

(1957) 08 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 607 of 1956

Shiam Sunder and Another	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 28-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Pepsu Municipal Election Rules, 1949 — Rule 10, 2, 44, 51, 52
Punjab Municipal Act, 1911 — Section 240

Citation : AIR 1958 P&H 128

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; N.L. Saluja, for A.G. and J.N. Kaushal, for the Respondent

Final Decision : Allowed

Judgement

Bishan Narain, J.—The Barnala town in the District of Sangrur is a second class municipality. Elections were held for this municipality in September 1956. Two of the residents of the town who are also registered as voters in the rolls of this municipality have filed this petition under Art, 226 of the Constitution for a writ, direction or order in the nature of quo warranto challenging the right of the respondents who were elected as members of the municipality in this election to act as such. The petitioners pray that the office of the members of the municipality may be declared to be vacant and the respondents be restrained from discharging any of the functions, rights and duties of members of the municipality.

This petition is based on the allegation that the election was void and invalid and was vitiated by various illegalities and irregularities. The petitioners have impleaded as respondents the State of Punjab, tho Deputy Commissioner, Sangrur, and ten members who were elected in the impugned election. A reply has been filed on behalf of the Punjab State pleading that the election

proceedings were legal and regular and that this Court should not interfere as the petitioners have not taken advantage of the alternative and effective remedy available to them under the election rules by means of an election petition.

2. The facts leading to this petition are these. The State Government (the erstwhile Pepsu Government) issued a notification u/s 240(1) (b) and (c) of the Punjab Municipal Act, as then in force in the Pepsu State, dividing tills municipality into 9 election wards and the boundary of each ward was described in the schedule appended thereto.

It was further laid down in this notification that one member shall be elected from each ward excepting ward No. 3 from where two members were to be elected. Elections were then held in this town in 1952. In 1953 the State Government included certain specified areas from outside within the Barnala Municipality by issue of a notification u/s 5(3) of the Municipal Act. This notification was issued on 30-7-1953. This additional and extended area is on all sides of the town and it admittedly appreciably increased the area and the number of inhabitants of this municipal town.

It appears that later on the municipality was superseded and an administrator was appointed to carry on the functions of the municipality. In 1956 the Deputy Commissioner, Sangrur, fixed September 1956 for holding general elections for this municipality under R, 3 of the Pepsu Municipal Election Rules, 1949, made tinder Section 240 of the Municipal Act. He further appointed the Sub-Divisional Officer, Barnala, as the Deputy Commissioner under Rule 44 of these Election Rules to perform the functions of the Deputy Commissioner for the purposes of the election.

It appears that the Administrator of the Municipality was directed to prepare the preliminary electoral roll. The Administrator by his letter dated 11-7-1956 pointed out to the Sub-Divisional Officer that (1) as he was not the Election Officer he could not prepare the electoral roll, and (2) that as the population etc. in this municipal town had increased since the 1952 elections, it was necessary to divide the town afresh into wards, so that the electoral roll might be prepared. The Additional Deputy Commissioner, Sangrur, then by letter dated 13-7-1956, laid down that the wards for the elections would be as were in 1952 elections.

The Sub-Divisional Officer on his part informed the Administrator that he (the Sub-Divisional Officer) had been appointed the Section Commissioner by the Deputy Commissioner, Sangrur, under a circular issued by the Pepsu Government on 26-6-1953 authorising the Deputy Commissioner to appoint any other officer as an Election Commissioner. By the same communication the Sub-Divisional Officer issued directions to the Administrator which read-

"It is therefore requested that wardwise alphabetical electoral rolls may please be prepared and got printed by getting competitive rates without any further delay. This all work must be completed within a period of fortnight, so that further necessary steps into the matter may be taken. In case the electoral rolls

be not prepared within the proscribed period, you will be held responsible for delay."

Thereafter the electoral roll was prepared. It appears that certain objections were raised to the electoral roll but the fate of these objections is not clear on this record. The elections were duly held and respondents Nos. 3 to 12 were elected. Four persons including the present petitioners filed an application under rule 67 before the Pepsu Government praying that the election be set aside as material irregularities had been committed in the conduct of the elections and a request was made to the Government not to give its approval in the meanwhile to the election of the successful candidates.

This application was made on 10-10-1956. The present petitioners filed the present petition on 26-12-1956 and it is alleged that this petition has been filed as the Government has taken no action on the application made under Rule 67.

3. The petitioners challenge the validity of these elections on the following grounds-

1. that after the addition of territory within the jurisdiction of the Barnala Municipality, no election wards were constituted by the Government;

2. that the Sub-Divisional Officer could not act as an Election Officer as the Deputy Commissioner who was appointed as such by the Government could not delegate his office to him;

3. that the electoral roll was prepared by the Administrator who had no authority to do so; and

4. that the electoral roll prepared was defective under various headings given in detail in the petition.

4. The grounds other than the first one are easily disposed of. The second objection has no force. Rule 2(b) of the Election Rules lays down that an Election Officer is one who has been appointed by the Government. The then Pepsu Government by general order dated 26-6-1953 appointed all Deputy Commissioners to be Election Officers, but they were authorised to appoint any of the other officers to act as such.

In the present case the Deputy Commissioner, Sangrur, admittedly appointed the Sub-Divisional Officer, _Barnala, to be the Election Officer in the elections to be held in this municipal town to carry out the 1956 elections. It follows that the Sub-Divisional Officer could validly act as an Election Officer. This is also in consonance with Rule 44 which permits the Deputy Commissioner so appointed to delegate the functions to be performed by him under the Election Rules to any person he likes in circumstances given in the rule.

5. The third objection relates to the preparation of the electoral roll. The petitioners' case is that it was prepared by the Administrator, while under the Election Rules this could only be done by the Election Officer. I have reproduced

the directions given by the Sub-Divisional Officer whom I have held to be validly appointed Election Officer. From these directions it is clear that the Election Officer had directed the Administrator to prepare the electoral roll and to get it published. Rule 8 of the Election Rules provides:

"The Election Officer shall cause a roll for each constituency of a municipality to be prepared in Form I and published at a convenient time."

From this rule it is clear that the Election Officer is not expected to prepare the roll himself, but it is his duty to see that it is prepared. There is no dispute that in fact the roll was duly prepared and published. The procedure adopted therefore cannot be held to be in contravention of Rule 8.

6. The fourth ground relates to non-observance of the directions laid down in Rule 8 for the preparation of the preliminary electoral roll. Rules 9 and 10, however, provide a remedy of objections by aggrieved parties to the Revising Authority appointed under the rule and a revision petition thereafter to the Deputy Commissioner. His decision becomes final, subject to an election petition. Admittedly, the petitioners have not availed of this remedy, and it will not be proper for this Court in the present proceedings to go into the merits of these objections, particularly when they involve disputed questions of fact. I have, therefore, no hesitation in rejecting this ground also.

7. The first objection of the petitioners has, in my opinion, substance. It relates to delimitation of wards in this municipal town. Section 12 of the Punjab Municipal Act lays down that a municipality shall consist inter alia of members elected under the rules framed under the Act. Section 240 (1) (b) & (c). empowers the Government to frame rules as to division of municipalities into wards or of the inhabitants into classes and as to number of representatives proper for each ward or class.

The then Pepsu Government framed general rules u/s 240 of the Act and notified them on 7th of September, 1949. These rules, however, do not deal with matters mentioned in Section 240 (1) (b) & (c). No other such rule has been brought to my notice which covers these points. Before the 1952 elections, the Government had notified that in this municipality there will be nine wards and ten members shall be elected therefrom. This rule could be changed only by the Government. It is common ground that no such alteration was made after the extension of the boundaries of the municipal town in 1953.

It follows that the 1952 rules remained operative in the 1956 elections, i.e., that the boundaries of the wards carved out in 1952 continued to remain in force and the inhabitants residing in the extended area were not included in any of the old wards. These inhabitants, therefore, could not vote from the old wards nor was any new ward created from which they could participate in the elections.

8. The petitioners' case is that the Administrator arbitrarily added different portions of the extended area to the existing old wards and their objection is that

this could be done only by the State Government and not by the Administrator. The Government denies that the new areas were Included by the Administrator in the old wards. Its case, however, is that the election was held on the basis of 1952 wards and it is clear that if the names of persons residing or carrying on business inside the extended areas were inadvertently included in the rolls of old wards, then the petitioners or others aggrieved could have got the mistake rectified by filing objections under Rule 10. Under this rule these objections had to be filed before the electoral roll was finally prepared.

The basic assumption in this plea of the Government is that the names of the persons residing or carrying on business in the extended area could not have been legally included in the roll of 1952 wards and that they had no right to vote in the 1956 elections. In my view, in either case there has been no delimitation of constituencies in accordance with law.

9. If the Administrator included the extended areas into the boundaries of the 1952 wards, then his action was obviously in excess of power and jurisdiction vested in him when the Election Officer called upon him only to prepare the electoral roll. This inclusion could be effected only by the State Government.

It must be remembered that delimitation of constituencies is a delicate and complicated matter. It can seriously affect the results of an election and may, if not properly done, make a fair election impossible. It is probably for this reason that in this State this power has been retained by the Government and it has not been delegated to Election Officers. This legal position is not contested by the learned counsel for the respondents. Delimitation by an unauthorised person cannot be considered to be a mere irregularity but must be held to be an illegality which affects and vitiates the entire election.

10. It is now to be determined whether the election in question cannot be held to be valid when according to the Government an appreciable . number of persons residing or carrying on business within the municipal limits of this town could not cast their votes and participate in the election as a matter of right. Now, the Deputy Commissioner had ordered under Rule 3 that a general election be held in this municipal town for the election of members for the entire municipality. This election was not limited to any given area or to any given class of persons.

In 1956 the municipal town had within its area the territories included therein by 1953 notification. Under election Rule 6 every resident within the municipal limits was entitled to vote unless he was not a citizen of India or was below the age of 21 and was of unsound mind. It is not the Government case that all the residents in this extended area suffered from one or the other infirmity mentioned in this rule. These persons could not be deprived of the right to vote or participate in the elections by the Government without a specific order and a rule u/s 240 (1) (b) & (c). Admittedly, no such order or rule has been made in the present case.

It follows that in an election for the entire municipality an appreciable portion of its inhabitants was not allowed to vote and that too without any valid order of

the Government. This is a very serious matter. In my opinion, the 1952 delimitation had become obsolete when the boundaries of this municipality were extended in 1953 and no election could validly take place in this municipal town without new and fresh delimitation under -S. 240 (1) (b) & (c). A valid delimitation of constituencies is the first and essential prerequisite for a valid election. This is wanting in the present case, and its absence renders the whole election invalid.

11. The learned counsel for the respondents strenuously urged before me that I should not interfere with the election in these proceedings in the nature of quo warranto, when the petitioners did not challenge the validity of the electoral roll under the election Rule 10 or by filing an election petition under Rule 52, and it was urged that by virtue of Rule 51 the election could not now be challenged on any ground. There cannot be any doubt that under Rule 3 a person's name has to be entered on the roll of the constituency in which he resides or carries on business. It is open to the party interested in the matter to file objections to the inclusion in or exclusion from this roll of a name. In the present case the petitioners could have filed objections to the inclusion of names in the rolls of 1952 wards of persons who resided or carried on business in the extended area. This, however, - would have in-volved riling of considerable number of petitions when in substance the objection was not to the inclusion of a particular name in the roll but to the right of including the residents etc. of a particular area in a particular ward.

This objection, to my mind, lies outside the scope of election Rules 8 and 10. Filing of individual objections on this ground would have not only been extremely inconvenient but would not have been appropriate and effective. Similarly, this objection lay outside the purview of an election petition. The election petition under Rule 52 is directed against the return of a candidate on the ground of corrupt practice or material irregularity in the procedure. The definition of the latter term in the election rule, however, does not include objections to the inclusion in or exclusion from the electoral roll of names but extends to matters like improper acceptance or refusal of a nomination or a vote. The objection relating to delimitation of constituencies is not included in the ground of corruption nor in "material irregularity in the procedure of an election."

It falls outside the scope of this ground. Under Rule 67 the Government is given the power to interfere on the grounds on which an election petition can be maintained, and it is laid down therein that the case shall be dealt with in the manner-prescribed in the rules. Under Rule 68 it may declare the elections to be void and order new elections. It is, therefore, clear that the objection now under consideration lies outside the purview of Rr. 52 and 62. The respondents, therefore, cannot invoke Rule 51 as a bar to the present petition.

12. Moreover, an election petition can be filed only by a defeated candidate or by five electors. This objection relating to delimitation could not be filed by the residents in the extended area, as, according to the Government, they were not

entitled to vote in this election. It cannot, therefore, be said that the petitioners in the present case had an alternative remedy which was equally appropriate and effective.

Undoubtedly a statutory remedy displaces a writ in the nature of quo warranto, but it is not so displaced if the objection taken falls outside the scope of the statutory remedy. Further, an election petition may be maintained by a defeated candidate or by five voters in enforcement of their right under the Election Rules, but a quo warranto can also be invoked by the people in their sovereign capacity as an inherent right (vide para 150 of Extraordinary Legal Remedies by Ferris). After all every subject has inherent right in seeing that public duties are performed by those competent to exercise them.

13. Now, the only point that remains to be considered is whether I should in the exercise of my discretion issue the writ prayed for by the petitioners. This is not a writ which the petitioners are entitled to as a matter of right. I am conscious of the fact that it is highly inconvenient to the people concerned if an election is set aside, but I am convinced that in the present case the residents as a whole in this municipal town have not been able to express their opinion properly and it appears that a considerable number of them have been disenfranchised, if the plea of the Government is to be accepted.

If by any chance some of those who have been residing or carrying on business in the extended area's have cast their votes, then this has not been done in accordance with law. The objection in this case to the absence of valid delimitation of constituencies is not merely of a technical nature but is of substance. This defect was brought to the notice of the Deputy Commissioner concerned before the elections were held, but it was ignored by the authorities concerned. I have, therefore, decided though with reluctance, to set aside the election. No other point was argued before me nor was it urged that a writ in the nature of quo warranto could not be issued in the present case.

14. For all these reasons this petition succeeds. I declare the office of the ten elected members (respondents Nos. 3 to 12) to be vacant and I order that these members be restrained from discharging any of the functions, rights and duties of a member of the Barnala Municipality. The petitioners will get their costs from respondents Nos. 1 and 2. Counsel's fee Rs. 100/-.