

**(1994) 11 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 5388 of 1994**

Ramchander Jangid and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

**Date of Decision : 24-11-1994**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Rajasthan Municipalities Act, 1959 — Section 3(2), 40

**Citation : AIR 1995 Raj 172**

**Hon'ble Judges : P.K. Palli, J**

**Bench : Single Bench**

**Advocate :** M. Mridul, M.S. Singhvi and Vinit Kumar Mathur, for the Appellant;  
L.R. Mehta, Senior Advocate, S.S. Bhandawat, L.S. Udawat, A.A.G.s and S.K. Vyas, Additional Government Advocate, for the Respondent

**Final Decision : Dismissed**

## Judgement

P.K. Palli, J.—Vide the notification dated 29-10-1994 the Government of Rajasthan has called upon the electorate to elect the members of the Municipalities and the election is scheduled to be held on 27-11-1994.

2. All the petitioners are candidates for the Municipal Corporation, Jodhpur and a public notice of the intended election came to be issued on 10-11-1994. The last date for filing nominations was fixed as 14-11-1994 and for the purpose of withdrawal of the nomination papers the date was specified as 17-11-1994.

3. On 18-11-1994 the symbols were allotted by the Returning Officer to the candidates including the petitioners as per their choice indicated. By a communication the candidates including the petitioners were informed in respect of the symbols allotted to them.

4. It is said that the petitioners immediately thereafter rushed for getting the election material printed and the election campaign was undertaken by them and insertions in the newspapers in this respect were also given out.

5. On 20-11-1994, according to the petitioners, in the early hours of the morning a communication was handed over to each one of them whereby they were intimated about the change in the allotment of symbols. This communication has been placed as Annx. 1 and is dated 19-11-1994. This action appears to have been taken under the provisions of Rule 20 Sub-rule (6) of the Rajasthan Municipal (Election) Rules, 1994 (hereinafter referred to as "the Rules"). This communication is addressed to each of the petitioners by the Returning Officer (Additional District Magistrate, Jodhpur). A reading of this communication makes out that it was the State Election Commission that desired a revision in the allotment of symbols through a wireless message dated 19-11-1994. Although this wireless message has not been annexed to the writ petition but on my asking the same has been made available by the respondents and it is placed on the record as Annex. C-1. In the message the Chief Electoral Officer and Secretary informs the Returning Officer, Jodhpur that the allotments made by him are not included in the list of free symbols notified by the State Commission on 3-10-1994. The same was incorrect and the Commission directs under Sub-rule (6) of Rule 20 of the Rules to revise the allotment in accordance with the notification of the Commission issued earlier. It, thus, becomes clear that it was in pursuance of this communication and under the provisions mentioned therein that the necessary follow up action was taken resulting in the revision of symbols vide Annex. 1.

6. The petitioners for facility of reference have placed the relevant rules as Annex. 3. It is next stated in the petition that the entire process of election should be put to a halt by making suitable directions that the elections be not held till appropriate amends are made. The petitioners are further aggrieved in respect of the amends, which have been made in delimitation of the wards and preparation of electoral rolls. A chaos is stated to have been created in the process of holding free and fair election and finally it has been said that the respondents are not within their power to change the allotment of symbols, once the allotment has been made on 18-11-1994.

7. The petitioners are thus stated to have changed their position on account of the representation made to them by giving them the option to choose the symbols from out of the list shown to them by the Returning Officer and the respondents cannot now turn round to say that the allotment made to the petitioners was wrong and they are allotted different symbols.

8. A mention may also be made to the additional affidavit which the petitioners have placed on record wherein the details of the electoral rolls for each of the ward as not having been prepared as stipulated by Rule 20(1) of the Conduct of Election Rules has been given. A mention is also made in the said affidavit about the electorates whose names appeared in the electoral rolls earlier then deleted and again added and thereafter the names of certain electorates have been removed from the electoral rolls without any notice or enquiry.

8. In the return filed by the respondents it has been replied that 792 persons

have filed nominations in different wards in Jodhpur and after scrutiny and withdrawal 487 candidates are now in the field. A list containing 100 symbols was put on the Notice Board by the respondent No. 3, although only first 40 symbols were free and available for allotment. Thus, the symbols starting From 41 to 100 were not available for allotment but were wrongly allotted under a bona fide mistake by the Returning Officer i.e. respondent No. 3. A list of symbols has been placed on record as Annex. R. 1/2. The Commission's Gazette notification dated 3-10-1994 has been placed on record as Annex. R.1/3 where the 40 symbols have been detailed which were to be allotted in this election. The communication from the State Election Commission dated 19-11-1994 has been placed as Annex. R.1/3 (A). This is the same wireless message reference to which has already been made above in the order. It is said in the reply that it was under this situation that the petitioners were re-allotted free symbols on 19-11-1994. It is further said in the reply that the petitioners were informed immediately in respect of the revised symbols as per the directions of the State Election Commission and there was no violation of the rules. The election process should not be brought to a halt and there was hardly any basis or material for any direction as sought by the petitioners. The elections are being held in a democratic process and as the machinery for holding the elections have already been put in motion and the petitioners after the re-allotment of symbols have proceeded ahead with the election campaign the election process should not be stopped as it would be contrary and inconsistent with the law on the subject.

10. It is next said in the reply that there is a remedy provided for under the provisions of Section 33(2) and Section 40 of the Rajasthan Municipalities Act in the nature of election petition and the provisions contained in Article 243(b) of the Constitution of India bars challenge to any election which has commenced the strength of a notification except by way of election petition. The State Election Commission was very much under its jurisdiction and authority to make the amends and the power in this respect exists in Rule 20 Sub-rule (6) of the above said Rules.

11. It has been denied that the petitioners have been put to any disadvantageous position and the petitioners could not be permitted or allowed to contest election on the basis of unspecified symbols. Thus, the symbols. Thus, the symbols were rightly revised under the provisions and no grievance on this count can be made. It is next said in the reply that the writ petition is misconceived and out of large number of candidates only 10 petitioners are opposing this election and desiring it to be postponed. It is also said that the necessary parties i.e. other candidates have not been impleaded in the petition and the provisions under Article 226 for invoking the extraordinary jurisdiction of this court in election matters while the process is going on cannot be invoked and a joint writ petition on the basis of the alleged grievance is further not maintainable. A reference has also been made to an order passed by this Court in S.B. Civil Writ Petition No. 5032/94 dated 21-11-1994 where in an identical situation the stay has been declined vide the order placed as Annex. R.1/5

passed by Hon"ble Mr. Justice R.P. Saxena.

12. Mr. Mridul, learned Senior Advocate, appearing for the petitioners has confined his arguments to the three points; first that the electoral rolls have been revised wherein the names of the voters appearing earlier were deleted and then again added; the second argument relates to delimitation of the wards that the wards have been delimited in utter abuse of the rules and without keeping in mind the number of voters; and the third limb of the argument relates to the allotment of symbols and its subsequent change. The learned counsel, thus, proceeds that the cumulative effect of such circumstances leading to the situation has to be examined.

13. With regard to the first point, the argument is that there was no occasion to delete and then add the names of the voters and the electoral rolls have been prepared and latter tampered with without any notice or opportunity. It is stated that the electoral rolls were ultimately finalised on 2-11-1994. It has also been stated by referring to the electoral rolls where the names of the voters were initially deleted, again added and deleted again. In respect of the second limb of the argument regarding delimitation of wards, the argument is that the same is not uniform keeping in view the population of each ward.

14. In respect of the attack on the allotment of symbols and its change latter, the learned counsel has urged that it was on 18-11-1994 that the symbols were allotted and vide the communication dated 19-11-1994 (Annexure 1) the symbols were changed and reference has been made that the same has been done under the directions received from the State Election Commission purporting to exercise its right and authority under Rule 20 of the Rules. It is contended by the learned counsel that Sub-rule (1) is not mandatory and thus, once the mistake was realised than the entire election process should have been put to a halt and fresh programme should have been brought. It would be useful to reproduce Rule 20 of the Election Rules of 1994 on the point:--

"20. Symbols to contesting candidates.--(1) The. State Election Commission shall, by notification in the official gazette, specify the symbols that may be chosen by candidates a the elections to the municipality and the restrictions to which their choice shall be subject to.

(2) The day immediately following the last date of withdrawal of the candidates, the returning officer shall proceed to allot symbols to the contesting candidates in the following manner.

(3) For the candidates set up by a party which is a recognized party in the State under the Election Symbols (Reservation and Allotment) Order, 1968, reserved for that party under the said order:

Provided that such a political party can set up only one candidate per award.

Explanation.-- To be considered a candidate set up by a recognized political party, a candidate should produce a letter to that effect signed by the President

of the State unit of that party or any person authorized by him in this behalf before the time and date fixed for withdrawal of nominations specified in Rule 16 is over.

(4) Whether more nomination papers than one are delivered on behalf of a candidate, the choice of symbols made in the nomination paper first delivered, and no other choice of symbols, shall be taken into consideration even if that nomination paper has been rejected.

(5) The returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall:

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot (including computerized random draw) to which of such candidates the symbol will be allotted.

(6) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the State Election Commission in this behalf in which case the State Election Commission may revise the allotment in such manner as it thinks fit."

15. Learned counsel, thus, contends that the action has to be set aside as a candidate in the given situation stands on a more disadvantageous position than the one whose symbol allotted earlier has been taken away and a new symbol has been allotted instead. The argument proceeds on the basis that immediately after the allotment of symbols on 19-11-1994 the candidates rushed for publication of material, advertisements and were all of a sudden made to alter position which has materially affected their chances as each and every petitioner was running against time.

16. Learned counsel has also pressed for consideration Rule 52 of the Election Rules of 1994 where the State Election Commission has the power" to postpone the date and extend the period fixed for polling under the situations given therein. Rule 52 of the Rules is reproduced hereunder:--

"52. Postponement of poll in emergencies. -- The State Election Commission may, for sufficient cause to be required in writing, postpone the date or extend the period fixed for polling in case of emergencies such as disturbance of the public peace, natural calamity etc. where a poll is so postponed, the State Election Commission shall endeavour to conduct the poll as soon as practicable."

17. The counsel, thus, contends that if the State Election Commission has the power to extend the period, in that situation, this Court should exercise the power as the present situation created by the respondents is also emergent.

18. Learned counsel has pressed Article 14 of the Constitution on the strength that the rights under the Article have been violated and petitioners have a right

to seek enforcement of their fundamental rights as enshrined therein in the Article.

19. Learned counsel has further relied upon Bar Council of Delhi and Others Vs. Surjeet Singh and Others, ; Prag Ice and Oil Mills and Another Vs. Union of India (UOI), ; G.S. Lamba and Others Vs. Union of India (UOI) and Others, ; A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, and Nand Kishore Prasad Vs. State of Bihar and Others,

20. Learned counsel appearing from the side of the respondents Mr. L.R. Mehta, has raised a preliminary objection that it is not open for the petitioners to invoke, the extraordinary writ jurisdiction of this Court in the matter since the elections have been announced and the same are in process and scheduled to be held on 27-11-1994,

21. It is further submitted by the learned counsel that the arguments raised in respect of delimitation of wards and in respect of the electoral rolls also cannot be gone into and these matters can safely be challenged by way of election petition which remedy stands provided for under the Statute. It is also said that the electoral rolls were finalised as back as on 2-11-1994 and no objections were filed by any of the petitioners in this respect.

22. It is next contended that the points in respect of de-limitation of wards also cannot be gone into as the petitioners are taking up these points after the nominations have been accepted, symbols allotted and the elections are scheduled to take place on 27-11-1994.

23. Learned counsel appearing for the respondents has frankly conceded that there has been a mistake on the part of the Returning Officer in the allotment of symbols and the moment this mistake came to the notice of the State Election Commission the same was ordered to be corrected and in the exercise of powers under Rule 20(6) the communication was sent by the State Election Commission to the Returning Officers. Here, it would be useful to reproduce the said communication which finds mention in the communication of the Returning Officer to the petitioners. As already said above, I have placed the same as Annex. C-1 on the record and the same has also been placed on the record from the side of the respondents as Annex. R. 1/3A, The communication reads as under:

NO. F 4(1)(2)M, SEC/94, Jaipur, dated 19-11-1994. \_\_\_\_\_

REGARDING MUNICIPAL ELECTION(.) REFER DISTRICT MUNICIPAL ELECTION OFFICER

JODHPUR MESSAGE NO. 3666 DATED 19th Nov. 1994(.) ALLOTMENT OF SYMBOL MADE BY YOU WHICH ARE NOT INCLUDED IN THE LIST OF FREE SYMBOLS NOTIFIED

BY THE COMMISSION VIDE ORDER NO. 269 DATED 3-10-1994 IS INCORRECT (.)  
THE STATE ELECTION COMMISSION

DIRECTS UNDER SUB RULE 6 OF RULE 20

OF RAJASTHAN MUNICIPALITIES (ELECTION) RULES,

1994 TO REVISE THE ALLOTMENT IN ACCORDANCE WITH COMMISSION  
NOTIFICATION REFERRED TO EARLIER (.) (B. B. Mohanty) CHIEF ELECTORAL  
OFFICER & SECY.

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NO. F. 4(1)(2)M, SEC. 94. Jaipur, 19-11-1994.

Copy forwarded to the following for information

1. All concerned (Above).
2. The Officer-Incharge, Wireless Station, Secretariat.

Sd -

B. B. Mohanty) CHIEF ELECTORAL OFFICER & SECY.

24. Learned counsel appearing for the respondents Mr. Mehta has further brought to my notice the notification Annex. R. 1/1 issued by the Local Self Government Department dated October 29, 1994, whereby the Government called upon the wards of the Municipalities to elect members in accordance with the provisions of the Act and the Rules. This notification specifies the date of filing the nominations, scrutiny, date for withdrawal, allotment of symbols, date of poll and date of counting. Notification Annex. R. 1/3 dated 3-10-1994 issued by the State Election Commission specifies the symbols from S. Nos. 1 to 40 and it is said that the allotment of symbols to the contesting candidates had to be made out of this list and none else. The Returning Officer by mistake lost sight of this notification and symbols were allotted beyond those specified in the notification and the moment it came to the notice of the Commission the Returning Officer was told to rectify the mistake. Since the symbols which had been allotted were not included in the list of free symbols notified earlier therefore, the Commission in exercise of the power under Sub-rule (6) of Rule 20 ordered for the revision of the allotment in accordance with the notification referred to above.

25. Learned counsel proceeds to submit that under Sub-rule (5) of Rule 10 it is said that the date of poll shall not be earlier than six days and later than ten days from the last date of withdrawal of candidates. On the strength of this rule, it is said that even if the symbols were changed it was done on 19-11-1994 and the elections have to take place on 27-11-1994. Therefore, the petitioners have clear seven days to go ahead for the purposes of campaigning and, thus, no prejudice has been caused to the petitioners. Learned counsel for the respondents has further pressed Article 329(b) of the Constitution of India in

order to make a point that this Court will not interfere in the process and the only remedy available to the petitioners was by way of an election petition. Article 329(b) is reproduced here- under:--

"329. Bar to interference by Courts in electoral matters -- Notwithstanding anything in this Constitution.

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

26. Article 243ZG which has been recently incorporated in the Constitution, reads as under: --

"243ZG. Notwithstanding anything in this Constitution.-- (a) the validity of any law relating to the delimitation of constituencies" or the allotment of seats to such constituencies, made or purporting to be made Article 243ZG shall not be called in question in any court:

(b) 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."

27. The provisions contained in Section 33|of the Rajasthan Municipalities Act, 1959 has also been brought to my notice which is reproduced hereunder:

"33. Jurisdiction of Civil Courts-- (1) No Civil Court shall have jurisdiction :--

(a) to entertain or adjudicate upon any question whether any person is not entitled to be registered in an electoral roll prepared under this Act; or

(b) to question the legality of any action taken by or under the authority of an electoral registration officer or of any decision given by any authority appointed under this Act, for the revision of any such roll; or

(c) to question the legality of any action taken or any decision given by the Returning Officer or by any other officer appointed under this Act, in connection with an election.

(2) No election shall be called in question except by an election petition presented in accordance with the provisions of this Act."

28. On the strength of the aforesaid section, the learned counsel contends that the only remedy provided for is by way of election petition and this Court would not venture to entertain this writ petition and interfere in the process at this stage.

29. Learned counsel further submits that whether any prejudice has been caused to the petitioners or the act and the conduct of the respondents have materially altered or affected the position of the petitioners require evidence on the points

and all these matters can safely be determined in the election petition, the provision for which has been made Section 34 of the above Act.

30. Some decisions have also been cited at the Bar viz. S.T. Muthusami Vs. K. Natarajan and Others, ; Lata Devi (Mali) Vs. Haru Rajwar,

31. A reading of all these decisions makes out that this Court should not interfere the election process, once the machinery in this direction has been set in motion.

32. In the case reported in Lata Devi (Mali) Vs. Haru Rajwar, the point involved was in respect of change in symbol The rule interpreted in this decision of the Hon"ble Supreme Court is *pari materia* with Rule 20(6) of the Election Rules.

33. To some what similar effect are the observations contained in the judgment reported in S.T. Muthusami Vs. K. Natarajan and Others, There in also the question related to error in the allotment of symbols. It was held that it would not be appropriate for the High Court to interfere with the election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election. The parties aggrieved can question the validity of the election by way of an election petition, which is an effective alternative remedy.

34. After having heard the learned counsel appearing for the parties and after having gone through the pleadings and the annexures placed by the parties on the record and after giving my thoughtful consideration to the case law on the subject as well as other relevant provisions noticed in the earlier part of the order. I am of the opinion that the writ petition deserves to be dismissed. The law on the subject of elections as settled down by the Hon"ble Supreme Court is that once the election process is set in motion, the jurisdiction of the High Court to entertain the petitions challenging the election is taken away and the process of election starts from the date of announcement for holding the elections till the declaration of the result. It has been held in the decision reported in A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others, where election is eminent, the High Court must be very cautious and slow to interfere and pass orders or directions postponing the elections. It was further observed in this very decision that under Article 226 of the Constitution of India the High Court should not entertain a writ petition in which no substantial question of constitutionality is involved. Even under the law relating to Panchayat elections the jurisdiction of the Courts has been taken away in such matters.

35. It is no doubt correct that the matter has been dealt with by the Returning Officer in a most irresponsible manner. The functionaries of the State in such like matters are expected to look at the matter with utmost care and caution, particularly when it pertains to democratic process such as holding of elections from the side of the respondents. This mistake is conceded. I cannot refrain myself from observing that such an action on the part of the Returning Officer deserves to be taken note of seriously by those on whom the responsibility lies

for holding free and fair elections.

36. What emerges out of the admitted position is that the State Election Commission in a given situation has the power and authority to issue directions in respect of revising the allotment of symbols, where the same has gone inconsistent with any direction issued by the Commission in that behalf.

37. Admittedly a notification was issued earlier in point of time where the Commission had made it clear that the allotment of symbols has to be made out of 40 specified symbols as mentioned in Annex. R. 1/3 and the moment it came to be noticed, orders with immediate effect were passed asking the Returning Officer to revise the allotment in accordance with the directions given in the notification and it was in pursuance of this direction that Annex. 1 which is impugned was issued by the Returning Officer without any loss of time. One more aspect cannot be lost sight of is that hundreds of candidates have already entered the field and campaign is in process with only two days left for the elections to be held. The process cannot be brought to a grinding halt on the petition of 10 candidates and particularly when all the candidates who are in the field are not before the Court and may be affected by the order passed adversely to them. After having carefully perused the case law as settled by the Hon'ble Supreme Court of India in a number of cases on the subject, I find that the High Court under Article 226 of the Constitution is not permitted to exercise its extraordinary writ jurisdiction in the matters relating to elections. This is how Article 329(b) of the Constitution has come to be interpreted. Very recently another provision has been made in the Constitution i.e. Article 243ZG detailed reference to which has already been made above in the order. This provision has been brought by way of amendment and the provisions deal with the elections to the Panchayats and the Municipalities. Thus, no scope is left for interference with this Court in these matters under the writ jurisdiction.

38. In view of what has been said above, the preliminary objection raised by the learned counsel for the respondents is upheld and in the situation the writ petition is dismissed as not maintainable and also that this Court has no jurisdiction to go into the matter in view of the case law and the relevant provisions noticed above in the order.