

Nemchand Gulabchand Vs. Block Development Officer, (Returning Officer) and ors.

Nemchand Gulabchand Vs. Block Development Officer, (Returning Officer) and ors.

SooperKanoon Citation : sooperkanoon.com/500669

Court : Madhya Pradesh

Decided On : Feb-09-1965

Reported in : AIR1965MP251

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963 - Rule 11(6)

Appeal No. : Misc. Petn. No. 615 of 1964

Appellant : Nemchand Gulabchand

Respondent : Block Development Officer, (Returning Officer) and ors.

Advocate for Def. : R.J. Bhave, Govt. Adv. for Respondent Nos. 1, 2, 4 and 5

Advocate for Pet/Ap. : K.B. Sinha, Adv.

Disposition : Petition allowed

Judgement :

Dixit, C.J.

1. This is an application under Articles 226 and 227 of the Constitution for the issue of a writ of certiorari for quashing an order passed by the Sub-Divisional Officer, Damoh, on 13th November 1964, excluding the petitioner's name from the voters' list of Gram Sabha, Banwar.

2. The matter arises thus. After the finalisation of the voters' list under Rule 8(4) of the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1966 (hereinafter referred to as the Rules), a programme for the election of Panchas to the Gram Panchayat was fixed according to which the date of filing nomination papers was 10th November 1964, the date of scrutiny of the nomination papers was 21st November 1964, the date of withdrawal of nominations was 23rd November 1964, and the date of polling was 19th December 1964. The applicant filed his nomination papers on 10th November 1964. On 24th October 1964, the respondent 3, Ramjilal, made an application for the exclusion of the petitioner Nemichand's name from the voters' list on the ground that he was not an 'ordinary resident' of the village. A notice of this application was given to the petitioner and ultimately on 13th November 1964, the Sub-Divisional Officer, Damoh, after hearing the petitioner and Ramjilal ordered the exclusion of the petitioner's name from the voters' list. On 21st November 1964, when the Returning Officer scrutinised the nomination papers, he rejected the applicant's nomination paper on the ground that the applicant's name had been deleted from the voters' list by an order passed on 13th November 1964, by the Sub-Divisional Officer, Damoh, and that, therefore, he was not entitled to be nominated as a candidate for election.

3. The petitioner's contention is that the application, which Ramjilal made on 24th October 1964 for the exclusion of his name from the voters' list, was under Rule 11(1) of the Rules; that under Sub-rule (6) of this Rule, no application for the exclusion of any person's name from the voters' list could be entertained 'within a period of one month from the date fixed for a general election or a bye-election'; that the election of the Panchas to the Gram Panchayat commenced on 10th November 1964, the date fixed for filing the nomination papers; that, therefore, the application filed by the respondent No. 3 on 24th October 1964 being one filed within a period of one month before the date fixed for election, could not be entertained by the Sub-Divisional Officer; and that consequently the order passed

by the Sub-Divisional Officer on 13th November 1964 allowing that application and excluding his name from the voters' list was altogether illegal and without jurisdiction

4. In our opinion, this contention must be accepted. The election to a Gram Panchayat is held on the basis of voters' list prepared and finalised in accordance with Rules 5, 6, 7 and 8 of the Rules. The scheme of these Rules is that first a provisional list of voters is prepared and published by being exhibited at the Office of the Panchayat, if any, on the notice-board of the Tehsil within which the Gram Sabha lies and at one or two conspicuous places within the ward to which the list pertains, along with a notice inviting objections thereto in the prescribed manner and fixing a date and time for the hearing of such objections and claims. Any person whose name is not entered in the voters' list or is entered in an incorrect place or manner or with incorrect particulars or any person whose name is entered in the list and who objects to the inclusion of his own name or the name of any person in that list is entitled to prefer a claim or objection (Rule 7). The Collector or the authorised officer then has to hold a summary enquiry into the claims and objections received and record his decisions. The provisional voters' list is then amended in accord with the decisions of the Collector or the authorised officer on the claims and objections. That list so amended, is final (Rule 8). The voters' list thus made final continues in force until it is revised in accordance with Sub-rule (3) of Rule 10, which says-

'Every such list shall be revised and brought up-to-date whenever a bye election or general election is due to take place or when ever any change in the limits of the Gram Sabha or a ward thereof takes place". The revision has to be effected in conformity with Rules 6, 7 and 8. Rule 11 then provides for 'interim alterations'. Under this rule, any person can 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 the authorised officer. The rule permits, not only correction of particulars of an entry in the list but also inclusion in or exclusion from the voters' list the name of a person. Sub-rule (5) lays down that no order 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 is given an opportunity of being heard. Then Sub-rule (6)

says that no application for the inclusion or exclusion of the name shall be entertained within a period of one month from the date fixed for a general election or a bye-election. The last Sub-rule (7) lays down that the voters' list 'altered in accordance with this rule shall be deemed to be the list for the time being in force.'

5. It will thus be seen that after the voters' list is finalised under Rule 8, an opportunity is given to persons aggrieved by entries in the list to have the list corrected either by having correct particulars of entries made therein or by the inclusion of the name of a person in the list or by the exclusion of the name of a person included in the voters' list. But an interim correction by way of inclusion in or exclusion from the voters' list of the name of a person can be made only on an application filed upto the date not later than one month before the date fixed for a general election or a bye-election. This is what Sub-rule (6) of Rule 11 lays down. In Sub-rule (6) the word "election" has not been used in a restricted sense as meaning the actual polling, but in the sense of embracing the whole procedure whereby a Panch is returned, whether or not it be found necessary, to take a poll. With this wider connotation of term 'election', the expression 'the date fixed for a general election or a bye election' used with reference to fixation of time-limit for the making of an application for inclusion or exclusion of a name clearly means the date fixed for the filing of a nomination paper when the election commences. In the present case, the date fixed for the filing of the nomination papers was 10th November 1964. That being so, an application for the inclusion in, or exclusion from the voters' list of any name could be entertained only upto 10th October 1964. The Sub-Divisional Officer had, therefore, no jurisdiction at all to entertain Ramjilal's application made on 24th October 1964 for the exclusion of the petitioner's name from the voters' list.

6. The submission made by the learned Government Advocate on behalf of the respondents Nos. 1, 2 and 4 that the expression 'the date fixed for a general election or a bye-election' meant, for the purposes of Sub-rule (6) of Rule 11, the date of actual polling, and, therefore, a person's name could be included in the voters' list or excluded therefrom at any time right upto the date of actual polling, ignores the fundamental fact that for the conduct of an election in conformity with the M. P. Gram Panchayats Election and Co-option Rules, 1963, it is of the very

essence that the electoral roll, on the basis of which the election is held, must not be open to correction beyond a certain date before the election commences. A firm and final electoral roll before the commencement of election is essential to the orderly and expeditious conduct of election according to the Rules and for securing the purity of election. The persons, who claim the right of franchise, which includes the right to vote, the right to seek election and the right to nominate a candidate, must know with certainty sometime before the date of the filing of nomination papers that they have this right of franchise. It is easy to see that if a voters' list could be corrected even after the date fixed for the receipt of nomination papers and while the election is on, it would seriously hamper the voters in the exercise of their right of franchise, and would also open a wide door for entry into election of all sorts of undesirable practices and devices for securing the defeat of candidates whose nomination papers have been accepted as valid but who are not favoured by a particular group, party or person. In fact, the rules about the conduct of elections contained in Chapter V of the Rules assume a firm and final voters list not open to any correction after a certain day before the commencement of election.

Under Rule 21, the programme of election has to be fixed by the Collector. This programme cannot be adhered to if last-minute corrections right upto the date of polling are made in the voters list so as to give to some people the right of franchise or to deprive others of that right. Again, the rules do not contain any provision about the filing and scrutiny of a nomination paper by a person whose name was entered in the voters list subsequent to the date fixed for the filing of nomination papers. The rules also do not provide for the rejection of an otherwise valid nomination paper on the ground that subsequent to the filing of the nomination paper the name of the proposed candidate has been excluded from the list. On the other hand, Rules 23 and 24 contemplate that if on the date of the presentation of nomination papers a person's name is included in the voters list, then he can contest the election and he can also subscribe, as proposer, a nomination. Under Sub-rule (3) of Rule 24 a nomination paper can be rejected only if the Returning Officer is satisfied that the names and numbers in the voters list of the candidate and his proposer as entered in the nomination paper are not the same as those entered in the voters list.

Then again, as provided by Rule 27(2) the Returning Officer can reject a nomination paper at the time of scrutiny only on the ground that the candidate is disqualified for being chosen to fill the seat by or under the Act or that the proposer is disqualified from subscribing a nomination paper, or that there has been a failure to comply with Rule 23, or 24 or 25, or that the signature of the candidate or the proposer in the nomination paper is not genuine, and not on the ground that the name of the candidate or the proposer has been subsequent to the date of the filing of the nomination paper deleted from the voters list. The disqualification of a candidate or a proposer on which a nomination paper can be rejected does not mean the disqualification arising from a subsequent deletion of his name from the voters list, but is the one arising under the provisions of the M. P. Panchayats Act, 1962. Rules 21 to 31 contained in Chapter-V of the Rules themselves, therefore, do not countenance any correction in the voters list after a certain date before the commencement of the election. In our judgment, Sub-rule (6) of Rule 11, which is mandatory in terms, clearly means that no application for inclusion in, or exclusion from a voters list the name of a person can be entertained within a period of one month from the date fixed for the filing of nomination papers.

7. For these reasons, this application is allowed, and the order dated 13th November 1964 of the Sub-Divisional Officer, Damoh deleting the applicant's name from the voters list is quashed. In the circumstances of the case, the parties shall bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.