
(1958) 02 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ No. 94 of 1956

Ramnath

APPELLANT

Vs

Dwarka Prasad and Others

RESPONDENT

Date of Decision : 13-02-1958

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 89
Rajasthan Panchayat Election Rules, 1954 — Rule 18, 19

Citation : AIR 1959 Raj 201

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

Bench : Full Bench

Advocate : R.K. Rastogi, for the Appellant; C.B. Bhargava, for Opposite Party
No. 1, for the Respondent

Judgement

K.N. Wanchoo, C.J.—This Full Bench has been constituted to resolve a conflict which has arisen between two decisions of this Court both by Division Benches. The first decision was given on 1-10-1956 in Kishorilal v. Indersingh Mehta, (Civil Writ Petition No. 191 of 1956) decided at Jaipur. It was held there that an election petition under Rule 19 of the Rajasthan Panchayat Election Rules, 1954, (hereinafter called the Rules) could be filed even before the election was notified under Rule 18 (c) read with Section 14 of the Rajasthan Panchayat Act, No. XXI of 1953 (hereinafter called the Act). The second decision was given on the 11th of October, 1957 at Jodhpur in Civil Writ petition No. 114 of 1956 Mangilal and Others Vs. Collector of Bhilwara and Others, As the first decision was not marked "Reportable", it was not known in Jodhpur when the second decision was given. The question, which falls for consideration, may be formulated as follows :

Can an election petition under Rule 19 of the Rajasthan Panchayat Election Rules, 1954 be filed before the notification under Rule 18 (c) of the same rules read with Section 14 of the Rajasthan Panchayat Act (No. XXI of 1953)?

2. Section 14 of the Act is as follows :

"Every election or appointment of a Sarpanch, Upsarpanch and a Panch shall be notified in Rajas- than Gazette in accordance with rules made under this Act."

3. Rule 18 (c) which is relevant for present purposes is as follows :

"Upon receipt of the report under Rule 17, the Chief Panchayat Officer shall, as soon as possible (c) notify the names of the Panchas, Sarpanch and Upsarpanch so elected or appointed."

4. Then comes Rule 19, the relevant part of which is as follows:

"The validity of the election of any Panch, Sarpanch or Up-sarpanch may be challenged by a petition presented by a defeated candidate or by ten duly qualified electors to the Collector within 15 days from the date of the notification under Rule 18."

5. The question, which falls for consideration is whether an election petition under Rule 19 can only be filed within 15 days after the notification under Rule 18 (c) or it can be filed even before the notification under Rule 18 (c). The reason why this trouble has arisen is this. Section 15 of the Act provides that every Panch or Sarpanch shall, as soon as possible after his election or appointment, as the case may be make in the prescribed manner the prescribed oath or affirmation of his office and, unless this is done, shall not perform any of his functions under this Act.

A question arose in Dalelsingh Vs. Tehsildar of Chhoti Sadri and Others, as to whether Panchas could start functioning after taking the oath u/s 15 without waiting for the notification u/s 14. It was held in that case that Panchas could start functioning after taking the oath u/s 15 even though the notification u/s 14 had not been made. The position, therefore, is that the Panchas can start functioning even before the notification u/s 14 and the question arises as to when an election petition can be filed.

There are three possible dates after which an election petition could be filed. Under Rule 12 of the Rules, the Returning Officer declares a candidate duly elected immediately after the election is over. That is one date after which the election petition can be filed. Then comes the oath u/s 15 of the Act which may be taken on this very day or some days or weeks later. That is another date after which the election petition may be filed viz. after the oath has been taken. Then there is the notification u/s 14. This may precede the taking of oath u/s 14 or it may follow it. That is a third date after which the election petition can be filed. Rule 19 has to be interpreted keeping these three dates in mind.

6. The learned Judges, who decided Kishorilal's Case, Civil Writ Petn. No. 191 of 1956. D/- 1-10-1956 (Raj) did not express any opinion as to whether the election petition could be filed after the declaration of the result of the election under Rule 12 or after the taking of oath u/s 15. They held that Rule 19 prescribed the maximum period of limitation and that an election petition could be filed even before the notification under Rule 18 (c) read with Section 14, so

long presumably it was filed after the declaration of the result under Rule 12.

The learned Judges in that case did not express any preference for any of the three dates mentioned above, and therefore, it must be taken that the election petition could be filed at any time after the result of election was declared under Rule 12, but within 15 days from the date of notification under Rule 18. On the other hand, the view that prevailed in *Mangilal and Others Vs. Collector of Bhilwara and Others*, to which I was a party was that Rule 19 provided not only the last date by which the election petition had to be made (this corresponds to the maximum period of limitation mentioned in *Kishorilal's case Civil Writ Petn. No. 191 of 1956. D/- 1-10-1956, (Raj)* but also the date after which only the petition could be made, viz. the date of notification in the Gazette under Rule 18 (c). The question, therefore, which has to be decided by the Full Bench is the correct meaning of the words used in Rule 19 in this behalf.

7. It was argued in this connection that we have to see when the cause of action arises and that the right to commence an action begins on the same day on which the cause of action arises. Generally speaking, there is force in this argument and the right to commence an action arises as soon as the cause of action arises. But it must not be forgotten that election law is a special and technical one where these general principles are many a time out of place. For example, if the election law did not provide for an election petition at all, it is doubtful if a person, who lost the election could, on the principles of general law, file an election petition through a civil suit. In any case, where a provision is made for an election petition, it is that provision alone which would govern when an election petition can be made.

8. The relevant words, therefore, of Rule 39 which have to be interpreted are these :

"The validity of the election may be challenged by a petition presented..... within 15 days from the date of the notification under Rule 18."

The difficulty is said to arise because of the use of word "from". The argument is that because of the use of the word "from" the intention of those who framed the rule was that the election petition could be made at any time upto 15 days from the date of the notification under Rule 18.

9. Now it cannot be denied that these words in Rule 19 provide a period of limitation. Nor can it, in my opinion, be denied that a period of limitation always includes a starting point as well as a concluding point otherwise it would be difficult to calculate the period mentioned in any Statute of limitation. Take any article of the Limitation Act. It "has three columns : Description of Suit, Period of Limitation, time from which period begins to run. Whatever, therefore, be the period of limitation, there is always a starting point, for without the starting point the period can never be calculated.

Further, it cannot be denied that no action can be commenced before the period

of limitation begins to run, for before that date, there would, generally speaking, be no cause of action, and the action would be premature. To divorce, therefore, the expression used in R. 19 which is undoubtedly a period of limitation from the starting point and to say that it merely prescribes the maximum period of limitation appears to me, with all respect, to go against the very principle on which limitation is based.

10. I may in this connection examine the position in England. The procedure in England is to be found in Halsbury's Laws of England (Third Edition, Volume 14) Paragraph 247 page 142 which is as follows :

"In a contested parliamentary election, when the result of the poll has been ascertained, the returning officer must forthwith declare to be elected the candidate to whom the majority of votes has been given, return his name to the Clerk of the Crown in Chancery and give public notice of his name and of the total number of votes given for each candidate."

11. It will be seen that the English procedure also has something in common with what is provided in Rule 12, namely the declaration of the result by the returning officer forthwith after the votes have been counted. In addition to that, he has to give public notice of the result and also to re-turn the name of the elected candidate to the Clerk of the Crown in Chancery.

12. Election petitions are also provided in England and time of presentation of such petitions is to be found in the same volume, of Halsbury at paragraph 450 at page 257. The relevant portion is as follows :

"Subject to the exceptions stated hereafter, a parliamentary election petition must be presented within twenty-one days after the return of the member to whose election it relates has been made to the Clerk of the Crown in Chancery.

13. It will be clear, at once that in England also there are two dates (1) the date on which the result of the election is declared by the returning officer and (2), the date on which he makes return to the Clerk of the Crown in Chancery. English courts have laid down when it can be said that the return has been made to the Clerk of the Crown in Chancery and the period of 21 days of Limitation runs thereafter. It has, however, been stressed that the words in the English Statute are "within 21 days after the return of the member" and not "within 21 days from the return of the member." In any case, it is clear that even in England, there may be some time lag between the declaration of the result by the returning officer and the making of the return by him to the Clerk of the Crown in Chancery. The election petition can only be made after the return has been made to the Clerk of the Crown in Chancery. In the same paragraph at p. 257 the matter is put thus :

"The return of a member is not made till the writ with the certificate of the returning officer endorsed thereon reaches the Clerk of the Crown so that he may act on it, and the period of twenty one days does not begin to run until

then."

14. It would not be difficult to see that an election petition cannot be filed unless the period of limitation begins to run. The provisions in Australia are similar and can be found in *Mulcahy v. Payne* 27 Com-W.-LR. 470. In Australia also the returning officer declares the result as soon as the counting is over. Thereafter by endorsement under his hand, he certifies on the writ the names of the successful candidates and returns the writ to the Governor of the State in respect of which it was issued. Then there is a provision that an election petition shall be filed within 40 days after the return of the writ. In that particular case, the returning officer declared the result on the 7th of January, but the writ reached the Governor on the 13th January, and time was held to run from the 13th January. Here again it was stressed, however, that the word used in the Australian Act is "after" and not "from".

15. The question, therefore, boils down to this. Is there any vital difference made because the word "from" is used in Rule 19 and not the word "after". It is said that the use of the word "from" implies a maximum period of limitation without any beginning, while the use of the word "after" would have implied both beginning as well as an end. In this connection again I may draw attention to the third column of the Schedule to the Indian Limitation Act. Time from which period begins to run. There also the word is "from" and not "after." But it cannot be disputed that no suit can be filed before time begins to run, for otherwise it would be premature. The more, therefore, I look into the matter the more I am convinced that there should be no difference except what I shall point out later whether the word "from" is used or the word "after" is used in a clause like this, so far as the starting point and the concluding point of limitation are concerned. In the Oxford English Dictionary Volume IV page 560, the following meaning of the word "from" is to be found with reference to law :

"indicating a starting point in time, or the beginning of a period (the date from which one reckons may be either inclusive or exclusive)."

16. In Webster's New International Dictionary Vol. 1 second Edition page 1012, the generic meaning of the word "from" is "indicating a point of starting."

17. It seems to me, therefore, that when an enactment says "within 15 days from a certain date", it indicates the starting point as well as the concluding point. The starting point will be indicated by the word "from" and the concluding point determined by calculation of the period of limitation mentioned therein. There may perhaps be a reason for the use of the word "from" in Rule 19 which may appear from the following observation, of Coutts-Trotter J. in *In re In Re: Court Fees*, . The question there was different, but it is interesting to note the effect of the use of the word "from" in laws or rules in different circumstances, as pointed out by Coutts-Trotter J. I may quote the following observation at page 259 :

"If you are fixing the point of time at which a certain state of things is to be

called into existence that state of things comes into existence at midnight of the day preceding the day at which or on which or from which or from and after which the new state of things begins. In such cases the statute or rule is only concerned in fixing the terminus a quo of a new state of law which is enacted to continue indefinitely, in other words, until repealed by a new enactment of the legislature where, in short, you have a terminus a quo but no terminus ad quem. . . . it is one of obvious convenience for it would be an intolerable burden upon the litigant public to require it to ascertain at which precise hour of the day a particular statute is passed or a particular rule or regulation is promulgated. The other rule is this. When you have a period delimited by statute or rule which has both a beginning and an end, the word "from" excludes the opening day and any words fixing the closing day include that day."

18. It may very well be that the rule making authority in Rajasthan used the word "from" in Rule 19 in order to exclude the day on which the notification is issued in counting the period of 15 days. In any case, it is to my mind very clear that the use of the word "from" cannot mean that there is no starting point of the period of limitation fixed by Rule 19. As I read this rule, the starting point of limitation is the notification and as the word "from" is used, the day on which the notification is published is to be excluded and 15 days is the period for filing the election petition after excluding the day of notification. It makes no difference to my mind whether the word "from" was used or the word "after" was used because both would in effect mean the same except perhaps that by the use of the word "from" there is a clear indication that the date of the notification has to be excluded.

19. I recognise that a curious position is created in Rajasthan because of Section 15 which makes it possible for Panchas to take the oath immediately after their election and begin working even before the notification is made u/s 14. I also recognise that sometimes the Chief Panchayat Officer may by oversight or for any other reason not notify the names in the Gazette for a long period. So far as the first is concerned, the position may be curious. But we have to interpret this provision as to election matters according to well recognised principles,

As I pointed out earlier, it may sometimes happen that the notification may be made after the oath has been taken, but it may also happen that the notification may be made before the oath is taken. Curiousness of this position cannot affect the interpretation of Rule 19. As to the second contention, viz., that the Chief Panchayat Officer may not notify the names for a long time, it is enough to say that it has been held in *Dalelsingh Vs. Tehsildar of Chhoti Sadri and Others*, as well as in *Mangilal and Others Vs. Collector of Bhilwara and Others*, that Section 14 is mandatory for certain purposes.

If the Chief Panchayat Officer is not carrying out his duty of notifying the names promptly, the person affected can always come to this court and ask us to issue a mandamus so that election petition may be filed within 15 days of the notification. With all respect, therefore, I still adhere to the view that was taken

in Mangilal and Others Vs. Collector of Bhilwara and Others, namely that Rule 19 means that the election petition has to be filed after the notification under Rule 18 (c) and within 15 days of that period. In calculating that period, the date of notification will be excluded, I would, therefore, hold that any election petition, which is filed before the Chief Panchayat Officer makes the notification under Rule 18 (c), is premature. The case will now be listed before the Division Bench for disposal according to law.

20. BAPNA J. : I agree.

21. BHANDARI J.: I regret I am unable to agree with the view taken by my Lord the Chief Justice. Before I examine the relevant provisions of the Rajasthan Panchayat Act (hereinafter called the Act) and the Rules made thereunder, it may be stated that elections in a democratic set up are generally conducted on well settled lines. There is a notification made calling upon the voters to elect a member or members from a constituency in accordance with the provisions of law. Administrative machinery for the conduct of the election is provided.

Ordinarily, a Returning Officer is placed incharge of such machinery. Then takes place the nomination of the candidates of election, scrutiny of nomination papers and the withdrawal of nomination. Thereafter the poll takes place and after polling counting of votes is made. I am concerned in this case at a stage when the counting of votes is completed and declaration of the result is made. The returning Officer or any other officer incharge of the election declares the result of the election when the counting of votes has been completed. Provision is usually made for the publication of the result of the election. A member elected then takes oath of office and thereafter he becomes the full-fledged member of the body to which he has been elected.

22. Usually a provision is made for setting aside of the election by presenting an election petition. This is to be presented in accordance with law. Such are the broad outlines of an election in any democratic set up.

23. Let me examine what is the position with regard to the election under the Rajasthan Panchayat Act. The law relating to the election is not provided in detail in the main Act. It is provided in the Rajasthan Panchayat Election Rules, 1954 framed u/s 89 of the Act. Under Rule 3, a Returning Officer is appointed. Rule 12 makes provision for the declaration of the result of election of a panch. It runs as follows :

"After the votes have been cast and counted the Returning Officer shall announce the number of votes secured by each candidate and declare the candidate securing the greatest number of votes to have been duly elected."

24. Rule 14 makes provision for the election of Sarpanch, Rule 15 makes provision for the election of a Up-Sarpanch. It may be taken that the provisions for the declaration of the results regarding them are also the same as in Rule 12. Rule 17 makes it necessary that the Returning Officer should submit a report to

the Chief Panchayat Officer of the result of the election.

25. Section 17 of the Act requires that every election or appointment of a Panch, Sarpanch or Upsarpanch shall be notified in the Rajasthan Gazette in accordance with the rule made under the Act.

26. Under Rule 18 (c) the Chief Panchayat Officer shall upon the receipt of a report under Rule 17, as soon as possible notify the names of Panchas, Sarpanch and Up-Sarpanch so elected.

27. Under Rule 18 (d) he shall announce such election by posting a notice at the office of the Panchayat and also by beat of drum.

28. u/s 15 of the Act every Panch or Sarpanch shall as soon as possible, after his election or appointment, as the case may be, make in the prescribed manner the prescribed oath or affirmation of his office and, unless this is done, shall not perform any of his functions under this Act.

29. Now it cannot be denied that so far as election is concerned, the election of a Panch, Sarpanch or Upsarpanch is completed as soon as declaration is made by the Returning Officer. What remains to be done by the Chief Panchayat Officer under Rule 18 is a mere formality and does not affect his election. There is nothing in the Act preventing any one elected from taking oath and performing functions of his office after he has been declared elected by the Returning Officer. This has been so held by this court in Civil Writ Petn. No. 107 of 1956 decided on 12-9-1957 Dalelsingh Vs. Tehsildar of Chhoti Sadri and Others,

30. Declaration of the result by the Returning officer is final and irrevocable. It cannot be annulled or cancelled by any authority except by an election petition. The date of election of a candidate is the date of such declaration. The provisions of the Representation of the People Act, 1951, in this point may be compared.

31. Section 66 of that Act provides for the declaration of results. It states that when the counting of votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by the Act or the rules made thereunder.

32. Section 67 makes provisions for the report of the result and lays down that the Returning Officer shall report the result to the appropriate authority and to the Election Commission and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House, and the aforesaid authority shall cause to be published in the official Gazette the declarations containing the names of the elected candidates.

33. Section 67A lays down that the date on which the candidate is declared by the Returning Officer to be elected to a House of Parliament or or the Legislature of a State or the electoral college of a Union territory shall be the date of election of that candidate. Thus according to the provisions of the Representation of the People Act, 1951, the date of an election of a candidate is the date of the

declaration by the Returning Officer.

34. Section 67-A is nothing more than the statutory recognition of principle that if a candidate has been declared elected finally and irrevocably the date of election is the date of such declaration.

35. Reverting to Rule 19, it makes provision for contesting the validity of the election. It runs as follows :

"The validity of the election of any Panch, Sarpanch or Up-sarpanch may be challenged by a petition presented by a defeated candidate or by any ten duly qualified electors to the Collector within 15 days from the date of the notification under Rule 18 The Collector may either himself inquire into the petition or may forward the same to the Sub-Divisional Magistrate for inquiry and report."

It gives right to any defeated candidate or any ten duly qualified electors to present an election petition to the Collector. Such a petition must be presented within 15 days from the date of the notification under Rule 18.

36. Now, it cannot be denied that right to challenge the election becomes available to a person on whom such right is conferred as soon as the result of the election has been declared and the person whose election is sought to be challenged has been declared elected. Under Rule 20 the Collector before setting aside the election or amending the result thereof is required to be satisfied that the election in dispute had been the outcome of some misconduct or corrupt practice which has substantially influenced the result thereof. Naturally the person who files the election petition must allege any of these things referred to above.

Such a right being in them they have the right to present the election petition as soon as the result of the election is declared by the Returning Officer. The words "within 15 days from the date of the notification" occurring in Rule 19 merely prescribe the period of limitation. It does not in any way curtail the right. A provision prescribing the period of limitation cannot be construed as laying down any law as to when the cause of action arises. The cause of action arises because a person possesses some right to relief in a Court of law. That right is possessed by virtue of some substantive law or by force of custom.

The law of limitation does not grant any right to any person nor does it take away any right. It only says that it cannot be enforced in a Court of law if it has not been brought after the period of limitation. As observed by Mukerji, J., with regard to the provisions of Limitation Act in the case of *Srimati Sarat Kamini Dasi Vs. Nagendra Nath Pal*,

"the periods prescribed by the Act (Limitation Act) are more or less arbitrary, and the fixing of the periods is founded on considerations of public policy."

Third column of the 1st Schedule of the Limitation Act provides the starting point of limitation from which the period of limitation as given in second column is to

be computed. The starting point of limitation does not always synchronise with the cause of action, in many cases it does, but in others it dates from some specified event which may be posterior to the accrual of the cause of action.

37. In U.N. Mitra's Law of "Limitation and Prescription, Sixth Edition (Tagore Law Lectures 1882) it has been observed as follows at page 318 :

"It may be here observed that in the case of suits not governed by the general Article 120 of Schedule 1, the time of limitation does not necessarily begin to run from the date of the accrual of the right to sue. Under the express provisions of the Schedule, in some cases, limitation runs from a time after the right to sue or apply has accrued, and in some cases, it may run from a time before the right to sue has accrued."

38. The above statement may be subject to some controversy in so far as it says that in some cases limitation may run even before the right to sue has accrued. But it is certainly correct when it says that, in some cases, limitation may start running after the lapse of some time after the right to sue has accrued.

39. In my humble opinion it is futile to seek any assistance for determining when the cause of action arises from the starting point of the period of limitation within which an action for relief on that cause of action can be brought in a Court of law. There is nothing in the Limitation Act from which it can be said that an action cannot be brought in a Court of law before the date from which the period of limitation begins to run. Of course, there may be other express words in any enactment laying down that a person shall not be at liberty to bring an action for the enforcement of a right before a particular date.

The cause of action then remains in suspense. In that event, that person may not be at liberty to bring an action before that event has happened. In the case of an election petition such provision finds place in England, u/s 6 of the Parliamentary Elections Act, 1868, election petition is to be presented within 21 days after the return has been made to the Clerk of the Crown, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented within 28 days after the date of such payment.

The use of the word "after" definitely lays down that election petition can only be presented after the happening of the particular event. u/s 81 of the Representation of the People Act, 1951, the Legislature went to the extent of providing that an election petition cannot be presented earlier than the date of the election of the returned candidate. This may be for the reason that the person whose nomination paper has been wrongly rejected may rush in at an earlier date to contest the validity of the rejection of his nomination paper, that is, he may file an election petition questioning the decision of the Returning Officer in respect of the acceptance or rejection of the nomination paper.

40. There is nothing in Rule 19 which may point out that the election petition cannot be filed as soon as the result of an election has been declared. In the absence of any such provision I am humbly of opinion that it would not be proper to hold that any election petition filed under Rule 19, after the date of the declaration of the result by the Returning Officer is premature, because it has been filed before the date of notification under Rule 18. It would be leading in Rule 19 what is not contained in it.

41. There is yet another consideration why Rule 19 should not be read in that way. Notification u/s 14 of the Act may not be issued even after the election Panch or sarpanch had taken an oath and had started performing his functioning. If in such a case the filing of an election petition is to be postponed till the notification is issued, it will be denying even to a vigilant suitor his right to come in a Court of law the earliest and this cannot be taken to be the policy of the law.

42. It has been suggested that there is no material difference when the words used are "after a particular date" instead of "from a particular date". I for myself am unable to accept this. While "from a particular date" in the context of Rule 19 signifies that that date is material only for the purpose of counting limitation, "after a particular date" may signify that an election petition can be filed only after that date.

43. On these considerations I am of opinion that an election petition can be filed under Rule 19 of the Rajasthan Panchayat Election Rules 1954 before the notification under Rule 18 (c) is issued and such an application cannot be dismissed as premature. BY THE COURT.

14. We bold, in accordance with the view of the majority, that any election petition filed before the notification under Rule 18 (c) of the Rajasthan Panchayat Election Rules. 1954, by the Chief Panchayat Officer is premature. The case will now be listed before the Division Bench for disposal according to law.