
(1995) 05 RAJ CK 0051

In the Rajasthan High Court

Case No : CivilWrit Petition No. 5094 of 1994

Shantilal and Another

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Representation of the People Act, 1951 — Section 15, 16

Citation : (1995) 2 RLW 659 : (1996) 2 WLC 144 : (1995) 2 WLN 367

Hon'ble Judges : Rajendra Saxena, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Saxena, J.—The petitioners, who are residents of town Pali, by filing this writ petition, have prayed that the draft notification dated 6.9.94 (Annex. 4) issued u/s 14(1) of the Rajasthan Municipalities Act, 1959 (in short, "the Act") read with Rule 3, Rajasthan Municipalities (Election) Rules, 1994 (briefly, the Rules, 1994") inviting objections for de-limitation of wards for the ensuing election of the Municipal Council, Pali, final notification dated 23.9.94 (Annex. 9) issued u/s 14(4) of the Act read with Rule 3 of the Rules, the notification Annex. 10 finalising formation of wards and reservation of reserved wards, notification u/s 9 of the Act dated 26.8.94 for fixing the total number of seats for Municipal Council, Pali and specifying the number of general seats and seats reserved for members of the Scheduled Caste, Scheduled Tribe, other backward classes and women and the draft election roll dt. 15th October, 1994, Annex. 13 issued under Order 8 of the Rajasthan Municipalities Registration of Electorate Order, 1974, (in short, the Electorate Order, 1974) be quashed; that the respondents be directed to issue fresh draft order for formation of wards, hear all objections, consider and decide those in accordance with law and thereafter to issue final publication of wards and final publication of voter list and to undertake the said exercise within time before the Notification u/s 23 of the Act is issued and hold election in accordance with law. The petitioners have further prayed that in the meanwhile,

the respondents be prohibited from issuing notification under Section. 23 of the Act.

2. The petitioners have filed this writ petition as a public interest litigation. However, petitioner Shantilal claims that he also does propose to stand in the said election. The petitioners have averred that the State Govt., which is contemplating to hold elections for various municipalities in the State including the Municipal Council, Pali, has issued a proposed calendar for municipal election, Annex. 1, whereby the poll is scheduled to be held on 22.11.94. According to the petitioners, the District Census Officer has categorically informed them in writing that the final census figure has not been published and the provisional figure of the year 1991 for Pali was 1,36,797 and, therefore, in view of the provisions of Article 243(P) read with Sections 3(13A) and 22 of the Act, latest census figure which means the figure as ascertained in the last preceding census of the relevant figure, which has been published. The State Govt. by its notification dt. 2.7.94. (Annex. 14) exercising its power under Section. 9 of the Act has determined the number of seats for each municipality on the basis of its population and laid down that the municipality having the population between 1,00,001 to 2,00,000 shall have forty seats. Therefore, as per criteria fixed in Annex. 14, the total number of seats for Municipal Council, Pali, should have been forty only but the State Govt. by its notification dated 26.8.94, Annex. 11 issued u/s 9 of the Act has determined forty five seats for the Municipal Council, Pali, clearly ignoring the norms for determination of number of seats as stipulated in its notification dt. 2.7.94, Annex. 14, which is patently wrong and illegal because it would completely change the de-limitation of wards and reservation of wards for different categories. The petitioners have averred that as per provisions of Article 243(T) of the Constitution, seats for the scheduled caste and scheduled tribes shall be reserved for every municipality and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the scheduled caste or of the scheduled tribe in the municipal area bearing to the total population of that area and that such seats may be allotted by rotation to different constituencies in a municipality, that as per Article 243(T) not less than 1/3 including the number of seats reserved for women belonging to the scheduled caste or scheduled tribe of the total number of seats to be filled in by direct election in every municipality shall be reserved for women and that such seats may be allotted by rotation to different constituencies. According to the petitioners, as per provisional census figure of municipal area, Pali, the total population is 1,36,797 and the total scheduled caste and scheduled tribe population in the said area is 20274 and 1923 only and, therefore, as per criteria fixed in notification Annex. 14, the total number of seats for Municipal Council, Pali should be 40 and, as such seven seats could not be reserved for the scheduled caste as has been done vide notification dt. 26.8.94 Annex. 11. Thus, there has been an excessive reservation for the scheduled caste people. Another challenge taken by the petitioners is that according to Section 14(2) of the Act, a

draft order for de-limitation of wards is required to be published inviting objections within a period of not less than seven days. The draft de-limitation order should also contain the wards in which the municipality shall be divided for the purpose of election to the Board, extent of each ward number of seats reserved for scheduled caste and tribes and for members of backward classes and women members thereof. The numbering of wards and reservation of wards is to be done in accordance with the provisions of Rules 4 and 5 of the Rules, 1994 but ignoring those provisions, a draft order of de-limitation of wards vide notification dt. 16.9.94 Annex. 4 was issued and the same was not published in the Rajasthan Gazette; that the draft order purporting to be issued u/s 14(1) was fixed on the notice board of District Collector, Pali and District Election Officer, Municipal Council, Pali, respondents No. 3 and 4 respectively inviting objections to be submitted within seven days of the publication of the notification in the official gazette but the said notification was not published in the Rajasthan Gazette and was not made available to the petitioners despite their written request. The petitioners have alleged that the said draft notification Annex. 4 was sent to the Govt. Press on 19.9.94 and was published somewhere after 23.9.94. Thus, no opportunity of filing objections was given to the petitioners and requirements of sections 14(1) and (2) of the Act with regard to the issuance of the draft order and inviting objections have been patently and flagrantly violated. The draft order of de-limitation of wards published in the Rajasthan Gazette Annex. 5 however discloses the eight wards to be reserved for scheduled caste and scheduled tribe but those have also not been earmarked as SC-I, SC-II and ST-I and ST-II and so on. The petitioners have averred that Annexes. 4, 9, 10, 11, 13 and the draft and final publication of electoral rolls are creatures of illegal and colourable exercise of power and offend the mandatory provisions, of the Act, the Elections Rules, 1994 and the Electorate Order, 1974; that the pre-election exercise undertaken by the respondents is wholly illegal, which cannot ensure proper, legal and fair election and, as such, the said illegalities be set right at this stage and respondents be directed to undertake de novo pre-election exercise in accordance with the letter and spirit of law.

3. The respondents No. 1 and 3 to 5 in their reply to show cause notice, have categorically refuted the alleged illegalities pointed-out in the writ petition and asserted that whole pre-election exercise in respect of publication of draft notification dated 6.9.94 (Annex. 4) inviting objections for de-limitation of wards, hearing and deciding the objections by the Competent Authority, finalisation of wards and reservation of reserved wards and of seats for the members of Scheduled Castes/Scheduled Tribes and women, draw of lottery for such reserved wards, publication of draft election roll, hearing and deciding the objections in that behalf and final publication of electoral rolls, has been done and conducted as per provisions of the Act, the Election Rules, 1994 and the Electorate Rules, 1974. It has been also pointed out that the petitioners did not file any objections, on the other hand, they participated in the draw of lots for reservation of seats Under Rule 5 (12) of Election Rules, 1994. The electoral roll

was prepared in accordance with the Amended Electorate Order, 1994 and the procedure was followed. The respondents have asserted that the petitioners have no locus standi to file this writ petition; that it is not at all a public interest litigation and that they had filed this writ petition to serve their self interest that the petitioners have deliberately suppressed material facts and have not come with clean hands. The Electoral rolls, after hearing and deciding all the objections, have been finalised under Clause 16 of the Amended Electorate Order, 1994, de-limitation and determination of wards under Section. 14-1-B of the Act has been over and final notification dated 23.9.94 Annex. 9 has been issued and published in the Rajasthan Gazette. The Returning Officers and A.R. Os. have been appointed and notification under Section. 23 of the Act for the election has also been issued and published in the Rajasthan Gazette dated 31st Oct. 1994 alongwith the revised calendar for municipal election and, thus, the election process has commenced and it is not open to be withheld, stayed, or intercepted on whatsoever grounds. The respondents have maintained that this writ petition is belated, based on malafide grounds and actuated by personal interest and extraneous and political reasons, which deserves to be dismissed.

4. In support of the reply, revised Calendar for municipal election dated 23.9.94 Annex.R/1, Draft Notification dt. 6.9.94 under Section. 14(1) of the Act read with Rule 3 of the Rules, 1994 published in the Rajasthan Gazette of even date Annex. R/2, Corrigendum dated 20.9.94 to the notification for determination of seats dated 26.8.94 Annex. R/3 and the notification dated 20.10.1994 issued under Section. 23 of the Act, published in the Rajasthan Gazette dated 31st October, 1994 calling all the wards of the municipalities including Pali municipality to elect members in accordance with the provisions of the Act, the Rules and the Orders made thereunder as per revised Calendar of Election Programme, have been filed.

5. The Chief Election Officer, State Election Commission (Respondent No. 2) despite service did not file any reply.

6. I have heard Mr. N.P. Gupta, learned Counsel for the petitioners and S/ Shri L.R. Mehta and S.K. Vyas, learned Counsel for respondents No. 1 and 3 to 5 at length and carefully perused the relevant record.

7. Mr. N.P. Gupta has strenuously contended that the respondents have not complied with the provisions of law in the pre-election exercise and that there are substantial infirmities in the formation of wards and preparation of electoral rolls and those can be challenged by filing a writ petition under Article 226 of the Constitution of India. According to him, as per provisions of Article 243ZA, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission and the State Election Commission has not issued public notice of intended election Under Rule 10 of the Election Rules, 1994 under the election process did not commence by the Govt. notification dated 29th October, 1994 issued u/s 23 of the Act and alleged to have been published in the

Rajasthan Gazette on 31st October, 1994. He has, therefore, submitted that the respondents should be directed to issue fresh draft order of formation of wards, hear all objections and consider and decide those in accordance with law and to undertake to novo pre election exercise and that till then, they may be prohibited from conducting the impugned municipal election.

8. On the other hand, Mr. L.R. Mehta has vehemently canvassed that the petitioners have not come with clean hands and suppressed important and material facts, that after The Constitution Seventy-Fourth Amendment Act 1992" by which Part IXA relating to the municipalities has been added in the Constitution and Article 243ZG alongwith "Twelfth Schedule" have been added and that Article 243ZG specifically lays down that notwithstanding anything in the Constitution, the validity of any law relating to de-limitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243ZA shall not be called in question in any court and that 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. Thus, there is a bar for interference by the courts in electoral matters pertaining to the municipality. The Rajasthan Municipalities Second Amendment Act, 1984 came into force w.e.f. 29th day of April, 1994, whereby the Act 1959 has been amended. The Act has been further amended by the Rajasthan Municipalities (Third Amendment) Act, 1994 and the State Govt. after completion of all legal and valid formalities under the law has issued draft notification for delimitation of wards u/s 40(1) of the Act, which was duly published in the Gazette; that the Competent Authority/ State Govt. after considering all the objections and deciding those, issued the final notification, that the reservation of reserved wards for members of scheduled castes, scheduled tribes and women was made after drawing the lottery in accordance with law and that the electoral rolls were also revised and duly published in accordance with law and that there was not at all any illegality or colourable exercise of powers offending any provisions of the Act and the Rules and the Electorate Order. He has vehemently asserted that the petitioners have no locus standi to file this writ petition; that in view of the specific bar, this writ petition is not maintainable and that the State Govt. on the recommendation of the State Election Commission in exercise of its power under Section. 23 of the Act, has already issued notification dated 29th October, 1994 calling all the wards of the municipalities including that of Pali to elect members in accordance with the provisions of the Act and the Rules and Orders made thereunder in accordance with the revised Calendar of various events of the election and the said notification has already been published in the Rajasthan Gazette Extraordinary dated 31st Oct. 1994 and thus, the election process has commenced and the election process cannot be withheld, intervened or intercepted by any court on whatsoever grounds. He has urged that the petitioner has filed this writ petition malafidely, which deserves to be dismissed summarily.

9. I have given my thoughtful consideration to the rival submissions. It may be mentioned here that the stay application filed by the petitioner was rejected on 9.11.94 that the poll for the town of Pali Municipality took place on 27.11.94 and the result thereof has already been declared and some election petitions have also been filed u/s 36 of the Act before the Competent Authority.

10. It stands conclusively established that the State Govt. issued notification dated 29th October, 1994 under Section. 23 of the Act calling all the municipalities including that of Pali to elect members and that the said notification was published in the Rajasthan Gazette Extraordinary dated 31st October, 1994. The provisions of Section 15 of the Representation of people, Act, 1951 pertaining to the general election of the State Legislative Assembly are analogous and in parimateria with the provisions of Section 23(1) and (1A) of the Act, which relates to the election to constitute a municipal board.

11. Clause (1A) of Section 23 of the Act lays down that for the purpose of election to constitute a board, the State Govt. shall on the recommendation of the State Election Commission call upon all the wards to elect members in accordance with the provisions of the Act and the Rules and Orders made thereunder on such date or dates as may be specified in the notification.

12. In N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, dealing with the question whether the writ petition was the proper remedy, which can be availed of by a person aggrieved by any irregularity in the conduct of an election before the result of the election is declared, the Apex Court first laid down that as a matter of general principle, interference with the election process between commencement of such process and the stage of declaration of result by a court would not ordinarily be proper and next laid down that Article. 329(b) of the Constitution had the effect of taking away the jurisdiction under Article 226 of the Constitution also in respect of the disputes arising out of election during the said period. It was further held that the word "election" is used to embrace the whole procedure of election and is not confined to final result thereof and that the term "election" should be used in a wider sense and not in a narrow sense.

13. Following the decision of N.P. Ponnuswami's case (supra), the Apex court in Nanhoo Mal and Others Vs. Hira Mal and Others, , held that election to the office of the municipal board is a creature of the Statute i.e. the U.P. Municipalities Act and it must be subject to limitations imposed by it. Accordingly, it was held that the election to the office of the president of the Municipal Board could only be challenged according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of that Act and in no other, way. In that case, the ground taken in the writ petition was non-compliance with the provisions of Rule 6 made under that Act. The Apex Court observed that the provisions of Article 329 were relevant only to the extent that even the remedy under Article 226 of the Constitution was barred as a result of the provisions and that there was no room for the High Court to interfere in

exercise of their powers under Article 226 of the Constitution. It was further observed that all considerations applied in coming to the conclusion that the election to the legislature should not be delayed or protracted by the interference of the courts at any intermediate stage before the results of the elections and over, apply with the equal force to the elections of the local bodies.

14. In the case of Election Commission of India Vs. Shivaji and Others, , the Governor of Maharashtra by a notification dated 18th Sept. 1987 issued u/s 16 of the Representation of People Act, 1951 called upon six local authorities constituencies in the State of Maharashtra to elect one member from each of the said constituencies in order to fill the vacancies in the Maharashtra Legislative Council, which had been caused by the retirement of the members representing the said constituencies on the expiration of their terms of office. On the same day, the Election Commission of India, also issued notification u/s 30 of the Act fixing the calendar of events for the purpose of holding the elections accordingly. Osmanabad-cum-Latur-cum-Beed Local Authorities Constituency was one of those six constituencies. According to the notification issued by the Election Commission, last date for making nomination was 25th Sept. 1987 and the entire election process was to be completed by 21st Oct. 87. Respondent Shivaji and Ors. filed a writ petition under Article 226 on 26th Sept. 87 before the High Court of Bombay challenging the validity of the notification on the ground that the notification was invalid because the Zila Parishad Osmanabad and the Zila Parishad of Latur district, which were within the constituency, had not been constituted and the Administrators were appointed to run the said Zila Parishad and, therefore, the members of the said Zila Parishad, who were entitled to take part in the said election, had been deprived of their right to participate in the said election. The Bombay High Court while issuing the notice on the writ petition by an interim order *ex parte* directed the postponement of the last date of withdrawal of the candidature from 28.9.87 to Oct.1, 1987. Thereafter a D.B. of that High Court dismissed the said writ petition on October 1, 1987. The D.B. relied on the decision in *Inderjit Barua and Others Vs. Election Commission of India*, , which has laid down that the validity of an election process under the Representation of People Act could be challenged only in election petition filed under that Act as provided by Article 329(b) of the Constitution while dismissing the writ petition. The said D.B. did not make any observation as to the effect of interim order passed by it earlier on the election programme. Eighteen candidates withdrew their candidatures by 1st Oct. 1987, which was the last date for withdrawal of candidatures as per interim order passed by the High Court. In the circumstances, the Election Commission considered it fair to postpone the last date of poll from 18th Oct. 1987 to some later date to secure compliance with the spirit underlying Section 30(d) of the Act. The Election Commission also notified under the same notification the revised date of poll and last date for completion of process of election as 4th Nov. 1987 instead of 21st Oct. 1987. But on 16th Oct. 1987, respondents 1 to 5 filed a review petition before the High Court seeking direction to the effect that the election programme might be re-

notified on the grounds that clear 20 days" interval was not there between the last date of withdrawal of candidatures and the date of poll, which had been originally fixed as 18th Oct. 1987. The D.B. of the High Court was informed by the Counsel for the State and Returning Officer that the Election Commission had on 15.10.87 already postponed the date of poll from 18th Oct. 1987 to 1st Nov. 1987. Despite this, the High Court while issuing notice before admission, stayed the election fixed for 18th Oct. 1987 by an interim order against which the Election Commission filed Special Leave Petition. The Apex Court held as under:

Article 329(b) of the Constitution provides that notwithstanding anything contained In the Constitution, 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. The disputes regarding the elections have to be settled in accordance with the provisions contained in Part VI of the Act. Section 80 of the Act States that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. The expression "election" is defined by Section 2(d) of the Act as an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir. Thus a dispute regarding election to the Legislative Council of a State can be raised only under the provisions contained in Part VI of the Act. Section 80A of the Act provides that the court having jurisdiction to try an election petition shall be the High Court. An election petition has to be presented in accordance with Section 81 of the Act. In view of the non obstante clause contained in Article 329 of the Constitution, the power of the High Court to entertain a petition questioning an election on whatever grounds under Article 226 of the Constitution is taken away. The word "election" has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329(b) occurs.

Where the High Court entertained a writ petition challenging the notification fixing the calendar of events for the purpose of holding the elections to legislative council from certain local authorities constituency and, first, by an interim order, postponed the last date for withdrawal of candidatures and the high Court after itself dismissing the writ petition on the ground that It had no jurisdiction to interfere with the process of election at that stage in view of the provisions of Article 329(b) of the Constitution, entertained a review petition on the ground that 20 days clear interval was not there between the last date of withdrawal of candidatures and the date of poll and by interim order stayed the holding of

election even though the Election Commission had postponed the date of poll to secure compliance of spirit of Section 30(d), both the interim orders, the one postponing the last date of withdrawal of candidatures and the other staying the poll were without jurisdiction.

15. In *S.T. Muthusami Vs. K. Natarajan and Others*, , after the commencement of the election process i.e. issuance of the notification for the election of the office of the Chairman of the Panchayat Union, Madathukkulam, a writ petition was filed on the ground that the allotment of symbol to the appellant was in violation of the provisions of the Tamil Nadu Panchayats Act, 1958 and the Rules made thereunder. The Hon'ble Supreme Court held that it was not appropriate for the High Court to interfere with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election held for the purpose of filling a vacancy in the office of the Chairman of the Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such election and that the aggrieved parties by the result of the election can question the validity of the election by an election petition. It was further held that the non-compliance of the provisions of the Act and the Rules made thereunder would not automatically vitiate the election and that the exercise of the jurisdiction of the High Court in that case under Article 226 of the Constitution could not be supported.

16. In *Inderjit Barua's case (supra)*, the revision of electoral rolls was dispensed with by the Election Commission. That order was not challenged and elections were held on the basis of such unrevised electoral roll for the Assam Legislative Assembly on the basis of the electoral rolls of 1979. Interpreting the provisions of Article 329(b) and 226 of the Constitution of India, it was held that the validity of the election could not be challenged in the writ petition on the ground that the electoral rolls were invalid because the bar under Article 329 operates and that the plea that the elections were challenged as a whole and not individually was immaterial. The Apex Court further held that the court can also not issue any direction to the Election Commission not to hold any election to the Parliament from Assam unless the revision of the electoral roll was complete.

17. In *A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others*, , the Apex Court has emphasized that where election is imminent, the High Court must be very cautious and slow to interfere and to pass orders or directions postponing the election. It was also held that the allegations of irregularities in the electoral rolls, held on facts were vague and general in nature and in absence of material before it, the High Court was not justified in passing orders for postponement of the election. It was further observed that no High Court in exercise of the powers under Article 226 of the Constitution should pass any orders interim or otherwise, which has the tendency of effect of postponement in the election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked and that the imminence of the electoral

process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction.

18. Therefore, keeping in view the law laid down by the Apex Court, in the case on hand, once the notification dated 29th Oct. 1994 u/s 23(IA) of the Act has been issued and published in the Rajasthan Gazette Extra Ordinary dated 31st Oct. 1994 alongwith the revised calendar of events of election, the election process for the impugned election commenced and that same cannot be stayed or withheld or in any way interrupted on the ground of any infirmity in the formation of or delimitation of the wards, reservation of the reserved wards, publication of the electoral rolls by filing a writ petition under Article 226 of the Constitution because the bar of Article 243ZG operates.

19. It is heedless to mention that any irregularity in the publication of the draft electoral roll does not render the election to be Void. The challenge regarding the delimitation or infirmity information of the wards or reservation of reserved wards or non compliance of the procedure or law in respect of the impugned election in this writ petition are not legally maintainable in view of the bar provided by Article 243ZG of the Constitution of India and Section 329 of the Act. Apart from it the election should not be held up and the person aggrieved should not be permitted to ventilate his individual interest. On the other hand, the general interest of the electorates at large requires that the election should be gone through according to the time schedule.

20. In my considered opinion, this writ petition has been filed at a belated stage for personal interest of the petitioners and for ulterior motives to get the election of the municipal board of Pali postponed.

21. Hence for the reasons mentioned above, this writ petition deserves to be and is hereby dismissed. No order as to costs.