

Mathuralal and anr. Vs. Mandattsingh and ors.

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Court : Rajasthan

Decided On : Feb-23-1982

Reported in : 1982WLN(UC)173

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition Nos. 2006/81 and 10/81

Appellant : Mathuralal and anr.

Respondent : Mandattsingh and ors.

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. The above two writ petitions arise out of the common facts. It will be proper to dispose of them together by a common order, so they are being disposed of by this common order.

2. The name of Mandattasingh was entered in the electoral roll of village Banjariya, panchayat Pardi, which was prepared for election of the panchayat in the year 1981. The electoral roll was published on October 16, 1981 and objections were invited under Rule 7 of the Rajasthan Panchayat and Nyaya Panchayat Election Rules, 1960 (for short 'the Rules'). One Jaloo filed an objection

to the inclusion of the name of Mandattasingh in the electoral roll of village Banjariya of Gram Panchayat Pardi on the ground that he was not ordinary resident of that village. Along with the objections, Shri Jaloo submitted documents showing that Shri Mandattasingh is a resident of Deogarh town only. Mathuralal also filed an objection to the inclusion of the name of Mandattasingh in the voters list of Pardi, Ward No. 3 at serial No. 130 on November 9, 1981, inter alia on the ground that Mandattasingh does not live in village Pardi but lives at Deogarh town and that he is in the habit of falsely getting the name entered in the voter's list of different villages from time to time. This objection was sent by registered-post. This objection did not reach the office of the Authorised Officer-cum-Returning Officer (Sub-Divisional Officer), Bhim District Udaipur before 3 p.m. on November 10, 1981. Thus, the objection filed by Mathuralal did not reach in time. Notice was issued to Mandattasingh for the date November 17, 1981. The name of Mandattasingh also appeared in Ward No. 7, that is, village Mandawara. The inclusion of the name of Mandattasingh, in that ward, was objected to. Mandattasingh appeared on November 17, 1981 before the Authorised Officer and produced evidence consisting of the statements of Ummaidsingh and Ambalal, but the objector Shri Jaloo did not appear before the Authorised Officer. The Authorised Officer allowed both the objections and the name of Mandattasingh was ordered to be struck off from serial No. 130 of Ward No. 3 of Panchayat Circle Pardi. Similarly, his name was struck off from serial No. 17 in ward No. 7 of Panchayat Circle Swadari. Mandattasingh preferred an appeal before the Additional Collector against the order of the Authorised Officer dated November 17, 1981 under Rule 12 B, against the order of deletion of the name from the list of Banjariya. Shri Jaloo filed an application supported by an affidavit before the Additional Collector stating that he withdraws his objection and he has further stated that he has come to know and is satisfied that Mandattasingh is a resident of village Banjariya and his name was correctly entered in the list. Despite that the Collector dismissed the appeal on November 25, 1981. In the appeal before the Additional Collector, Mathuralal also filed an application for impleading him as a party and that he may be allowed to be heard to oppose the appeal, but this application was dismissed by the Additional Collector. Shri Mandattasingh then, preferred an appeal against the order of the Additional Collector before the

Revenue Appellate Authority. The learned Revenue Appellate Authority by its order dated December 10, 1981 allowed the appeal and set aside the orders of the Authorised Officer and of the Additional Collector and the name of Mandattasingh was ordered to be retained at serial No. 130 in the voter's list of Ward No. 3 of Panchayat Circle Pardi.

3. S.B. Civil Writ Petition No. 2006 of 1981 filed by Mathuralal is directed against the order of the learned Revenue Appellate Authority for either declaring the order to be non-est or for quashing the same on the ground that no appeal was maintainable under Rule 12B of the Rules before the Revenue Appellate Authority against the order of the Additional Collector as the order of the Additional Collector became final and the order of the Revenue Appellate Authority is without jurisdiction.

4. S.B. Civil Writ Petition No. 10 of 1982 is filed by Mandattasingh, in which, it had been prayed that the order of the Authorised Officer and the Additional Collector may be quashed, if it is found that the order of the Revenue Appellate Authority is without jurisdiction although, he did not admit that the order of the Revenue Appellate Authority is without jurisdiction.

5. I have heard learned Counsel for the petitioners and the learned Counsel for Shri Jaloo.

6. First of all, I proceed to take up the writ petition No. 10 of 1982. Mr. Parekh, learned Counsel for Mandattasingh petitioner submitted that the Authorised Officer as well as the Additional Collector acted illegally in allowing the objection filed by Shri Jaloo, when Shri Jaloo did not appear to press his objection before the Authorised Officer and when Shri Jaloo withdrew his objection in appeal stating categorically in his application supported by an affidavit that Shri Mandattasingh is ordinarily residing in the house of Dalpatsingh in Ward No. 3 Panchayat Samiti, Pardi. When the objector has withdrawn his objection, according to Mr. Parekh the Additional Collector had no alternative except to allow the appeal and dismiss the objection. Mr. Parekh urged that under the provisions of the Code of Civil Procedure, any proceeding could be withdrawn by the person, who has initiated the proceedings or even when the provisions of Code of Civil Procedure are not

made applicable, still under the general law as well, it was competent for the objector to withdraw the objection. He referred some cases for withdrawal of the writ petitions and the cases for withdrawal of execution of the decree. He also urged that in the absence of any provision, in the rules prohibiting withdrawal of the objections, it should be taken as permissible.

7. In this connection, reference has to be made to the provisions of the Rajasthan Panchayat Act, 1953 and the provisions contained in the rules. Under sec 10 of the Act, a duty is cast on the Collector or such Sub-ordinate Gazetted Officer of the State Government as the Collector may authorise in this behalf for the preparation and maintenance of a list of the voters for each of Wards into which a Panchayat Circle is divided and every person, is qualified to be registered in the Rajasthan Legislative Assembly electoral roll relatable to the area shall be entitled to be so registered in the list of voters of such Panchayat Circle or Ward, as the case may be. Such voter's list is required to be published under Rule 7 of the Act and objections are to be invited within fortnight of the notice. Claims and objections can be filed by an application in writing not later than 3 o' clock in the afternoon of the 15th day from the date of the notice under Rule 7 and rule 8 further provides that no claim or objection received after that time shall be entertained. Rule 8 also provides that the claim or objection shall be accompanied by any documents on which the claimant or objector relies. Under Rule 9, claims and objections are required to be decided after holding such summary inquiry as the Collector thinks fit but before deleting the name of voter, he shall be given an opportunity of being heard. It is significant to note that under Section 10, it is the duty of the Collector or some Sub-ordinate Gazetted Officer to prepare and maintain the list. Under Rule 9, the concerned authority has to dispose of the claims and objections after such summary enquiry, as it thinks fit on the material, which comes on record during the enquiry. Rules do not contemplate withdrawal of the objections. Even if objection is withdrawn and if there is sufficient material on record to hold that a particular voter is not a resident of the village, where his name is entered, then the entry can be ordered to be deleted. The claimant and the objector need not be present before the Collector during the enquiry, when the objector has already submitted the documents along with the objection, on which he relies. The nature of the proceedings before the Collector are such, which in my

opinion do not attract the provisions of withdrawal, as embodied in the Code of Civil Procedure or on the analogy of these provisions, the objection can not be withdrawn. The question of insertion of the name or deletion of the name is open for the Collector and the Collector on the basis of summary enquiry is empowered to dispose of the claims and objections. Ordinarily, in the legal proceedings, the person who has initiated the proceedings is in a dominant position and it is his sweet will to proceed with the proceedings or not. In the case of preparation of voter's list, it is essentially the duty of the concerned authority to prepare the correct list. If something is brought to the notice of the concerned authority then it has to go into that matter and to conduct summary enquiry and decide the same finally at his level. This it can not be said that the Authorised Officer and the Collector acted illegally in proceeding to decide the proceedings even when the objector Shri Jaloo did not appear before the Authorised Officer or even the objector Shri Jaloo did withdraw his objection and stated that Mandattasingh ordinarily resides at village Banjariya. In case of claims for insertion of some names, no notice is required to be given to any one and after requisite summary enquiry, claims can be decided, but in case of objection to the inclusion, opportunity of hearing has to be given to the concerned voter. Objection cannot be decided without such opportunity. In the conduct of summary enquiry, it can call such evidence as it thinks necessary to decide the claim and objection and the matter would not solely rest in the hands of the claimant or the objector. Thus, I do not find any force in the above submission of Mr. Parekh and the same is over ruled.

8. Mr. Parekh, next urged that the learned Authorised Officer and the learned Additional Collector primarily proceeded to consider the question on the basis that the name of Mandatta Singh appeared in the electoral roll of Deogarh Municipality. That was the list of the year 1978 did not the list for the relevant year, so the finding arrived at by both the authorities is vitiated on that account. He submitted that as the objector did not appear before the Authorised Officer and in appeal the objector withdrew his objection, so the petitioner Mandattsingh did not produce all possible evidence regarding his ordinary residence at village Banjariya. He referred to 1980 electoral roll of the Legislative Assembly Ex. 9, in his petition and pointed out that his name does not appear in the list of the town Deogarh and he

also submitted the various documents before the Revenue Appellate Authority for establishing that the petitioner Mandattasingh is an ordinary resident of village Banjariya. The authorised officer proceeded to dispose of the matter on November 17, 1981 and did not afford a fair and reasonable opportunity. Thus, at the stage of the Authorised Officer, the objector did not appear and press his objection and at the stage of appeal, the objector withdrew his objection and further, both the authorities proceeded wrongly on the basis that the petitioner's name appears in the voter's list of Deogarh Municipality, so the order of both the authorities may be quashed and the petitioner may be given opportunity to establish that he is ordinarily residing at village Banjariya. In such cases if the opportunity is not allowed to the petitioner the petitioner's right of franchise and to stand at the election would be seriously affected. I find force in the above submission of Mr. Parekh. In the circumstances of the case, it would be just and proper that a fresh enquiry may be conducted into the question as to whether the name of Mandattasingh has been rightly included in the electoral roll in Ward No. 3 of Panchayat Circle, Pardi. It is a serious question to be tried by summary enquiry. By Mathuralal as well, 1981 voter's list of Deogarh Municipality has been filed, in which, the name of Mandattasingh appears and an order dated January 17, 1982 of the Electoral Registration Officer has also been produced whereby the objections were rejected and the name of Mandatta Singh was allowed to be kept in Ward Mo. 1 at serial No. 1. The question of ordinary residence is a question of fact and this Court can not enter into that enquiry. It will be legitimate for the authority to go into that question and decide the matter afresh on the basis of material, which may be placed before it during the enquiry. Thus, the writ petition of Mandattasingh deserves to be allowed and the orders dated November 17, 1981 & November 25, 1981 of the Authorised Officer (Sub-Divisional Officer), Bhim and the Additional Collector, Udaipur respectively deserve to be quashed.

9. It may be pointed out that the petition of Mandatta singh would lie only if it is found that the order of the Revenue Appellate Authority is ab initio void, honest and without jurisdiction which is the direct question involved in the other writ petition. A perusal of rule 12 B makes it abundantly clear that no appeal lay against the order of the Additional Collector before the Revenue Appellate Authority and the order of the Additional Collector was final. Sub-rule (1) of Rule

12 B provided that an appeal shall lie from an order passed under Rule 9 by the subordinate Officer referred to in Section 10(1) and rule 12 A to the Collector and when the order is passed by the Collector under Rule 9 or rule 12, then the appeal is competent to the Revenue Appellate Authority. Under Sub-rule (4) of rule, 12 B, it is provided that the decision of the authority to whom appeal has been preferred, shall be final. It is not in dispute that the order of the Sub-Divisional Magistrate e. i. Authorised Officer was appealable to the Additional Collector and rule 12 B makes no provision for second appeal. Thus, the order of the Additional Collector became final under Sub-rule (4). In this view of the matter, the order of the Revenue Appellate Authority passed in appeal against the order of the Additional Collector is absolutely without jurisdiction and void.

10. Mr. Parekh, learned Counsel for Mandattasingh, however, raised two preliminary objections against the maintainability of the writ petition by the petitioner Mathuralal. He submitted that the election petition is the only remedy and the petitioner can not invoke the jurisdiction of this Court under Article 226 of the Constitution before holding of an election, in respect of the entry in the electoral roll. He further urged that he has no locus standi to present the writ petition. He has placed reliance on some case law.

11. In my opinion, both the objections are without any force. The first question, which arises for consideration is as to whether the ground to challenge the entry in the electoral roll is available in an election petition. My simple answer to this question is in the negative. The election petition can only be challenged on limited grounds, as stated in rule 3 of the Rajasthan Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1959. As submitted by Mr. Parekh, in my opinion, the ground of wrong entry in the electoral roll is not covered by clause (b) of rule 3 of the Election Petition Rules. The ground mentioned in clause (b) relates to improper rejection or admission of any nomination or for any other reason, the person was not duly elected by majority of lawful votes. Mr. Parekh referred to a decision of the Supreme Court in *Baidyanath Panjira v. Sitaram Mahto and Ors.* : [1970]1SCR839 . In that case, the electoral roll was revised beyond the date of filing of the nomination form So, on that basis, it has been held that the votes of the electors whose names were included in the roll after the last date of

nomination papers must be held void votes and that conclusion satisfies one of the conditions prescribed in Section 100 (1) (d). It would appear that there was no such question in that case that the electoral roll, which becomes final is open to challenge in the election petition. Reference may be made to the decision of the Supreme Court in *Nripendra Bahadur Singh v. Jai Ram Verma and Ors.* : [1978]1SCR208 . In that case, it was observed as under:

The finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparation of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score not been corrected, before the last hour of making nominations. After that dead line the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under Section 16 of the 1950 Act. In the case, in question the persons whose names were recorded in the electoral roll and participated in the voting were not disqualified under Section 16 of the 1950 Act. That being the position it would have been wrong on the part of the Presiding officer not to allow the voters whose names were recorded in the electoral roll of the constituency to participate in the voting. Even though their names could have been earlier at the appropriate time legitimately excluded from the electoral roll. These voters are electors within the meaning of Section 2 (1) (a) of the 1951 Act and were entitled to vote under Section 52 of the 1951 Act.

In a democracy and for that matter in an election, perennial vigilance should be the watch-word for all. If, therefore, notwithstanding the provisions of the law, appropriate action was not taken at the appropriate time, the provisions of the election law which have got to be construed strictly, must work with indifference to consequences, immediate or mediate. On the part of the officers also, it will vitalise & invigorate a healthy democratic practice if, charged with the electoral duties, demanding high probity, they neither exhibit rank remissions nor accelerated alacrity apt always to breed suspicion of partisanship. (Emphasis added).

12. After disposal of claims and objections under Rule 9, the voter's list amended accordingly, shall be finally published under Rule 9 A by the Collector and that list would be final electoral roll. Mr. Parekh also referred to the decision of the Supreme Court in *K.K. Shrivastava v. Bhupendra Kumar Jain and Ors.* : AIR 1977 SC1703 and *Nanhoo Mal and Ors. v. Hiramal and Ors.* : [1976]1SCR809 . Both the authorities have no application. In *K.K. Shrivastava's* case supra, the scope of the election petition was very wide as provided under the rules. So, on that basis, it was observed that the statutory remedy of the election petition has to be availed. Although, it has been observed that if the case presents exceptional and extraordinary circumstances, the High Court may have jurisdiction under Article 226 of the Constitution. Similar are the observations in *Hanhoomal's* case supra, in para 5. That case is not a case of wrong entry in the electoral roll. Reference has to be made to the decision of this Court in *Hapuram v. Munsif and Judicial Magistrate and Ors.* (D.B. Civil Special Appeal No. 345 of 1980, decided on February 2, 1981), whereby, the judgment of the learned single Judge was upheld and it was observed that an election tribunal under the Panchayat Act, can not go beyond the electoral roll for the purposes of re-opening the inclusion of the name of a person in the electoral list, who has been nominated as a Panch or Sarpanch. The same view has been taken in *Purshottamlal Sharma v. The State of Rajasthan and Ors.* (D.B. Civil Special Appeal No. 14 of 1976. decided on October 9, 1979), where in, it has been observed that the appellant is not entitled to invoke the jurisdiction under Article 226 of the Constitution for the purposes of challenging the election of the respondent to the Legislative Assembly on the ground that the registration of the respondent's name in the electoral roll of Kishanpole constituency is illegal and void. Besides that, it may also be pointed out that the election petition can only be filed by any member of the Panchayat Samiti and the elector has no such right to challenge the election of Pradhan. Thus, it can not be said that the petitioner Mathuralal has an alternative remedy by way of election petition to challenge the inclusion of the name of Mandattasingh in the voter's list of village Banjariya. However, it may be pointed out that in case election takes place, then it is only the member, who can challenge the election and that too by an election petition.

13. As regards the other objection of locus standi, it may be stated that the petitioner Mathuralal is an elector and intends to offer his candidature for the office

of the Pradhan and being a prospective candidate, he is very much interested in the constitution of the Panchayat Samiti. His apprehension is that Mandattasingh would contest the election of Pradhan, when he is not even eligible to be an elector. In view of the above facts, in my opinion, the petitioner Mathuralal is having a legitimate grievance against the entry of the name of Mandatta singh in the electoral roll of Panchayat Circle, Pardi, Ward No, 3. In the circumstances of the case, it cannot be said that the petitioner Mathuralal is completely a strange and a busy body or an interloper in the matter. I, therefore, hold that the petitioner Mathuralal is an aggrieved person and has a sufficient interest in maintaining the writ petition.

14. No other point has been argued before me and so, no point survives for consideration.

15. In view of what I have considered above, both the writ petitions deserve to be allowed.

16. In the result, both the writ petitions are allowed and the order of the Authorised Officer (S.D M.), Bhim dated November 17, 1981; the order of the Additional Collector dated November 25, 1981, and of the Revenue Appellate Authority dated December 10, 1981 are quashed and set aside. The Authorised Officer (S.D.M.) Bhim is directed to decide the objection against the entry of the name of Mandattasingh at Serial No. 130, in Ward No. 3 of Panchayat Circle Pardi afresh, after giving an opportunity of hearing to Mandattasingh and after conducting such summary enquiry as he thinks fit in the matter. The objection shall be decided expeditiously. In the circumstances of the case, the parties are left to bear their own costs of both the writ petitions.