

(1963) 11 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 544 of 1963

Resham Lal

APPELLANT

Vs

Election Commissioner, Ferozepore and Others

RESPONDENT

Date of Decision : 18-11-1963

Acts Referred:

Citation : (1963) 11 P&H CK 0051

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : H.L. Sibal, for the Appellant; S.C. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This petition under Article 226 of the Constitution has been presented to this Court in the following circumstances.

2. The petitioner, Resham Lal, was elected member to the Municipal Committee, Malaut, from Ward No. 4 in the municipal elections held in February, 1959. His election was challenged by an election petition by five voters. The Election Commission allowed the election petition and set aside the election on the 30th June, 1961 the principal ground on which the election was set aside was that the electoral rolls had not been prepared in accordance with the rules and. therefore, there was no electoral roll on the basis of which an election could be held. The order of the Election Commission was challenged by Civil Writ No. 1056 of 1961. This petition was filed in August, 1961. In the mean time, the Tribunal's order had been gazetted and the gazette notification is of the 10th November, 1961. The writ petition came up before Pandit J. on 12th October, 1962 and was dismissed in view of the decision of Dua J. in Nand Lal v. Das Raj C.W. No. 608 of 1961, decided on 26th September, 1961. It was held by Dua J. that till there is a notification by Government, the order of the Election Commission cannot be challenged because it is open to the government either to accept or not to accept the decision of the Election Commission. It appears that the parties were

oblivious of the notification declaring the result of the election which had been issued on 10th November, 1961, that is, almost a year prior to the order of Pandit J. The present petition has been filed on the same allegations as were made in Civil Writ No. 1056 of 1961 inter partes on the 10th April, 1963.

3. The only argument urged, by the learned counsel for the petitioner is that the ground on the basis of which the Election Commission has set aside the election is no ground in the eye of law. The various grounds on the basis of which an election can be set aside are mentioned in the rules. None of those grounds is available to the respondent, The claim, as has already been mentioned, was that the electoral rolls were not prepared in accordance with the law and as such there being no electoral rolls a valid election could not be held. It has been so held by this Court in *Lajpat Rai v. Khilari Ram* (1960) 62 P.L.R. 377 and in *Piara Singh v. Lachhman Singh* (1960) 62 P.L.R. 901. But the argument proceeds that this ground is no ground on the basis of which the Election Commission could set aside the election and reliance is placed on *Lajpat Rai's* case (1960) 62 P.L.R. 377. The learned counsel for the respondents however in reply urged that the ground on which the election has been set aside and which has already been stated above is covered by rule 51(e), which is in these terms:

51. (e) Material irregularity" in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or non-compliance with the provisions of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election.

The material question that arises for determination is whether "material irregularity" defined in rule 51(e) is a material irregularity in the procedure of an election. If it is a material irregularity in the procedure of an election, the Election Commission would be competent to set aside the election but not otherwise. *Dua J.* who delivered the judgment of the Division Bench in *Lajpat Rai's* case (1960) 62 P.L.R. 377 held that-

On consideration of the scheme of the Punjab Municipal Election Rules and the relevant provisions of the Punjab Municipal Act it does seem to me that the expression "material irregularity in the procedure of an election" is intended to be confined to non-compliance with the provisions of the Act or the rules committed during the course of the election programme as framed by the Deputy Commissioner and it does not cover illegalities committed antecedent to the steps covered by the said programme. It is, of course, not denied that preparation of electoral roll has to be completed before the commencement of the programme of election. The counsel for the respondents has not been able to bring to our notice any precedent directly supporting his contention that an election petition is competent on grievances pertaining to, or violation of, the provisions of law, antecedent to the stages included in the election programme issued by the Deputy Commissioner.

In other words, defective electoral roll is no ground on the basis of which the Election Commission can set aside the election. On the other hand, it has been held in the cases of Lajpat Rai (1960) 62 P.L.R. 377 and Piara Singh (1960) 62 P.L.R. 901 that the electoral roll which is not prepared in accordance with the rules cannot furnish the basis of a valid election and any election held on its basis would be no election in the eye of law.

4. It is no doubt true that the contention of Mr. Sibal is well-founded, but if I give effect to that contention, I would be nullifying the effect of the decisions of this Court referred to above. Therefore, though Mr. Sibal is technically right that the Election Commission was not justified in setting aside the election of the petitioner on the ground on which it has been set aside, yet in view of the fact that there was no electoral roll in the eye of law on the basis of which a valid election could be held, the result would be the same because this Court will not while acting under the provisions of Article 226 of the Constitution, give effect to such an election. I, therefore, see no ground to interfere in this situation under the extraordinary powers conferred on this Court by Article 226 of the Constitution.

5. Moreover, there is no explanation for the delay in filing the present petition which itself has been filed six months after the order of dismissal of the earlier petition and that would also be a circumstance which would be taken into account in disposing of this petition.

6. For the reasons given above, this petition fails and is dismissed, There will be no order as to costs.