
(1971) 03 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 176 of 1970

Ram Swaroop Sharma and others	Vs	APPELLANT
Stale of M.P. and others		RESPONDENT

Date of Decision : 10-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipalities Act, 1961 — Section 20, 29, 32, 32(1), 328
Representation of the People Act, 1950 — Section 14, 14(b)

Citation : (1971) JLJ 568

Hon'ble Judges : Shiv Dayal Shrivastava, J; S.M.N. Raina, J

Bench : Division Bench

Advocate : G.P. Patankar and R.A. Roman, for the Appellant; J.P. Gupta for respondents 4 to 8, P.L. Dubey, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

S.M.N. Raina, J.—This is a petition under Art. 226 of the Constitution.

2. The Municipality of Mungaoli is a class III municipality. The Municipal Council Mungaoli was dissolved on 28.9.1967 and non-petitioner No. 3 was appointed as administrator there of. Subsequently, general elections were held in the year 1970 and non-petitioners 4 to 7 were elected as members of the council from ward Nos. 1, 3, 5, 6 and 9. Petitioners 1 to 5 are the residents of wards 1, 3, 5, 7 and 9 respectively and they have filed this petition challenging the election of non-petitioners 4 to 8 on the ground that the electoral rolls were not revised within 6 months of the election as required by sub-section (3) of section 32 of the M.P. Municipalities Act, 1961 (hereinafter referred to as the Act). It is urged that the election of non-petitioners is illegal and liable to be set aside as the electoral rolls were not prepared according to law and the applicants and many others were deprived of their rights to vote as they could not get their names entered in the rolls in time.

3. The non-petitioners have contended that the electoral rolls were duly revised within the period prescribed by law, and, therefore, the elections are perfectly valid. It has also been urged that the petition is not maintainable as the proper remedy for the petitioners was to file an election petition.

4. u/s 20 of the Act an election petition can be filed by a candidate or by a voter of the ward concerned. The petitioners were neither candidates nor voters. They could not, therefore, file an election petition under the Act. They have challenged this election in their capacity as residents of the wards concerned, on a ground which according to them goes to the root of the matter and render the election invalid. They have accordingly prayed for a writ of quo warranto against the non-petitioners.

5. Since the petitioners could not file an election petition it is obvious that they had no alternative remedy and, therefore, the petition cannot be thrown out on this ground. The jurisdiction under Art. 226 of the Constitution is, however, discretionary and can be exercised only if it appears that the petitioners are acting in good faith and their conduct does not disentitle them to the relief vide para. 16.205 at page 729 of the Constitution Law of India by Seervai.

6. In the instant case the contention of the petitioners is that they were below the age of 21 prior to 19.7.1969 and they would have been able to get their names entered in the electoral roll, if the revision had taken place within 6 months of the election, because by that time they had attained the said age. No material was however placed by the petitioners in support of this contention. The Learned Counsel for the petitioners was unable to say when the petitioners Ram Swaroop, Suresh Kumar and Kanhaiyalal attained the age of 21. As regards other petitioners it was stated that the date of birth of Rajaram was 25.4.1948 and that of Md. Jalil 15.2.1946. This means that Rajaram attained the age of 21 on 25.4.1969 and Md. Jalil on 15.2.1967. The notification relating to the preliminary publication of the electoral rolls and inviting objections within 30 days was issued on 20.6.1969 vide annexure A. It is, therefore, obvious that the petitioner Rajaram and Md. Jalil could very well get their names registered in the revised electoral rolls, if they are desired, as they had already attained the age of 21 before that. In the absence of any information about the date of birth of other petitioners a similar inference can be drawn against them. The petitioners have thus failed to show that they could not get their names entered in the electoral rolls and were, therefore, deprived of their right to vote.

7. It is clear from section 20 of the Act that the Act contemplates that an election of a councillor may be challenged only by a councillor or a voter. In view of this provision we have to closely scrutinise the conduct of the petitioners in order to see if the petition is bona fide, particularly because no councillor or voter has come forth to challenge it. Apart from the fact that the petitioners did not care to get their names entered in the electoral rolls, even though they had opportunity to do so there is nothing to show that at any time they complained to the Collector or other authorities concerned that the revision of the electoral rolls

was not according to law, and they were deprived of their right to vote at the election. If they had moved in the matter promptly, the Collector could have ordered special revision of the electoral rolls under sub-section (4) of section 32 of the Act or the elections could have been postponed for the time being. The fact that the petitioners remained quiet until the election was over and came forth to challenge the election only after the results had been declared shows that in moving this petition they are influenced by the result of the election and not because they felt that the election was not according to law. It appears that if candidates of their choice had been elected they would not have moved in the matter at all.

8. It would be pertinent to mention in this connection that the petitioners have not challenged the election in the other wards of the Municipality even though the grounds on which the election of non-petitioners 4 to 8 are challenged are equally applicable to them, apparently because they are satisfied with the results. It, therefore, appears that the petition is not bona fide and is apparently based on a false assertion that the petitioners could not get their names entered in the electoral rolls because they had not attained the age of 21 at the time of actual revision. The petition is, therefore, liable to be dismissed on this ground alone.

9. Even on merits, the contention of the petitioners that the election is not valid because the electoral rolls were not revised as required by subsection (3) of section 32 of the Act does not appear to be corrects. Sub-section (3) of section 32 reads as under :--

The electoral roll prepared under this section shall be revised not more than six months before every general election :

Provided that no such revision shall be necessary where the general election takes place upon the dissolution of the Council u/s 328 within two years of the last general election.

It was not disputed before us that the proviso to the aforesaid sub-section is not attracted in this case because the general election did not take place within 2 years of the last general election. The only point for consideration, therefore, is whether the electoral roll was revised more than 6 months before the general election. In this connection the following dates are material :--

The notification relating to preliminary publication inviting objections was issued on 20-6-69.

The final electoral rolls (annexure B and C) were published on 28-3-70. The election programme was published on 17-8-70. In N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , it has been held that the word "election" embraces the entire procedure relating to election. As such the process of election commenced from the date of publication of the election programme. It is, therefore clear that the final publication of the revised rolls

was within 6 months of the election as required by sub-section (3) of section 32 of the Act.

10. In the return an attempt has been made to show that the final publication of the revised roll was within 6 months of the actual election which took place on 6-10-70, as the final list published on 28-3-70 was cancelled by the Collector and a fresh final list was published on 25-4-70 (vide annexure A to the return). The Learned Counsel for the petitioners challenged the validity of the second final list after cancelling the list published on 28-3-70. If there were mistakes in the first list it was open to the Collector to issue a second final list in supersession of the first. Moreover, even if it assumed that the final list was published on 28-3-70 as stated in the petition it is clear that it was within 6 months of the election.

11. The question for consideration, however, is whether there is sufficient compliance of the provisions of sub-section (3) of section 32 where the final revised list is published not more than 6 months before the election. It has been urged that the aforesaid sub-section means that the entire process of revision should be held not more than 6 months before the election, and that the material date, therefore, is the date of the commencement of the revision, that is, the date on which the preliminary publication is made and objections are invited. In support of this contention it has been urged that if the material date is taken to be the date on which the final list is published it would be open to the Government to render this salutary provision nugatory by commencing the revision long before the election, and then keeping the final publication pending for long and making it within 6 months of the election. We do not, however find any justification for entertaining such an apprehension. No doubt, there was some unexplained delay in the final publication of the roll in the present case, but there is nothing to show that it was purposeful or malafide. Normally the presumption is that the Government agency will act bonofide and promptly. We need not, therefore, be influenced by this consideration in interpreting the word "revised" in its ordinary grammatical sense. An electoral roll cannot be said to be revised until final publication is made, and there is a clear distinction between the process of revision and the final stage of revision when the final publication is made. If the intention of the legislature had been that the entire process of revision should be within 6 months of the general election, the language of sub-section (3) would have been different. In that case it would have been laid down that the revision of the electoral roll shall be commenced within 6 months before the general election. Thus, it appears to us that on a proper construction of sub-section (3) of section 32 of the Act all that is necessary is that the final publication of the revised electoral roll should be made not more than 6 months before the election. We may here refer to a recent full Bench decision of the Delhi High Court in A.K. Gopalan Vs. The Election Commission of India and Another, . Their Lordships while considering the question when the rolls can be said to be revised within the meaning of section 14(b) of the Representation of the People Act, 1950 observed as under in paragraph 15 :--

The electoral rolls can be considered to be prepared or revised only when the entire process of preparation or revision is completed. Till that stage the process remains in choate and in an inceptive state. It is the culmination of that process which results in the preparation and revision of the electoral rolls.

We agree with the aforesaid view. We, therefore, hold that there was no contravention of the provisions of sub-section (3) of section 32 of the Act and the elections cannot be challenged on this ground.

12. No other point was pressed before us.

13. The petition, therefore, fails and is hereby dismissed with costs. Counsel's fee Rs. 50 for non-petitioners 1 to 3 and a similar fee for non-petitioners 4 to 8.

Shivdayal, J.

14. I have had the benefit of perusing the order prepared by my learned brother Mr. Justice Raina. I agree that this petition must be dismissed as it is not bona fide, although I read section 32(3) of the M. P. Municipalities Act, 1961, differently, for which I must record my reasons.

15. The five petitioners in this writ petition challenge the election of respondents No. 4 to 8 who were elected to the Municipal Council, Mungaoli, under the M. P. Municipalities Act, 1961 (hereinafter called "the Act")-

16. The Municipal Council, Mungaoli, was dissolved u/s 328 of the Act on September 28, 1967. No election was held within two years there of

17. On June 20, 1969, the electoral roll was published under Rule 4 of the M. P. Municipalities (Preparation, Revision and publication of Electoral Rolls, Election and Selection of Councillors) Rules, 1962, which were framed u/s 29 of the Act (hereinafter referred to as "the Rules"). On March 28, 1970, the final electoral roll was published. This was later on cancelled and, on April 25, 1970, another final electoral roll was published.

18. On August 17, 1970, the programme of the election was published appointing the following dates :--

2-9-70 for filing nomination papers;

3-9-70 for scrutiny of nomination papers;

18-9-70 for withdrawal of nomination papers;

19-9-70 for allotment of symbols; and

6-10-70 for Polling.

19. The petitioners' contention is that the electoral roll was not revised within six months immediately preceding the election as required by section 32(3) of the Act. Section 32 reads as follows :--

32. Preparation of Electoral rolls.--(1) The authority appointed under clause (i) of sub-section (2) of section 29, shall for purposes of preparation of electoral roll of a wards, adopt the Assembly roll relatable to the area comprised in the said ward and publish the same in the manner prescribed thereunder and upon its publication it shall, subject to any alteration, addition, or modification made under or in accordance with this Act, be the electoral roll for the ward prepared in accordance with this Act.

(2) Where any addition, omission, alteration or other amendment is made under the Representation of the People Act, 1950 (43 of 1950), or the rules made thereunder in the Assembly roll relatable to the area of the ward, similar amendment shall, as soon as may be, be made in the corresponding electoral roll of the ward.

(3) The electoral roll prepared under this section shall be revised not more than six months before every general election :

Provided that no such revision shall be necessary where the general election takes place upon the dissolution of the Council u/s 328 within two years of the last general election.

(4) Notwithstanding anything contained in sub-section (3), the Collector may, at any time, for reasons to be recorded, direct a special revision of the electoral roll for any ward or part of a ward in such manner as he may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the ward, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

20. The scheme of the Rules providing for the preparation, publication and revision of the electoral roll is this. The roll shall be prepared and revised by the Collector, vide Rule 3 (1). The assembly roll relatable to the area comprised in a ward shall be adopted for the purposes of preparation of electoral roll of a ward, vide section 32(1). The Collector shall put a public notice in each ward that the roll has been prepared, vide Rule 4 (1). Then Rule 4 (1) (a) and (3) provide for the manner of publication. Rule 4 (2) directs that objections shall be invited for inclusion or exclusion of names. Clauses (4) and (5) of Rule 4 provide for the procedure and manner of making claims. Rule 7 lays down the procedure for inquiry into every claim or objection made under the Rule. Clauses (c) and (d) of Rule 4 (7) read this : --

(c) After hearing the evidence, if any, adduced on behalf of the parties and after such further enquiry as he may deem necessary, the Sub-Divisional, Officer, Deputy Collector or the Tahsildar, as the case may be shall record an order on the claim or objection in the column specially provided for the purpose in the register of claims and objections prescribed in clause (a). Claims and objections shall ordinarily be decided within 40 days of the publication of the roll.

(d) The record of the proceedings shall consist of all the claims or objections, a

note of the date and place of hearing and of the attendance of parties and witnesses and an order stating as briefly as possible, the decision and the grounds therefor.

21. Shri Patankar, Learned Counsel for the petitioners urged that the electoral roll should have been revised not earlier than April 6, 1970, inasmuch as the election was held on October 6, 1970. The argument is that since the roll was published on June 29, 1969, and that was the date of revision of the roll, which date was more than six months prior to October 6, 1970 there was contravention of section 32(3) of the Act. According to the Learned Counsel the expression "revision" commences on the date of the publication of the provisional electoral roll under Rule 4 (1) of the Rules.

22. On the other hand Shri Gupta, Learned Counsel for respondents No. 4 to 8 argued that it should be the date on which the preparation and revision is completed, that is, the date on which the final electoral roll is published. The Learned Counsel relied on A.K. Gopalan Vs. The Election Commission of India and Another,

23. As provided u/s 32(3) Proviso, "revision" is not necessary where general election takes place upon dissolution of a council u/s 328 within two years of the last general elections, since in the present case the general election took place after two years of not only the last general election but also of the dissolution of the council, the Proviso does not come into play. Therefore, the electoral roll had to be revised not more than six months before the election.

24. Now the word "revision" in my opinion, covers the entire process of revision, beginning with the publication of the provisional roll and ending in the publication of the final roll. If that was not, so sub-section (3) of section 32 would have specified that revision of roll shall be completed not more than six months before the general election. It is true that the section also does not say that the commencement of the revision shall not be more than six months before the election, but having regard to the scheme of the Act and the Rules, and also barring regard to the purpose for which the revision of electoral roll is required it is quite clear to me (hat the whole process of revision must be done not more than six months before the election.

25. The roll has to be revised because after the previous general election there may have been cases where some voters have ceased to be qualified, and there may be cases where some persons have since become qualified to vote. The period of six months has been fixed studiously so that the roll may be upto date in the sense that the names of all those who have ceased to be qualified to vote upto six months prior to the election may be deleted, and the names of all those who have become qualified to vote upto six months prior to the election may be added in the electoral roll. This object will be defeated if the roll is revised long in advance and the valuable right of making claims for inclusion of names and for making objections for exclusion of names will be lost. In my opinion, it could not

be the intention of the legislature that the process upto the stage of final publication of the roll may be completed at any earlier time and merely the final roll be published within six months immediately preceding the election. If that were so there will be no substantial meaning in fixing a time limit. The publication of the final roll is after the decision of the claims and objections. No claims or objections can be filed after publication of the final roll. It is on the publication of the provisional roll that claims and objections are invited. Therefore, if there is any purpose behind fixing the outside limit of time (not exceeding six months) immediately preceding the election, it must be to enable the claimants and objectors to file their claims and objections. Thus mere publication of the final electoral roll within six months next before the election, is not compliance with the mandatory provisions contained in section 32(3) of the Act. I am, therefore, of the opinion that "revision" connotes the whole process of revision of electoral roll which commences with the publication of the provisional electoral roll and the inviting of claims and objections, their inquiry and decision. To put it differently, the meaning and intent of section 32(3) is that all this process must begin and be completed not earlier than six months immediately preceding the general election.

26. The Full Bench decision of the Delhi High Court is not in point. In that case, Mr. A. K. Gopalan challenged the electoral roll. The Legislative Assembly of Kerala was dissolved on June 26, 1970. According to section 14 of the Representation of the People Act, 1950, the qualifying date in relation to preparation of revision in every electoral roll means 1st day of January of the year in which it is prepared or revised. It was urged for Mr. Gopalan that the qualifying date was the 1st January 1969 as the rolls were revised during the period between November 15, 1969, and January 15, 1970. His contention was rejected, and it was held that the legislature did not intend the 1st January of the year, in which the preparation or revision of the electoral rolls is commenced, to be the qualifying date for section 14(b) of the Representation of the People Act. It was further held that the electoral roll can be considered to be prepared or revised only when the entire process of preparation or revision is completed. Till that stage the process remains inchoate and in the inceptive state.

27. From the above narration it can be clearly seen that the point raised in A. K. Gopalan's case (supra) was quite different. There, the question was what the qualifying date was. The provisions of law were interpreted to mean that it was the 1st January of the year in which the process of revision was completed which was the qualifying date. There, the provision under consideration was different and it must be said with respect that the decision of the Delhi High Court commensurate with the object and purpose of the law, that is, all persons who became qualified to vote upto the 1st January of the year of the completion of the roll should be included in the electoral roll. If the 1st January of the year of commencing the revision of the roll were the qualifying date, all those who became qualified within the next one year would be deprived of the right to vote, although the revision of the roll was not completed. For the reasons I have given

above the whole purpose of revision of electoral roll which is required under the mandatory provisions of section 32(3) of the Act would be defeated if the process of revision commences with the notice inviting claims and objections at any indefinite time, which may even be one year or two years or more, immediately preceding the general election. On this analysis it can be said that the principle underlying the decision of the Delhi Court supports the view I have taken.

28. For these reasons I hold that in the present case the authorities did not comply with the mandatory provisions of section 32(3) of the Act.

29. I am, however, of the opinion that this petition must be dismissed on the ground that the petition is not bona fide and the petitioners have not made out any case of infringement of his right. My learned brother Mr. Justice Raina has recorded the reasons in detail with which I agree. Not one of the petitioners was a candidate or even a voter. The name of not one of them was included in the electoral roll. It is an admitted position that the provisional roll was published on June 29, 1969, when claims and objections were invited, but at no time did any of the petitioners apply for his name to be included in the electoral roll. Thus they were never interested in the election either for being elected or for exercising the right to vote. When the final roll was published on March 28, 1970, or when the second final roll was published on April 25, 1970, they did not approach this Court as they have done now. The election programme was published on August 17, 1970. Even then they did not move this Court by a writ petition. They filed this petition as late as on November 3, 1970. In my opinion this petition was not filed either bona fide or with due diligence and that the delay with which it was filed was undue.

30. Shri Patankar endeavored to argue that the petitioners had not attained the age of 21 years before July 10, 1969, so that they could not file a claim for their names to be included in the electoral roll. But then the Learned Counsel could not substantiate this argument. He had to admit that the petition does not disclose the age of any of the petitioners. He told us that Rajaram petitioner had attained the age of 21 years of April 25, 1969, and that Mohammad Jalil petitioner No. 4 had attained the age of 21 years on February 15, 1967. Since the provisional electoral roll was published on June 29, 1969, they both could lodge their claims for inclusion of their names. But they did not. It is apparent that they came forward after the result of the election was declared in favour of respondents No. 4 to 8. It is obvious enough that this petition is not bona fide.

31. It is also remarkable that if the petitioners' contentions were accepted the entire election would be a nullity, but they did not join as respondents the successful candidates for the other four wards. It was only on February 4, 1971, that they applied for joining the elected members from those four wards. This is another reason to hold that the petition is not bona fide.

32. Mandamus is a discretionary writ. Having regard to the above circumstances which are peculiar and remarkable, I consider this as a fit case where mandamus

must be refused and the election must not be set at naught on the technical ground.

33. The petition is dismissed with costs. Counsel's fee Rs. 50 for respondents 1 to 3 and Rs. 50 for respondents 4 to 8. The balance amount of security deposited by the petitioners shall be refunded to them.

34. The petition is dismissed with costs. Counsel's fee Rs. 50 for non-petitioners 1 to 3 and a similar fee for non-petitioners 4 to 8. The balance amount of security, if any, shall be refunded to the petitioners.