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Rameshwar Soni Vs. Assistant Block Development Officer and ors.

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Court : Madhya Pradesh

Decided On : Feb-21-1972

Reported in : AIR1973MP124; 1972MPLJ357

Judge : S.B. Sen and ;S.R. Vyas, JJ.

Acts : Madhya Pradesh Gram Panchayat Election and Co-option Rules, 1963 - Rules 11(5), 11(6) and 27(2); [Constitution of India](#) - Article 226

Appeal No. : Misc. Petn. No. 52 of 1970

Appellant : Rameshwar Soni

Respondent : Assistant Block Development Officer and ors.

Advocate for Def. : S.L. Dubey, Adv.

Advocate for Pet/Ap. : A.M. Mathur, Adv.

Disposition : Petition dismissed

Judgement :

S.B. Sen, J.

1. This is a petition under Article 226 of the [Constitution of India](#). It pertains to the election of a Gram Panchayat. The petitioner came with the allegation that he is a resident of village Bhagora, tahsil and block Mhow . He resides with his family in

house No. 126 of village Bhagora. He is a voter at No. 56 of the voters' list of ward No. 4 of Gram Sabha Bhagora since 1951. He was elected Sarpanch of Gram Panchayat village Bhagora since 1962 and was elected Panch since 1956.

2. Elections to the various Panchayats are being held and voters' list of that village was revised in February, 1970 under Rule 10 of the M. P. Gram Panchayat Election and Co-option Rules, The list was published on 24-3-70 under Rule 6. The last date for filing the nomination papers to the office of the Gram Panchayat Bhagora was fixed as 13-4-70 UP to 3 p.m. The petitioner filed his nomination form for the office of Panch,

3. We may mention here that the petitioner has not mentioned at what time he had filed the nomination form, though in the other petition (which is almost on similar grounds) he has given the time and date. The petitioner further alleges that on the last date of the filing of nomination form, i.e. 13-4-70 at about 12.45 p.m. he received a show cause notice to show cause by 2 p.m. of that day as to why his name should not be excluded from the voters' list. On receipt of this notice, the petitioner further alleges, that he reached the office of the respondent No. 1, that is the Assistant Block Development Officer of Mhow who was the returning officer Gram Panchayat elections and made an application on that day at about 1.20 p.m. stating that the time given to him for show cause was too short and was difficult for him to produce evidence in such a short time. He therefore, wanted further time. But this was not granted At 4.30 p.m. on that day he moved an application again to supply a copy of the objection so as to know who has filed the objection and When the objection was filed. But he was told that his name has been excluded from the voters' list already at about 3 p. m. The petitioner was however told the name of the person who had raised the objection. He was Gordhan and the objection was raised at 5 p.m. on 12-4-1970.

4. The respondent No. 1 rejected the nomination paper of the petitioner on 14-4-70 on the ground of exclusion of his name from the voters' list. As there was no other person contesting the election the respondent No. 2, the only candidate was declared elected as Panch, The petitioner contends that the Returning Officer rejected the nomination form of the petitioner on illegal grounds and, therefore, the

order dated 14-4-70 rejecting the nomination paper was illegal and without jurisdiction.

5. The grounds on which the petitioner challenges the order are: (i) that the objection was not filed within 10 days from the date of notice of publication of the list as required by Rule 6 (1) (a), (ii) that the notice to show cause to exclude the name of the petitioner was served at 12.45 p.m. on 13-4-70 asking him to show cause by 2 p.m. As such there was no reasonable opportunity given to the petitioner as contemplated under Sub-rule (5) of Rule 11 of the Rules and (iii) that the order dated 14-4-70 rejecting the nomination form of the petitioner on grounds other than Rule 27 (2) is without jurisdiction. The petitioner has, therefore, sought a writ for quashing the order of respondent No. 1 dated 13-4-70 whereby the name of the petitioner was excluded from the voters' list and also a direction or order to be issued quashing the order of the respondent No. 1 dated 14-4-70 whereby the respondent No 1 rejected the nomination form of the petitioner.

6. A return has been filed on behalf of the respondent No. 1 and No. 3 as also on behalf of the respondent No. 2.

7. Respondents Nos, 1 and 3 who have filed a joint return have submitted that the rejection of the nomination paper was because the petitioner's name appears in the voters' list of Ward No, 4 at serial No, 2865 of Mhow Cantonment It was further averred that by virtue of Section 6 (1) (b) no person is entitled to be registered in the list of voters of Gram Sabha area if he is registered in electoral roll relating to any other local authority. It was also asserted that a person is not entitled to be registered in the list of voters of more than one Gram Sabha. The nomination form of the petitioner was rejected as his name appeared In the electoral roll of Mhow cantonment. Therefore, the could not continue in the voters' list of the Gram Sabha.

8. It was admitted that the petitioner lives in village Bhagora and his name also appeared in the voters' list of Bhagora. It was, however, asserted that the petitioner resides in house No 2498 in Gokul Ganj in Mhow Cantonment and his name appeared in the voters' list along with the members of his family. The respondents further asserted that the petitioner as well as his adult members of

the family are voters in Mhow Cantonment The respondents further submitted that an objection was filed by one Madanlal and Gordhan on 12-4-70 that the name of the petitioner could not appear in the voters' list of Gram Sabba Bhagora, as his name appeared in the list of voters of Mhow Cantonment. The petitioner was, therefore, given a show cause notice. He filed a reply on 13th April. 1970, the petitioner in spite of the objection filed his nomination paper. The Returning Officer allowed the objection and the petitioner's name was removed from the voters' list as a result of which the nomination paper of the petitioner was rejected.

9. The respondents 1 and 3 further submitted that the petitioner asked for time, but time was not given as it was the last day for consideration of the objection regarding the corrections in voters' list and the objection was to be considered and decided on that day. The objection of Madanlal was allowed and the name of the petitioner was removed from the voters' list of Gram Sabha. The list of voters could be corrected till 13-4-70 by virtue of amendment to Rule 11 (6): The respondents also say that the Petitioner himself had read the objection filed by Madanlal and. therefore, it was not necessary to supply the name. The nomination was filed on 13-4-70 and it was rejected on the date of scrutiny. The respondents have further submitted that the date of filing of objection for corrections of voters' list coincided with the last date for filing nomination papers and the objection was received one day before the last date of filing the nomination paper. There was, therefore, no other alternative but to call for a reply on that date and dispose of the objection. The order allowing the objection was within the competence of the Returning Officer. The respondents have also submitted that the petitioner had an alternative remedy of filing an election petition.

10. If we look to the grounds mentioned in the petition It is dear that the petitioner has taken four grounds. The first is that the objection was not filed within 10 days from the date of notice of publication of the list as required by Rule 6 (1) (&) of the Rules and hence the order dated 13-4-70 excluding the name of the petitioner is without jurisdiction aS regards this objection, it is misconceived. Under the amended Rule 11 (6) amended by Notification No. 1984-1872 XVIII-PR-70 published in M. P. Gazette Extraordinary dated 30th March, 1970 the objection can be taken till the date of nomination. The second and the third ground taken

together is that the show cause notice was served on the petitioner at 12.45 p.m. on 13-4-70 and he was asked to show cause by 2 p.m. on the same day. This was according to the petitioner against Sub-rule (5) of Rule 11 of the Rules which says'

'No order under this rule for the exclusion of the name of a person from the voters' list shall be made unless the person whose name is proposed to be excluded has been given a reasonable opportunity of being heard.'

and also against the principles of natural justice.

11. Rules have been framed under Section 12 of the M. P. Panchayat Act. Under these rules, which are divided into various chapters, chapter III relates to voters' list and Rule 5 speaks of the preparation of voters' list. Rule 6 speaks of publication of lists prepared under Rule 5. Under Section 6 each voters' list shall be published by being exhibited at the office of the Panchayat, on the notice board of the Tehsil within which the Gram Sabha lies and at one or two conspicuous places along with a notice inviting objections etc. Under Rule 7 claims and objections are heard. Under Rule 7 when the claims and objections are heard any person may prefer a claim or objection by delivering to the Collector or authorised officer an application in writing not later than 3 O'clock in the afternoon of the 10th day from the date of the notice under Rule 6. No claim or objection received after that time would be entertained. The Collector would dispose of the objections under Rule 8. Under Rule 9 every member of the public shall have the right to inspect the voters' list referred to in Sub-rule (4) of Rule 8 on payment of a fee of one rupee and attested copies of the same may be issued to an applicant on payment of the same fees as are prescribed for copies of revenue records. Under Rule 10 duration of voters' list and their revisions are mentioned and under that rule every such list shall be revised and brought up-to-date whenever a bye-election or general election is due to take place or whenever any change in the limits of the Gram Panchayat or ward thereof takes place. The provisions of Rules 6, 7 and 8 apply to such revisions.

Under Rule 11 however, and that is the rule with which we are presently concerned, any person may apply for the correction of any voters' list for the time being in force by presenting an application in that behalf to the Collector or

authorised officer. Sub-rule (5) of Section 11 says that 'a reasonable opportunity of being heard' should be given to the person whose name is proposed to be excluded.

12. It has been contended by the petitioner that Sub-rule (5) 'has not been complied with. Therefore, the question is whether reasonable opportunity was given. The admitted position is that at 12-45 p.m. on 13-4-71 the petitioner received the notice, that an objection has been received and he was asked to show cause by 2 p.m. His asking for time was rejected and his name was excluded and on the next day his nomination paper was rejected on the ground that his name did not appear in the voters' list. Time undoubtedly is very short, that is, he received it as he mentions at 12.45 p.m. But the question is whether opportunity was reasonable. A candidate must know whether his name appears in the list. The objection here is that his name also appeared in the voters' list of Mhow Cantonment. There cannot be any doubt that under Section 6 (1) (a) of the M. P. Panchayats Act no person shall be entitled to be registered in the list of voters for more than one sabha. He was told by the objection dated 12-4-70 which he received admittedly by 12-45 p.m. on the next day that his name appears in the list of voters of Mhow local area and the number where his name and the name of his family members appeared were also given. The objections which he received were categorical. They were the following:

- (1) That he is not an original resident of Bhagora;
- (2) that his real place of residence is Gopal Ganj, Mhow Cantonment;
- (3) that this name appears in the list of voters in the Mhow Cantonment; and
- (4) that his name appears in the list of voters in Ward No. 4 in serial Nos. 2865, 2866 and 2867.

No reply was given by the petitioner to (3) and (4) which were the crucial points raised. He wanted certificate from the Mhow Cantonment area. He does not say that he has not seen the list of voters of the _ Mhow Cantonment nor does he want time to find out whether his name appears or not. He also does not deny that his

name did not appear in the list of voters. He wanted time till 5 O'clock of that day. It appears there was no order allowing him time till 5 p.m.. but at 4.30 p.m. the petitioner filed his reply in which he raised objection about the right of the objector. According to him the objector who raised the objection regarding the list has no locus standi. There was no reply stating that his name did not appear in the list of voters in Mhow Cantonment area. Before us it has been vehemently argued that one hour's time that was granted was not a reasonable opportunity. We have, therefore, to see whether the time that was granted was in compliance with Rule 11 (5).

13. 'Reasonable opportunity' has been defined nowhere. We have to depend on the circumstances of each case. With this also is connected the question whether any purpose would have been served if opportunity was given. This is because we are not bound to interfere under Article 226, but we will come to the latter question subsequently. First we will take up the question whether the opportunity given was reasonable. The matter is a simple one. The petitioner has been told that his name appears in the Mhow Cantonment voters' list and the number at which his name appears has also been given. Undoubtedly the Returning Officer could have said that he was given time till 5 O'clock as asked for by him. Nothing has been said rejecting the prayer for time, but it appears that this name was delisted earlier as no reply came by 2 p.m.

14. We may here refer to some dispute regarding the time of submission of the nomination paper. In the petition of Rameshwar no time was mentioned as to when the nomination paper was filed. But while arguing, the petitioner's counsel pointed out to the connected petition M. P. No. 51 of 70 filed by Krishna Rao wherein, though originally he did not mention, the time of his filing the nomination paper, he had amended it by saying that it was done at 12.30 p.m. The learned counsel appearing for the State seems to have not noticed this amendment though he was allowed time to correct the written-statement. We therefore, asked him to get an affidavit sworn by the Returning Officer as to the time of filing of nomination paper. He has, therefore, filed an affidavit of Shri Vishnu Shankar Pandey who has stated that the petitioner Krishna Rao filed his nomination paper on 13-4-70 at 3 P.M. In support of this he has also filed a certified copy of the record. Though we

did not order any affidavit to be filed by the petitioner four affidavits have been filed--two each by the petitioner in M. P. No. 52 of 70 and the petitioner in M. P. No 51 of 70. Acknowledgments received showing the time of the receipt of the nomination papers have also been filed. These acknowledgments also show that the nomination papers were received at 3 P.M. The affidavits of the petitioners, however, speak differently.

15. We are, however, inclined to accept the statements, supported by documents, filed both by the petitioner as well as by the Returning Officer and at the time when acknowledgments were given there was no controversy about the filing time. The petitioner's claim is by affidavit, the documents produced by him speaking differently. However, we do not place much importance on this time of filing the nomination papers as the question involved in this petition and No. 51 of 70 is whether in delisting the name of the petitioner reasonable opportunity was given, to him. It is common ground that at 12.45 P.M. the petitioner received the information that an objection has been filed with the grounds given therein and he was asked to file reply by 2 P.M. We have already mentioned the grounds of objection and the reasons why his name should be excluded. He has not denied in his reply that his name does not appear in the list of voters of Mhow Cantonment. It was argued, however, that the list of voters of Mhow Cantonment was not with him and, therefore, he asked for time. But that is not the reason why he asked for time. He asked for time only to get a certificate from the Cantonment Board. The time asked for was till 5 O'clock. That was the last date for filing the nomination paper.

16. What would be a reasonable opportunity in one case may be unreasonable in other. There is no period mentioned nor can that be mentioned obviously. If there was a complicated question for which information would be necessary for reply one would require more time, He has not denied that he does not stay at Mhow. He asked for time to see whether Rules 6 and 7 have been complied with in the matter of objection. It is not that the petitioner asked for time to verify the list of voters of the Mhow Cantonment. He wanted to verify only whether the present objection was in accordance with the Rules 6 and 7.

17. The petitioner, however, in this petition has not challenged the statement that his name appeared in the voters' list of the Mhow Cantonment nor has he challenged in this petition that the objection taken by Madanlal had not the qualification of an objector. The only grievance is that he was given too short a time for giving the reply. It is true that the Returning Officer acted hastily and instead of giving him time till 2 P.M. he could have given time till 5 P.M. We can simply say that the Returning Officer should not have behaved in such a hasty manner. Undoubtedly that was the last date for filing the nomination paper and the objection should be decided before the filing of the same. But when the time was till 5 P.M. the time could have been extended as was requested by the petitioner. By not giving him time till 5 P.M. he has not shown any produce. But we are not concerned with the ethics, we are concerned whether the opportunity given was reasonable under the circumstances of this case. The petitioner's main grievance is that his nomination paper has been rejected on the ground that his name does not appear in the voters' list and from the voters' list his name was removed as a result of the objection raised by Madanlal. When he was given time till 2 p.m. to give a reply, he did not get a reasonable opportunity. 18. It is true that just a little over one hour may not be a reasonable time to be given for filing reply to an objection, but one should bear in mind that objection has been allowed to be raised under the new amendment till the date of filing the nomination paper. If that was the position there was in contemplation a very short time may be at once depending however on circumstances. It is not the case of the petitioner that there was any mala fide action or the cancellation was on account of any ulterior motive. The Returning Officer found that his name appeared in the list of Mhow Cantonment and. therefore, he was delisted from the list of voters of Bhagora constituency. We do not think that the petitioner was not aware that his name was in the list of voters of Mhow Cantonment. That conclusion we reach from the fact that he has never denied that fact nor has he pleaded that way when he has filed the petition before us.

19. From the above discussion even if we come to the conclusion that opportunity was not reasonable yet we do not feel that we should interfere in this petition. The petitioner has not denied in the petition that the ground on which he has been delisted is false or untrue or cannot be supported. On the other hand there is an

affidavit and assertion on behalf of the returning officer that his name appears in the list of voters of Mhow Cantonment. If that is the factual position any opportunity would have been futile so far as he was concerned. It is on account of this that we do not want to interfere.

20. The other ground that the order dated 14-4-70 rejecting the nomination form of the petitioner on grounds other than Rule 27 (2) is without jurisdiction, has also no substance. Rule 27 (2) authorises the Returning Officer to examine the nomination papers and decide all objections which may be made to any nomination, and may, either on such objection or his own motion, after such summary inquiry, if any as he thinks necessary, reject any nomination on certain grounds mentioned therein. This is not a case of rejection of nomination paper under Rule 27 (2). Here the petitioner is challenging the removal of his name from the list of voters of Bhagora constituency. If a person is not a voter in the Bhagora constituency he cannot be a candidate for that constituency as under Section 14 to be a voter is the basic qualification. Under Rule 23 any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Act and unless he is a voter of that constituency he cannot be nominated.

21. We were shown a decision of the Patna High Court in AIR 1971 Pat 161 (Nanik Chandra Vatsalya v. Birendra Singh). Certain observations in that case were referred to in which his Lordship has stated that:--

'A candidate's name may be recorded in two different Gram Panchayats. but that fact alone is not enough to debar him from contesting as a candidate for the office of Mukhiaship. It has to be seen whether he actually exercised his franchise in both the Gram Panchayats.'

These observations were made on the basis of an affidavit made by the petitioner stating that he had never voted at Sonbarsa and his name was wrongly entered in the electoral roll of Sonbarsa, and the same was done without his knowledge. He further stated that he had always been a voter from Amarpur, where he had been exercising his right of franchise, and he is an Upmukiya of Amarpur Gram Panchayat. These allegations in the affidavit were not refuted. The facts in that

case showed that the petitioner Nanik Chandra Vatsalya along with respondents were candidates for the election of Mukhia of Amarpur Gram Panchayat in the district of Saharsa and they filed their nomination papers before the proper authority. The nomination papers of the petitioner and one respondent were rejected. The petitioner thereafter filed an objection before the S. D. O. a respondent in that case. The rejection of nomination paper of the petitioner was mainly on the ground that his name was entered in the electoral roll of the two Gram Panchayats namely Amarpur Gram Panchayat and Sonbarsa Gram Panchayat contrary to the provisions of Rule 5. Clause (3) of the Rules.

22. It will thus be seen that the facts of the Patna case are different. In the Patna case the petitioner categorically stated that his name was wrongly entered in the electoral roll of the other constituency, whereas in this case there is no such assertion. It is true that cases may occur where through mistake either a name is not entered or a name is entered. If the entry is against the rules the person whose name is entered has to suffer; if the omission is against the rules then also he has to suffer. But if the challenge is that it was through mistake or through mischief it has been done, the question may be looked into. That is what has happened in the Patna case. In the instant case, however, there is no such allegation or averment that there was any mistake. What the petitioner wanted was whether the objector has a locus standi to object and not that there was any mistake. He has never mentioned in the petition before us that it was through mistake or mischief of some person that his name was entered. Therefore, if the observation in the Patna case means that in no case the entry of the candidate's name in two constituencies will not be enough to debar him from contesting as a candidate, we respectfully differ.

23. On the other hand there is a decision of the same High Court in 1961 BLJR 298 (Ramsaroop Mahto v. State of Bihar) quoted in AIR 1971 Pat 161 (supra) in which the observations are pertinent and we quote below the same:--

'In Ramsaroop Mahto v. State of Bihar, 1961 BLJR 298 where Raj Kishore Prasad J. while interpreting Rule 5 (3) of the Rules at page 300 in paragraph 11 of his judgment observed that from Rule 5 (3) it was manifest that the petitioner could not be a voter from more than one Panchayat. Admittedly in Udaidih Gram

Panchayat election of a Mukhia had already been held. The question whether the petitioner exercised his right of vote from that Panchayat was immaterial for the purpose of deciding the question under consideration. It was enough to state that when the petitioner was a voter from Udaidih Gram Panchayat he could not be a voter in the second Gram Panchayat. Rule 5 (3) was clearly a bar to his being a voter in that Gram Panchayat. He could not be a voter in both the Gram Panchayats.'

Both the decisions are Single Bench decisions and the earlier decision should have continued to be good law unless it was set aside by a larger Bench. However, that is not for us to discuss. We may simply say that we respectfully disagree with the view of the Patna High Court in ATR 1971 Pat 161.

24. For the reasons given above we do not want to interfere in this petition. The petition, is therefore, dismissed. As we find that the returning officer should have given the petitioner time till 5 O'clock as asked for by him, we order that the costs of this petition shall be borne by the parties as incurred. The security for costs deposited by the petitioner shall be refunded to him.

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