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Court : Rajasthan

Decided On : May-29-1971

Reported in : 1971WLN321

Judge : L.S. Metha, J.

Appeal No. : S.B. Civil Misc. Stay Petition No. 410 of 1971

Appellant : Ram Partap

Respondent : The State of Rajasthan

Judgement :

L.S. Metha, J.

1. This is a writ petition filed against (1) The State of Raj (21 than, The Collector. Ganganagar, (3) The Sub-Divisional Magistrate, Hanumangarh Junction and (4) The Krishi Upaj Mandi Samiti. Hanurnangarh Junction. The averments in the petition are that the petitioner is a resident of village Chollan Wali, Tehsil Hanurnangarh, and is a Panch of the of the Gram Panchayat Chotlan Wali, Panchayat Samiti, Hahumangarh. In exercise of powers conferred by Section 3 of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act), the State Government by notification, dated 9.12.1963, published in the Rajasthan Gazette dated 13.2.1964, proceeded to declare its intention to regulate purchase and sale of certain agricultural produce, specified therein in the area

falling within the limits of 31 Panchayats of Hanumangarh Panchayat Samiti and the Panchayat of Sadul Shahar & proceeded to invite objections and suggestions within one month from the date of the Notification. In exercise of the powers conferred by Sub-section (1) of Section 4 of the Act the State Govt., vide its Notification D. 24.6.1964 published in the Rajasthan Gazette, dated 3.9.1964, proceeded to declare the area referred to in the preceding para of the Notification as Market Area for the purchase & sale of agricultural produce, mentioned in the previous Notification. A market Committee was also constituted by the same Notification in exercise of the powers conferred by Sections 6 and 8 of the Act. The Committee was incorporated by the name Krishi Upaj Mahdi Samiti, Hanumangarh Junction for the said Market Area in respect of the sale and purchase of the said agricultural produce. The Government further proceeded to constitute and nominate under Section 7 the first Market Committee. On the expiry of the term of the first nominated Market Committee election of the members of the respondent Market Committee was held in the year 1967 and thereafter the first meeting of the newly elected Committee was held on 31-1-68. The substantive term of office of the office bearers of the Committee expired in January, 1971. The preliminary steps for getting elected the members to the Market Committee commenced somewhere in the month of December, 1970. Final voters' list (Ex. 4), was prepared by the Sub-Divisional Magistrate, Hanumangarh, Junction (respondent No 3) and the same was published on the Notice Board of the Market Committee only. The petitioner never came to know of it and it was only when the activities for election started that he looked into it and found that his name had not been mentioned therein. Respondent No 2, the Collector, Ganganagar, proceeded to issue a notice, dated 23.3.71 informing the voters of the programme of election of the members of the Market Committee. By the notice the Collector further informed the concerned that 7 persons would be elected from amongst the Agriculturists' Constituency, 2 from the Traders' Constituency, and 1 from the Co-operative Marketing Societies' Constituency (See Ex.4) Thereafter the Collector, by his Notice dated 15/16-4-71, proceeded to inform all the voters that election of the member of the Market Committee would be held on 31.5.71 in the office of the Market Committee (Ex. 5). The Collector later on declared by his Order, dated 16-1971 that instead of 2 persons only 1 would be elected from the Local Authorities'

Constituency. It is apparent from the Notifications Exs. 1 to 3 that there are 32 Panchayats falling within the territorial limits of the Market Committee. There are 65 Co-operative Credit and Multipurpose Societies including Better Farming Societies and Collective Farming or Joint Farming Societies operating in the Market Area.

2. According to the provisions of law 7 persons are required to be elected by the organisations of agriculturists in the Market Area or where no such organisations exist, by the agriculturists paying rent or revenue not less than Rs. 10/- per year, and residing in the Market Area. The petitioner's grievance in the writ petition is two fold. His first contention is that there exists no recognised organisation of agriculturists, as required by Section 7(1)(i) of the Act and Rule 6(1)(a) of the Rajasthan Agricultural Produce Market Rules, 1963 (hereinafter referred to as the Rules) Therefore, all persons paying not less than Rs. 10/- on account of rent or revenue were entitled to be enrolled as electors. His second submission is that even if Rule 2 (xii) is deemed to be referring to recognised organisation of the agriculturists, then too as many as 8 Gram Panchayats and members of the 35 Co-operative Societies, having not been included in the list of voters, have been disfranchised. The petitioner, therefore, prays that by an appropriate writ, order or direction respondents Nos. 1 to 3 may be restrained from proceeding to hold any election from the agriculturists' Constituency of the Krishi Upaj Mandi Samiti, Hanumangarh Junction, on the basis of the voters' list Ex. 4 and a fresh voters' list may be ordered to be prepared. The petitioner further prayed that Rule 22 of the Rules, may be struck down as being ultra-vires of Article 14 of the Constitution of India.

3. The writ petition was admitted on May 20, 1971. The petitioner also filed a stay application praying that pending the decision of the writ petition the election be stopped. On stay application notices were issued to the opposite parties. Notices were not returned duly served upto 28-6-1971. Learned Counsel for the petitioner submitted that as the matter is urgent and the elections are going to be held on 31-5-1971, stay orders should be passed. Mr. Guman Mal Lodha, Advocate, intervened on behalf of Parmna.

4. At this stage the only question that requires consideration is whether or not stay order should be passed, restraining the respondents Nos. 1 to 3 from proceeding to hold election from the agriculturist's constituency of the respondent Krishi Upaj Mandi Samiti, Hanumangarh Junction.

5. Learned Counsel for the petitioner, while arguing the stay application, submitted that there is no recognised organisation of the agriculturists as, mentioned in Section 7(1) of the Act and Rule 6(1)(a) of the Rules and, therefore, all persons paying not less, than Rs. 10/- per year by way of rent or revenue & residing in the Market Area are entitled to be enrolled as electors. But they have not been included in the electoral roll. His, alternative argument is that even if Rule 2(xii) of the Rules is deemed to be referring to the recognised organisation of the agriculturists, then too 8 Gram Panchayats and 34 Cooperative Societies have not been included in the voter's list and, therefore, the electoral roll Ex. 4 should not be allowed to form, the basis of election. Learned Counsel in support of his argument,, referred to Chief Commissioner, Ajmer v. Radhey Shyam : [1957]1SCR68 and Atma Singh v. State of Rajasthan 11967 R.L.W. 275 Mr. Gumanmal Lodha vehemently opposed the stay application on behalf of the intervener Parman.

6. I will first like to take up the alternative argument advanced on behalf of the petitioner.

7. Hon'ble Tyagi J. in his order, dated January 25, 1971, passed in S.B. Civil Writ Petition No. 1487 of 1969, Brij Lal Atma Ram v. Krishi Upaj Mandi Samiti, observed:

However, it is expected that soon after the elections of Parliament are over and if a fresh Samiti has not been constituted under the law, the Collector should see to, it that the elections of the Samiti are held, and they should be completed by 15th May as directed in Vyoparmandal Udaipur v. State of Rajasthan S.B. Civil Writ Petition No. 1644/70.

As per direction of this Court the Collector, Ganganagar, took necessary steps for holding the election. Non-holding of the election would mean to treat that order

irreverently or to do violence to it.

8 The Collector, Ganganagar, issued a Notification on March 23, 1971, according to which nominations were to be filed on April 13, 1971. The date of scrutiny was 14-4-1971 and the date of withdrawal was 17-4-1971. The election was to be held on May 10, 1971. But some how that election could not be held as per time-schedule. On April 15/16 another Notification was issued by he Collector, Ganganagar. As per this Notification nomination papers were to be filed on 3-5-1971, scrutiny was to be made on 4-5-71, the date of withdrawal was May 7, 1971 and the election has to be conducted on May 31, 1971.

9. In para 6A of the writ petition, the petitioner admits that the voters list was published on the Notice Board of the Market Committee. In para 7 of the writ petition it has been admitted that the respondent Collector proceeds to issue a Notice informing the voters of the Market Committee of the programme of election. Bat this Notification the said respondent proceeded to inform that 7 persons would be elected from amongst the Agriculturists' Constituency, two from the Traders' Constituency and one person from amongst the Co-operative Societies' Constituency (vide Ex. 4). In para 8 of the writ it is given that another Notice, dated 15/16-4-1971, was issued by the Collector 4 informing all the voters of the programme of the election to be held on 3J-5-71.

10. The voters' list was admittedly published on the Notice Board of the Market Committee on December 9, 1970. Rule 8(iii) lays down that every such list shall be published provisionally in such; manner as the Collector or or such person may deem fit. According to this rule the Notification could have been published on the Notice Board of the Market Committee. There is no allegation that no opportunity to raise objection was offered 10 the voters or that Rule 8 has been violated.

11. According to the Full Bench decision of this Court in Atma Singh' case the electoral roll which might have come into existence at the time of the election could not be treated as altogether non-existent, unless the court came to the conclusion that the final electoral roll was so worthless a document that no election could be held on its basis. In N.P. Ponnuswami v. Returning Officer, Kamakkal 1 ELR 133 (S.C.), it has been observed that inconvenience to the public

administration would result and the business and the local bodies would be held up, if individual were allowed to prosecute their individual grievances. It has been laid down that in a country with a democratic Constitution it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly regarded or protracted. Similarly in *N. Chenchurama Naidu v. Chief Electoral Officer* 10 ELR 268, it has been held that where after the publication of a Notice calling upon a constituency to elect a member and after nominations had been filed and the list of valid nominations had been published and the date of the election had also been fixed, no interference should be made with the process of election. Likewise in *Meghraj v. Delimitation Commission* : [1967]1SCR400 , it has been held that objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission have been published in the Gazette of India and in the official Gazettes of the States concerned, the matters could no longer be re-agitated in a court of law. There seems to be a very good reason behind such a provision. If the orders are not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. It has been made clear by their Lordships of the Supreme Court in *Ponnuswami's case* 1 ELR 133 (S.C.) that the observations made in respect of the elections of the Local Boards would apply with greater force to the elections of the Legislatures as well, because it does not require much argument to show that in a country with democratic Constitution in which Legislature have to play a very important roll, it will lead to serious consequences if the elections are unduly protracted or obstructed.

12. As to when the election commences has been made clear in *Atma Singh's case* 1967 RLW 257, wherein it has been laid down that the process of election starts by issuing a notification, calling upon a constituency to elect a member or members. It has also been made clear in *Ponnuswami's case* (supra) that the word 'election' can be used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important

bearing on the result of the process. That shows that the election commences with effect from the date when the notification is published calling upon the voters to file the nomination papers. In the present case such a notification was published on April 15/16, 1971. The voters ought to have filed objections, if any, in regard to the inclusion or exclusion of the names of the voters within the prescribed time. But they did not do so. They cannot now at this stage challenge the voter's list, when the elections are in progress. Any matter which has the effect of vitiating election can be brought up at appropriate stage in an appropriate manner and not an intermediate stage.

13. Learned Counsel for the petitioner cited Chief Commissioner, Ajmer v. Radhey Shyam (supra), in which it has been held that the validity of the election could be challenged on the ground that proper electoral rolls were not maintained. The above Supreme Court authority refers to a case where no election rules were at all framed and, therefore, the rolls were held defective and they could not form the basis of a valid election. But in the present case the rules had already been made and the petitioner had been given an opportunity to file objections under Rule 8, but he failed to do so. Therefore, the above Supreme Court authority is clearly distinguishable from the facts of the present case and is of no assistance to the petitioner.

14. Coming now to the other point, it may be stated that under Section 7 members are to be elected by recognised organisations of agriculturists in the Market Area as the State Government may prescribe. Section 2(xii) says 'prescribed means prescribed by rules under Rule 36. Rule 7 provides that every organisation of agriculturists shall report the names of the persons qualified to vote to the Collector or any person authorised by him in this behalf on or before the date fixed by the Collector. Rule 2(xii) reads that 'Organisation of Agriculturist' includes:

(a) All village Panchayats in the Market Area.

(b) Farmers Forum, if any.

(c) All Co-operative credit and multipurpose societies including better farming societies or collective farming or joint farming societies which do not hold traders'

or brokers' licence.

(d) Any other organisation of the Agriculturists which may be reconised by the Government.

In this manner the three categories mentioned in Rule 2 (xii), in addition to the fourth one constitute the organisation of agriculturists as given in Section 7(1) of the Act. I do not agree with learned Counsel for the petitioner that the word 'reognised' as used in Section 7(1) would hit the definition of the organisation of the agriculturists, as given in Rule 2(xii) of the Rules. The definition as coined in the above rule is exhaustive. The various organisations of the agriculturists detailed in the definition would show that they are all recognised orginisations of agriculturists as prescribed by the Rules and when such organisations have been given an opportunity to get the names of the persons included in the voters' list, it cannot be said that for want of recognised organisations of agriculturists in the Market Area agriculturists paying not less than Rs. 10/- per year by way of rent or revenue, have been disfranchised.

15. Having regard to the above discussion, I do not feel inclined to issue stay orders restraining respondents Nos. 1 to 3 from proceeding to hold elections from the agriculturists' constituency for the respondent Krishi Upaj Mandi Samiti, Hanumangarh Junction, on the basis of the voters' list Ex. 4. The stay application is accordingly dismissed. Any observations made in the order will not affect the merits of the case when the main writ petition will be argued.