
(1963) 02 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 929 of 1961

Shri Ramji Das

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 14-02-1963

Acts Referred:

Citation : (1963) 02 P&H CK 0034

Hon'ble Judges : Khanna, J

Bench : Single Bench

Advocate : D.D. Khanna, for the Appellant; H.S. Doabia, Additional Advocate General for Respondents Nos. 1 to 3 and Mr. Anand Swaroop, for the Respondent

Final Decision : Dismissed

Judgement

Khanna, J.—This is a petition under Article 226 of the Constitution filed by Ramniji Das praying that the election programme for the election to the Municipal Committee of Bhiwani issued by the Deputy Commissioner, Hissar, respondent No. 2, be quashed and all proceedings and actions taken in pursuance of that election programme be cancelled.

2. Although a number of grounds have been taken in the petition at the hearing of the petition Mr. Durga Dass Khanna, learned counsel for the petitioner, has pressed only two grounds. It is contended in the first instance that under sub-rule (3) of rule 3 of the Municipal Election Rules (hereinafter referred to as the Rules) the election programme should be published not less than ten days before the first of the dates specified in the election programme. This provision according to the learned counsel, was not complied with In the present case and as such rendered invalid the election programme. The other contention of the learned counsel is that arrears of house tax, water-tax and other municipal taxes were due from respondents 4 to 9, and as such they were ineligible to file their nomination papers. The order of the Returning Officer as well as of the Deputy Commissioner, Hissar, in revision refusing to reject the nomination papers of the aforesaid respondents, were stated to be illegal, unsustainable and ultra vires of

their powers.

3. So far as the first contention is concerned. I find that rule 3 reads as under:

3. (1) The Deputy Commissioner shall frame a programme for general elections hereinafter referred to as the "election programme" of the Municipal Committee.

(2) The election programme shall specify the date or dates on/by or within which :

(i) the nomination papers shall be presented:

(ii) the list of nomination papers shall be posted;

(iii) the nomination papers shall be scrutinised;

(iv) applications for the revision of the orders of the authority scrutinising the nomination papers may be made to the Deputy Commissioner;

(v) the revision application shall be decided;

(vi) a candidate may withdraw his candidature;

(vii) the list of valid nomination papers shall be posted;

(viii) the list of polling stations shall be posted;

(ix) the poll shall be held;

(x) the ballot papers shall be counted (here time and place fixed for the purpose shall also be specified); and

(xi) the result of election shall be declared,

(3) The election programme shall be published not less than ten days before the first of the dates specified in the election programme, by posting a copy at the office of the Deputy Commissioner; at the office concerned of the Municipal Committee; and at other conspicuous places in the said Municipality as may be determined by the Deputy Commissioner in this behalf.

The election programme about the election to the Municipal Committee of Bhiwani was, according to the allegations of the petitioner, published on 1st June, 1961 and was to the following effect:

NOTICE

The following election programme is framed and published under sub-rules (1) and (3) of rule 3 of the Municipal Election Rules, 1952, for election to the Municipal Committees of Bhiwani, Fatehabad and Kalanwali, in the Hissar District

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(1) Issue of 1st notice fixing election programme 10-6-1961

(2) Last date for making nominations 20-6-1961

- (3) Preparation and Publication of list of nominations 21-6-1961
- (4) Scrutiny of nomination papers 27-6-1961
- (5) Receipt of applications for revision of scrutiny decisions 30-6-1961
- (6) Decision on revision petitions 3-7-1961
- (7) Last date of withdrawal of candidature 5-7-1961
- (8) Preparation and publication of the final list of nominations 6-7-1961
- (9) Preparation and publication of list of polling stations 10-7-1961
- (10) Poll, if any 16-7-1961
- (11) Date on which counting of votes will take place Immediately after the close of the poll.
- (12) Date of declaration of result. Immediately after the counting of votes is completed.

Dated: 1-6-1961

Sd/- Iqbal Singh Deputy Commissioner, Hissar.

According to Mr. Durga Dass Khanna, as the first date mentioned in the above election programme was 10th June, 1961 and as the notice was issued on 1st June, 1961, it cannot be said that the election programme was published not less than ten days before the first of the dates specified in the election programme. Reliance in this connection is placed on a Bench decision of this Court *Jai Bhawan Sharma and another v. Matu Ram and others* (1963) 65 P. L. R. 1090, wherein it was held that the words "not less than ten days" in rule 3(3) of the Punjab Municipal Election Rules, 1952 meant ten clear days and ten clear days had to intervene between the publication of the election programme and the first of the dates specified in it and where only nine days intervened between the two dates there was contravention of the mandatory provisions of rule 3(3).

4. I have given the matter my consideration and am of the view that there was no infraction of the provisions of sub-rule (3) of rule 3 in the present case. The words "the first of the dates specified in the election programme" mentioned in sub-rule (3), in my opinion, refer to the date mentioned in clause (i) of sub-rule (2) which relates to the presentation of the nomination papers. It is sub-rule (2) of rule 3 which mentions the dates which have to be specified in an election programme, and as the date of the presentation of the nomination papers is the first of the dates both in chronological as well as serial order amongst the dates mentioned in sub-rule (2), it would follow that "the first of the dates specified in the election programme" has to be the date of the presentation of the nomination papers. If the Deputy Commissioner mentioned an additional date in the notice of election programme it would not in any way alter or affect "the first of the dates specified in the election programme" mentioned in sub-rule (3),

which would continue to be the date of the presentation of the nomination papers, because the mention of such an additional date was unnecessary and went beyond the requirements of sub-rule (2). Rule 3 has to be read as a whole and its sub-rules cannot be read in compartments as contended by Mr. Khanna. As the election programme was, according to the allegations of the petitioner, published on 1st June 1961 and the last date for presenting nomination papers was 20th June 1961, it cannot be said that the election programme was published less than ten days before the first of the dates specified in the election programme. So far as Jai Bhagwan Sharma's case is concerned, I find that the election programme was published on 29th July 1961 and the last date for presenting nomination-papers was 8th August 1961. As there was not an interval of clear ten days between the date of publication of the election programme and the first of the dates specified in it, the Court held that there was contravention of the rules but in the present case, as stated above, there was a much longer interval between 1st June 1961, on which day the election programme was published, and 20th June 1961, which was the last date for presenting nomination papers. It may also be mentioned that in Jai Bhagwan Sharma's case (supra) the Court found on facts that the contravention of the rules had caused actual prejudice to the petitioners. No such prejudice has, however, been shown to have been caused to the petitioner in the present case.

5. So far as the second contention of Mr. Khanna is concerned that respondents 4 to 9 were ineligible to stand in election, reliance is placed upon clause (g) of rule 7 which reads as under:

No person shall be eligible for election as a member of a Municipal Committee, who-

* * * *

(g) is an undischarged insolvent, or is in arrears of any kind due from him (otherwise than as a trustee) to the Committee when a special demand in this behalf has been served upon him by the Committee;

It is urged that as those respondents were in arrears of taxes due from them to the Municipal Committee, they were ineligible to stand in election. In this respect I find that before a person can be declared to be ineligible, it has to be shown that he was not only in arrears of any kind due from him (otherwise than as a trustee) to the Committee but also that a special demand notice in this behalf had been served upon him by the Committee. These are essential questions of facts and when there is a dispute about them this Court would not normally go into them in a writ petition. The respondents in their written statements have denied that they were ineligible for election and that a demand notice had been served upon them by the Municipal Committee in respect of the tax due from them. As this matter can be gone into in an election petition wherein the parties would have full opportunity of adducing evidence, I would not go into this disputed question of fact in the writ petition.

6. It may be stated that the present petition was filed on 12th July 1961. Prayer was then made for staying the elections which were due to take place on 16th July 1961. This Court, while admitting the petition, dismissed the prayer for staying the elections as the elections have already taken place, the present petition has apparently become in-fructuous and the proper remedy is to file election petitions for setting aside the elections.

7. The petition, accordingly, fails and is dismissed, but, in the circumstances of the case, I make no order as to costs of the petition.