

(1956) 09 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ No. 15 of 1955

Prabhudayal

APPELLANT

Vs

Chief Panchayat Officer, Jaipur and Others

RESPONDENT

Date of Decision : 03-09-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayat Rules, 1954 — Rule 19, 4

Citation : AIR 1957 Raj 95 : (1957) RLW 315 : (1957) RLW 317

Hon'ble Judges : K.N. Wanchoo, C.J;K.L. Bapna, J

Bench : Division Bench

Advocate : V.P. Tyagi, for the Appellant; R.A. Gupta, Government Advocate and S.C. Agrawal, for Respondents (Nos. 3 and 8), for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Prabhudayal under Article 226 of the Constitution for a writ direction or order in connection with the election of Malharna Dungar Panchayat.

2. The applicant's case is that the election for the Panchayat at Malharna Dungar was fixed for the 20th of October, 1954, under Rule 4 of the Rajasthan Panchayat Election Rules, 1954, the returning officer has, at least 7 days before the date of election, to announce for the information of the inhabitants of the Panchayat Circle by notice and in such/other manner as the Chief Panchayab Officer may direct the number and names of wards, if any, the number of Panchas to be elected from each ward and from the entire Panchayati Circle and the date, time and place of election. The applicant submits that the Returning Officer did not comply with Rule 4, inasmuch as he issued the notice under Rule 4 on the 18th of October, 1954. The applicant raised certain other points which, however we do not consider it necessary to set out for purposes of this case.

3. The application has been opposed by the opposite parties, and the reply with respect to compliance with R. 4 is this. It is admitted that election was fixed for

the 20th of October at 12 noon. It is said that the Returning officer fixed the date, time and place of the election by means of a notice on the 11th of October, 1954 and this notice was pasted on a conspicuous place on the 12th of October, 1954. This notice said that the election would be held at the Tahsil building in Malharna Dungar on the 20th of October, 1954, at 12 noon. It also went on to say that the list of wards would be published later when received by the Returning Officer, It is also admitted that the list of wards and the number of Panchas to be elected from each ward were actually announced by a notice on the 15th of October, 1954.

4. It is obvious from this admission on behalf of the opposite parties that Rule 4 was not strictly complied with inasmuch as though the date, time and place of the election were notified seven days before the list of wards and the number of panchas to be elected from each ward were not so notified by the time mentioned in Rule 4.

5. The first question that arises in these circumstances is whether Rule 4 is a mandatory rule which must be obeyed before an election is held or is merely a directory provision. We are clearly of opinion that it is a mandatory rule for the simple reason that before the notice mentioned in Rule 4 is published electors do not know whether the entire panchayat circle will be divided into wards or not and whether the election would take place for all the members of the panchayat treating the entire panchayat circle as one ward. It is clear from Rule 4 that it is not necessary that a panchayat circle be divided into wards, for the words "if any" appear after the words "the number and names of wards", and this clearly indicates that in certain

circumstances the entire panchayat circle may be one ward for the election of the panchas.

Consequently, the voters of a panchayat circle only come to know, for the first time, by the notice under Rule 4 that the panchayat circle will be divided into a certain number of wards, and a certain number of Panches will be elected from each ward. The rule also provides that this notice should be given to the electors at least seven days before the date of election. The reason for this is clear inasmuch as the electors must know sometime before they go to vote the number and particulars of the candidates for whom they would be required to vote.

It is also necessary that the candidates, who are standing for election, should know whether they have to stand for the entire panchayat circle and have to canvass in that wide area, or whether they can stand in a certain ward out of the panchayat circle and have to canvass only in that limited area. The learned Deputy Government Advocate also has not pressed before us that Rule 4 is merely a directory provision. We are satisfied that Rule 4 is a mandatory provision and must be strictly followed before an election in a panchayat circle takes place.

6. It has, however, been contended on behalf of the opposite parties that there is an alternative remedy provided under Rule 19, and therefore this court should not interfere in its extraordinary jurisdiction at this stage. Rule 19 provides for an election petition challenging the validity of the election of any Panch, Sarpanch or Upsarpanch, and this can be done either by a defeated candidate or by 10 duly qualified electors. Rule 20 mentions the grounds on which the election of an individual can be challenged, namely that the election has been the outcome of some misconduct or corrupt practice or some irregularity which has substantially influenced the result thereof. It is being urged by the learned Deputy Government advocate that the election of the various Panchas, who were elected on that date, could have been challenged by election petitions made singly against each of them on the ground of this irregularity and their election could have been set aside if the Collector come to the conclusion that the irregularity had substantially influenced the result of the election.

7. We are of opinion that the present Rule 19 contemplates election petition against individual Panchas. 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. That, in our opinion is a different matter altogether, and Rule 19 does not cover this kind of petition. We are, therefore, of opinion that an elector can bring the matter before us so long as he does not challenge any individual's election only on the basis of the grounds mentioned in Rule 20. In this case, the applicant has not challenged the election of any individual Panch or Sarpanch or Up-sarpanch. What he is doing is to challenge the entire election held on that day on the ground of a fundamental deficiency in the procedure preceding the election.

8. The last question, to which we address ourselves, is whether we should, in the circumstances, set aside the election. We are of opinion that the mistake in this case was a fundamental mistake, and the mandatory provision of Rule 4 was not complied with. As we have mentioned, it was open not to have wards at all. Where therefore no wards were proclaimed at least 7 days before the date of election, as was the case in this case, the electors would naturally take it that there would be no wards in this panchayat circle, and the whole panchayat circle would vote as a whole.

In any case, whatever the electors may think, the legal position would be that if wards were not announced at least 7 days before the date of election, there can be no further announcement of wards afterwards. The announcement, therefore, of wards in this case on the 15th of October, 1954, only 5 days before the election was no announcement under the law, and a subsequent election in consequence of such an illegal announcement is no election at all. In these circumstances, we are constrained to set aside the entire election which was held on the 20th of October, 1954, as an illegal election held in wards where in fact there were no wards in law in existence in that panchayat circle.

9. We, therefore, allow the application, and set aside the entire election of the Panchas held on the 20th of October, 1954, to the Panchayat at Malharna Dungar. We may make it clear that this does not invalidate the election of the Sarpanch who is elected by the entire panchayat circle and not by any particular ward, but the Up-Sarpanch would go as he is elected by the Panchas. The applicant will get his cost from the opposite parties except the Sarpanch.