

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit, J.*GURDEV SINGH,—*Petitioner**versus*THE DEPUTY COMMISSIONER, HOSHIARPUR AND OTHERS,—*Respondents*

Civil Writ No. 2403 of 1966

November 30, 1967

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 113-A—Punjab Panchayat Samitis (Primary Members) Election Rules (1961)—Rule 3—Notification issued directing general election of primary members of all Panchayat Samitis by a certain date—Fresh electoral roll—Whether necessary to be prepared after such notification.

Held, that the electoral roll is prepared by the Deputy Commissioner after the Government has issued the notification constituting the Panchayat Samitis for different areas. It is nowhere laid down in rule 3 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, that after the notification under section 113-A of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, as amended in 1964, has been issued by the Government, a fresh electoral roll will be prepared by the Deputy Commissioner. It is, therefore, not necessary for the Deputy Commissioner to frame a fresh electoral roll after the notification is issued by the Government fixing a date for the holding of the election of the primary members of the Panchayat Samiti.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order, dated 24th September, 1966 of Respondent No. 1 whereby he has set aside the election of respondent 2 to Panchayat Samiti Hoshiarpur but refused to set aside the election of respondents 3 to 17.

A. S. SIRHADI AND N. S. BHATIA, ADVOCATES, for the Petitioner.

R. L. AGGARWAL, ADVOCATE, for the Respondents.

ORDER

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution has been filed by Gurdev Singh challenging the legality of the order dated 24th July, 1966, passed by the Deputy Commissioner, Hoshiarpur, respondent No. 1, by which he set aside the election of Capt. Nand Singh, respondent No. 2 only and refused to declare void

the election of Jasjit Singh and 14 others, respondents 3 to 17, as members of Panchayat Samiti, Hoshiarpur-1.

The petitioner was a Panch of Gram Panchayat, Sassi Ghulam Hussain, district Hoshiarpur, and was a voter for the election of members of Panchayat Samiti, Hoshiarpur-1. This election was held on 16th June, 1965. The electoral roll for the said election was published on 29th May, 1964, in accordance with rule 3 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961 (hereinafter referred to as the Rules). There were 38 candidates for the election, out of which respondents 2—17 were duly elected. The petitioner filed an election petition challenging their election on a number of grounds, but in the present writ petition we are only concerned with one of them which led to the framing of issue No. I, namely, were the electoral rolls; as in force at the time of the election, defective and invalid for the reason that some alleged electors were not allowed to vote? If so, whether they materially affected the result of the election " This election petition was tried by the Deputy Commissioner, Hoshiarpur, who by means of the impugned order decided this issue against the petitioner. That led to the filing of the present writ petition on 2nd of November, 1966.

Learned counsel for the petitioner in the first place contended that the electoral roll, on the basis of which the election had been held, was defective and invalid. According to the learned counsel, a notification under section 113-A, sub-section (1) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act) directing that a general election of primary members of all Panchayat Samitis should be held in the State of Punjab by 30th of April, 1965, was issued by the Punjab Government on 16th of March, 1965. Later, a similar notification was issued on 12th of May, 1965, to the effect that where elections of primary members of the Panchayat Samitis could not be held, they should be held by 31st of July, 1965. Learned counsel submitted that rule 3 provided that after such a notification, a fresh electoral roll should be prepared for every block and, consequently, the electoral roll prepared on 29th of May, 1964, was no longer valid and the election held, on the basis of such a defective electoral roll was liable to be set aside.

There is no merit in this contention. In the first place, this precise argument was neither taken in the election petition filed by the petitioner nor was this contention raised before respondent No. 1 who

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tried the same. All that was stated in the election petition was that the electoral roll, on the basis of which the election had been held was bad, because neither some of the electors, who were duly entered in the electoral roll, were allowed to exercise their right, for the reason that their election had been declared void by the prescribed authority under the Act, nor the newly elected Panches and Sarpanches, after the publication of the said electoral roll, were included in the said roll and nor were they allowed any opportunity to get their names included in the electoral roll in question. Thus, it would be seen that it was not the case of the petitioner at that time that after the notification under section 113-A of the Act, fresh electoral roll should have been prepared under rule 3. Secondly, the relevant part of rule 3 says—

“(1) As soon as the notification to constitute Panchayat Samitis in a district, under sub-section (1) of section 3, has been issued the Deputy Commissioner, shall, for every block in this district prepare an electoral roll, in Form I, of the Panches and Sarpanches of the Gram Panchayats in the block and invite objections from the public by posting a notice along with the copies of the said electoral roll at conspicuous places in the offices of:

(2) * * * * *

(3) * * * * *”

Section 3(1) of the Act reads as under:—

“The Government may by notification direct that, with effect from such date as may be specified in the notification, there shall be constituted Panchayat Samitis either for every tehsil in a district or for every block in a district.”

It would, therefore, be seen that the electoral roll is prepared by the Deputy Commissioner after the Government has issued the notification constituting the Panchayat Samitis for different areas. It is nowhere laid down in the rule that after the notification under section 113-A, which was inserted in the Act by Punjab Panchayat Samitis and Zila Parishads (Amendment) Act, 1964, has been issued by the Government, a fresh electoral roll will be prepared by the Deputy Commissioner. Section 113-A is to the following effect:—

“(1) Notwithstanding anything contained in this Act or the rules made thereunder, the Government may by notification

direct that, by such date as may be specified in the notification,—

- (i) a general election of primary Members of all Panchayat Samitis and co-option of Members to all Panchayat Samitis; and
 - (ii) a general election of the Members of all Zila Parishads referred to in clause (a) of sub-section (3) of section 86 and co-option of Members of all Zila Parishads referred to in clause (e) of that sub-section; shall be held and made in the State of Panjab; and different dates may be appointed for different areas or for different Panchayat Samitis or Zila Parishads or groups thereof.
- (2) As soon as a notification is issued under sub-section (1), the Deputy Commissioner and all other authorities concerned shall take all necessary steps for such election and co-option under and in accordance with the provisions of this Act and the rules made thereunder.
 - (3) The power of holding a general election or making a co-option under this section, may be exercised by the Government from time to time so that a period of not less than five years shall intervene between any two consecutive elections or co-options.”

This section has nothing to do with section 3 of the Act or rule 3. In section 3, the Government is empowered to constitute Panchayat Samitis for certain areas and rule 3 says that after that has been done, the Deputy Commissioner will then prepare an electoral roll of the Panches and Sarpanches of the Gram Panchayats of that area. Section 113-A, on the other hand, authorises the Government to fix dates for the election of the primary members of the Panchayat Samitis, which is quite distinct from constituting Panchayat Samitis for different areas. After the insertion of section 113-A in the Act, neither any fresh rule was framed by the Government nor was any change introduced in rule 3. Besides, even under section 113-A as worded, it is nowhere laid down that after a notification has been issued under the said section, a fresh electoral roll will be prepared by the Deputy Commissioner. Learned counsel for the petitioner

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could not point out any other rule under which a fresh electoral roll had to be prepared after a notification had been issued under section 113-A. That means that neither section 113-A nor any other rule enjoins on the Deputy Commissioner to frame a fresh electoral roll after the notification is issued by the Government fixing a date for the holding of the election of the primary members of the Panchayat Samiti. It was contended by the learned counsel that when the legislature was using the words "the Deputy Commissioner and other authorities concerned shall take all necessary steps for such electionsin accordance with the provisions of this Act and the rules made thereunder" occurring in sub-section (2) of section 113-A, it was implied that after a notification was issued under that section, the Deputy Commissioner would prepare a fresh electoral roll, because such a preparation was also one of the necessary steps for such election. I am unable to see as to how this sub-section could be interpreted to mean that the Deputy Commissioner was bound to prepare a fresh electoral roll when a notification was issued under section 113-A. All that this sub-section required was that after a date had been fixed for the election of primary members, the Deputy Commissioner would frame an election programme and do other things in accordance with the provisions of the Act and the rules made thereunder. It was not the requirement of any of the provisions of the Act or the rules that a fresh electoral roll had to be prepared after the issuance of a notification under section 113-A. The preparation of a fresh electoral roll is not a necessary step for the election.

It was then contended that even if no fresh electoral roll had to be prepared after the notification under section 113-A, the old electoral roll prepared on 29th May, 1965, had to be annually revised under rule 3-B and since it was not so done by 29th May, 1965, the election held on 16th of June, 1965, on the basis of the unrevised electoral roll, was bad in law.

There is no substance in this contention as well. In the first place, this objection also was not taken in the election petition. Secondly as would be apparent from the impugned order, the election programme in the instant case was published on 4th of January, 1965, under which the nomination papers were required to be filed by 14th January, 1965, and the election was to be held on 22nd January, 1965. Subsequently, a writ petition was filed in this Court by one Nirmal Singh whose nomination papers had been rejected. As a result of this, the election was stayed. The writ petition was later

on accepted and it was held by this Court that the order rejecting the nomination papers of Nirmal Singh was not valid. He was thus considered to be a validly nominated candidate for the election. On 29th May, 1965, a new date, namely, 16th June, 1965, was fixed for the said election and on that date, respondents 2—17 were declared to have been duly elected as members of this Panchayat Samiti. Thus, it would be seen that the election held on 16th June, 1965, was in pursuance to the election programme which was published on 4th of January, 1965, on the basis of which the election was to be held on 22nd January, 1965. No fresh election programme was published by the Deputy Commissioner after the writ petition of Nirmal Singh was accepted by this Court. Only a fresh date for election was fixed and those persons, who had filed the nomination papers on or before 14th January, 1965, were to contest the said election. The nomination papers had been filed on the basis of the electoral roll prepared on 29th May, 1964, and the election was also held on the strength of that very roll. It would not be said that that was a defective roll. Even if the contention of the learned counsel for the petitioner were to be accepted that the electoral roll prepared on 29th May, 1964, had to be revised under rule 3-B within a year from that date, there was still a period of 4½ months, i.e., upto 29th May, 1965, within which the electoral roll could be revised under rule 3-B. The previous electoral roll prepared on 29th May, 1964, was valid, even according to the contention of the learned counsel for the petitioner, upto 28th May, 1965, for the filing of the nomination papers and for the holding of the election. Under these circumstances, it is not necessary to decide the implication of rule 3-B in the instant case.

It was submitted by the learned council for the petitioner that the election held on 16th of June, 1965, was in pursuance of the Government notification dated 12th of May, 1965, and, therefore, a fresh electoral roll should have been prepared immediately after the issue of the notification. In the first place, it is apparent that this election was held pursuant to the notification dated 22nd of December, 1964, mentioned in the notification dated 16th of March, 1965 (Annexure 'D' to the writ petition) for which election programme was published on 4th of January, 1965. Secondly, all that the notification dated 12th of May, 1965, stated was that where elections could not be held previously they should be held upto 31st of July, 1965. Thirdly, I have already held above that there was no necessity for framing a fresh electoral roll after the notification, that was issued under section

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113-A of the Act. It is also pertinent to mention that if the petitioner's case was that the election was being held on a defective electoral roll, he should have immediately come to this court and not waited till the election was actually held on its basis. This is an additional ground dis-entitling the petitioner to any relief in these proceedings on that ground. It is also noteworthy that it had been found as a fact by respondent No. 1 that even on the allegations made by the petitioner in his election petition, it had not been proved that the result of the election had been in any way materially affected. However, it is not necessary for me to go into this question, because I am of the view that there has been no breach of any law or rule in the instant case.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

B.R.T.

