsel further contended that as the earlier petition was not decided on merits the petitioners who are the members of the Krantikari Samajvadi Manch, which is a political party, the Returning Officer committed an illegality in not allotting the symbol of the party "Teer Kaman" in view of sub-clause (c) of Rule 31. To meet the objection of maintainability of the petition it was submitted that the ground raised in the petition cannot be raised in an election petition u/s 20 read with Section 22 of the M. P. Municipalities Act, 1961. Reliance was placed on a Division Bench decision of the Delhi High Court in *Mohinder Singh v. Election Commission* 1978 SC NOC 14.

I would first take up the contention regarding allotment of symbol. So far as the allotment of symbol is concerned relating to the Municipal Council Election, a recognised party, is defined in Rule 2(j) of the Rules, means the Political party for the time being recognised by the Election Commission of India as a National Party or as a State party in Madhya Pradesh, under the Order of 1968. Clause (c) of sub-rule (1) of Rule 31 deals with an allotment of symbol to such recognised political party as defined in Rule 2(j). Admittedly, Krantikari Samajvadi Manch is not a recognised political party as defined in Rule 2(j) of the Rules. Therefore, it was not incumbent upon the Returning Officer to allot the symbol "Teer Kaman"

to the candidates who were the members of the Krantikari Samajvadi Manch.

Coming to the contention of the power of the Election Commission of postponing the date and holding of election on an amended date, the contention is devoid of any substance. Chapter IV of the Rules deals with the conduct of election. Rule 21 speaks of notice of election and time schedule therefor. Rule 22 lays down the manner of publication of notice under Rule 21 which has to be published at least 20 days before the date appointed for poll by affixing a copy of the same on the notice board of the :-

- (1) District Election Officer, .
- (2) Returning Officer of the Municipality,
- (3) Municipality concerned ;

Rule 23 speaks of extension of time for completion of election which gives power to Election Commission, for the reasons which it considers sufficient to extend the time for completion of any election by making necessary amendment in the time schedule prescribed by it under Rule 21, Therefore, from a bare reading of Rule 23, it is amply clear that Election Commission is vested with the power to extend the time for election by making necessary amendment in the time schedule prescribed under Rule 21. When an order was passed in Writ Petition No. 3727/94 to allot the symbol and to act according to Order of 1968, which was not applicable, as the election was to be conducted in accordance with Rules, therefore, the Election Commission preferred review and postponed the date of poll, awaiting the decision of review, which was a sufficient reason for Election Commission for making an amendment in the time schedule prescribed by it for holding the poll by postponing the same. After the order passed in review, the Election Commission amended the date of poll in the time schedule, from 27-11-1994 to 28-12-1994, therefore, in the circumstances, in view of Rule 23 it cannot be contended that there was no power with the Election Commission to postpone the date for holding the poll given in the time schedule and then to make an amendment in respect of the date of poll.

The contention that while amending the date of poll, 20 days" notice before the date appointed from the poll ought to have been issued in the manner prescribed, has no merit. The notice of holding the Election according to time schedule in accordance with Rule 21 was already issued in the manner prescribed by Rule 22. It was only an amendment in the date of poll from the initial notice and the time schedule which gave more about 31 days time from the notice so issued. It is not a case of countermanding the election but holding of election by amending the date of poll to a subsequent date. Therefore, it would be within the entire process of election, as the election covers the entire process from the date of issue of notice/notification of the "election" till it is completed in its time schedule.

In case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner,

New Delhi and Others, , the Supreme Court while dealing with a case of repoll, considered the powers of the Election Commission under Article 324 in the contingencies not provided for by law, and to pass necessary orders for the conduct of the election, and observed that "election" covers the entire process from the issue of the notification u/s 14 of the Representation of People Act, 1951 to the declaration of the result u/s 66 of the Act. Unless a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefore, with the amended date as passed as integral part of the election process. Where the Election Commissioner amended its notification and extended the time for completion of the election by ordering a fresh poll it is an order during the course of the process of the "election." Even if it is a wrong order, it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the election. Even if it is a wrong order, that is a matter which may be agitated after the declaration of the result on the basis of fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law seeking a declaration of the election to be void. The catch all jurisdiction under Article 226 of the Constitution cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with rcpoll. For the prima facie purpose of such a repoll is to restore a delayed poll process and to complete it through the salvatory effort of a repoll. A writ petition challenging the cancellation coupled with repoll amounts to calling in question, a step in "election" and is, therefore, barred by Article 329(b) of the Constitution.

The present case relates to the election of Municipal Council. The contentions raised in the petitions relate to power of Election Commission of postponing the poll and then holding of poll on an amended date, the power of Returning Officer to allot symbols are all the steps in the election process. Sub-clause (b) of Article 243ZG of the Constitution mandates that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State. Therefore, in view of specific bar, the petitioners ought to have availed the statutory remedy to challenge the election provided therefor.

As a result of the above discussion the petitions are dismissed with no order as to costs.

Certified copy as per rules.