

In consequence this second appeal is dismissed, but the parties are left to their own costs.

Puran Singh
and others

v.

Resham Singh

Mehar Singh, J.
Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS
Before R. S. Narula, J.
PURAN SINGH,—Petitioner
versus
STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 847 of 1965

Punjab Agricultural Produce Markets (Election to Market Committee) Rules (1961)—Rule 5(2)—Whether mandatory—Seven clear days—Whether must intervene between the publication of an election programme and last date for filing nomination papers—Seven clear days—How to be calculated.

1965

September, 14th

Held, that sub-rule (2) of rule 5 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, is mandatory in nature and provides for a vital matter, the breach of which cannot be overlooked or condoned.

Held also, that Rule 5(2) provides that the election programme has to be published "not less than" seven days before the date fixed for filing nomination papers. The phrase "not less than" so many days before refer to the entire days intervening the *terminus a quo* and the *terminus ad quem* and both the terminal days will have to be excluded in computing the period described in this manner. Hence seven clear days must intervene between the date of publication of the election programme and the last date of filing nomination papers. Publication of the programme on the 1st of March, 1965, fixing the last date for filing the nomination papers as 8th of March, 1965, does not, therefore, comply with the mandatory requirements of the aforesaid rule as after excluding both the 1st and the 8th March, 1965, less than seven days are left as the intervening period.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the Notification of the Deputy Commissioner calling for the election from the producers and the proceedings regarding the nomination and scrutiny be annulled and further praying that the election of the producer members by the Panches and Sarpanches under section 12 of the Act be stayed pending the final decision of the Writ Petition.

H. B. SINGH, ADVOCATE, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE GENERAL, WITH P. R. JAIN, ADVOCATE, for the Respondents.

ORDER

Narula, J.

NARULA, J.—The facts in the present case are not in dispute. Name of Puran Singh petitioner is registered at serial No. 413 of the voters' list of Sarpanches and Panches relating to Market Committee, Kaithal (Gram Panchayat of village Harsola). He is a Sarpanch of that village and is an elector for the purposes of elections of the producer members of the Market Committee, Kaithal. The petitioner states that he wanted to contest the election to the Market Committee as a producer member.

Election of members except those from co-operative societies has to be held in accordance with rule 5 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961. Sub-rules (1) and (2) of rule 5 provide:—

“5. *Election programme.*—(1) For the purpose of holding elections from producers and from persons licensed under sections 10 and 13, the Deputy Commissioner shall frame an election programme specifying the date, time and place for:—

- (a) the filing of nomination papers;
 - (b) the scrutiny of nomination papers;
 - (c) the withdrawal of nomination papers;
 - (d) the taking of poll, if necessary;
 - (e) the counting of votes and declaration of results.
- (2) The election programme shall be published not less than seven days before the date fixed for filing the nomination papers:—
- (a) by posting a copy at the offices of the District Panchayat Officer, the Market Committee of the area and at such other conspicuous places in the notified market area as may be determined by the Deputy Commissioner in this behalf;
 - (b) by supplying a copy to each Panchayat in the notified market area.”

The election programme relating to Market Committee, Kaithal, was signed by Shri Ram Singh, District Electoral Officer, Karnal (to whom powers of the Deputy Commissioner under rule 24 of the above-said rules had been delegated) on 23rd February, 1965. The said election programme is stated by the respondents to have been despatched on the 27th February, 1965, from Karnal to the concerned officers for the purpose of publication on 1st March, 1965, at the requisite centres as well as at their offices as required by sub-rule (2) of rule 5 of the aforesaid rules. It is not disputed that the election programme was received by the Market Committee, Kaithal, in its office on the 3rd of March, 1965. According to the petitioner it was published on the 4th of March, 1965, whereas according to the affidavit of Shri Ram Singh, General Assistant to the Deputy Commissioner, Karnal, it was published by the Market Committee on the same day, i.e., on 3rd March, 1965, by pasting a copy of the same on the notice-board of the Market Committee as well as by beat of drum. Copy of the communication dated 20th February, 1965 (the date being prior to even 23rd February, 1965, on which date the election programme was signed by the District Electoral Officer, Karnal, according to the affidavit of Shri Ram Singh aforesaid) has been filed as annexure 'A' to the writ petition. In this communication all the officers concerned have been directed to get the programme published on March 1, 1965 and to report compliance with the same to the Deputy Commissioner, Karnal, on 3rd March, 1965, positively. These directions have been given in annexure 'A' to ensure compliance with the provisions of rule 5 which requires publication of the programme not less than seven days before the date fixed for filing the nomination papers. It is not disputed that the first day for filing nomination papers according to the said election programme was the 1st of March, 1965. In fact the programme provided for nomination papers being filed from the 1st to the 8th of March, 1965. The date of election was fixed as April 4, 1965. The case of the petitioner is that he came to know about the publication of the election programme only on the 8th after the time for filing the nomination papers had expired and that this was due to the deficiency of three days in the minimum period of seven days during which the election programme should be available to the persons concerned after its publication.

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As stated above, the claim of the petitioner is that he himself wanted to contest the election to the Market Committee. The petitioner, therefore, filed this writ petition on March 30, 1965, praying for the quashing of the election programme and for annulment of all proceedings based on the said programme relating to the elections to the Market Committee, Kaithal. Along with the writ petition, C.M. 1071 of 1965 was filed by the petitioner with a view to obtain stay of the holding of the elections. The Motion Bench (Capoor and Dua, JJ.) while admitting the writ petition on March 31, 1965, declined to grant the stay prayed for by the petitioner. As a consequence, the election to the Market Committee, Kaithal, has actually taken place on the 4th of April, 1965, in accordance with the impugned election programme. In the written statement of the General Assistant to the Deputy Commissioner, Karnal, the above-said dates have been given and it has been further stated that the election programme was duly published on 1st March, 1965, i.e., seven days before the last date of filing nominations at the following places:—

- (1) Office of the Deputy Commissioner, Karnal;
- (2) Office of Sub-Divisional Officer (Civil), Kaithal;
- (3) Office of the District Development and Panchayat Officer, Karnal; and
- (4) Offices of the Tehsildar, Kaithal, and Naib-Tehsildar, Buhla.

He has also affirmed that the election has already been held on 4th April, 1965, according to the scheduled programme.

In the writ petition an additional objection had been taken regarding the preparation of the voters' list, but the said objection has not been pressed before me at the hearing of this case in view of the facts stated in the return to the rule issued in this case.

The only point for consideration in the case is whether every part of sub-rule (2) of rule 5 of the aforesaid rules is mandatory or some of its provisions are merely directory. According to the said sub-rule it is compulsory that the election programme must be published at several places including the office of the Market Committee of the area not less than seven days before the date fixed for filing the

nomination papers. The contention of the petitioner is that even between the last date on which the nomination papers had to be filed, i.e., 8th March, 1965, and the date of the publication of the programme by posting the same at the office of the Market Committee, Kaithal, on 3rd March, 1965, the period was less than seven days and, therefore, the mandatory provisions of sub-rule (2) of rule 5 of the aforesaid rules have been violated. Mr. L. D. Kaushal, the learned Deputy Advocate General, has vehemently argued that the intention of the rule is that the election programme should be duly published and should be made well known in the locality concerned and that the provisions of rule 5(2) are merely directory and not mandatory. His argument is that the difference of one or two days in the publication of the election programme at one of the various places mentioned in the rule should not vitiate the election. He has also argued that in view of the publication of the programme at the four places mentioned above there has been substantial compliance with the above rule. The learned Deputy Advocate General has relied on the judgment of the Supreme Court in *Partap Singh v. Shri Krishna Gupta and others* (1) where it was held that tendency of the Courts towards technicality is to be deprecated and that it is the substance of the matter that counts and that it is the substance which must take precedence over mere form. Distinction between certain rules relating to elections, which are vital and go to the root of the matter and which should not be allowed to be broken on the one hand and between the other set of rules which are merely directory and of which breach can be overlooked provided there is substantial compliance with the rule read as a whole on the other hand was pointed out in that judgment.

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There appears to be no doubt that the rule as to the publicity of the election programme is mandatory. The very language of sub-rule (2) of rule 5 indicates this. Even otherwise publicity of the election programme and particularly the period fixed for filing the nomination papers is of the essence of all elections and it cannot be successfully argued that non-publication of the election programme does not vitiate the election. When a particular method of publication has been prescribed by the relevant rule, the

(1) A.I.R. 1956 S.C. 140.

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same must be strictly complied with and it has to be presumed on the slightest complaint being made that if the manner of publication provided by the rule was not complied with, the result of the election has been materially affected. I am inclined to think that sub-rule (2) of rule 5 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, is mandatory in nature and provides for a vital matter the breach of which cannot be overlooked or condoned. In this view of the matter I have to hold that the election programme in question was not properly published in so far as it related to the election to the Market Committee of Kaithal and that the election to that Committee based on the said programme has not been held in accordance with law and is liable to be set aside on that account.

The rule provides that the election programme has to be published "not less than" seven days "before the date" fixed for filing the nomination papers. It has been held by this Court (Tek Chand, J.) in *I.M. Lall v. Gopal Singh and others* (2), that the phrase "not less than" so many days before refers to the entire days intervening the *terminus a quo* and the *terminus ad quem* and both the terminal days will have to be excluded in computing the period described in this manner. According to the said interpretation of the phrase "not less than seven days before the date fixed for filing the nomination papers", seven clear days must intervene between the date of publication of the election programme and the last date of filing nomination papers. Publication of the programme on the 1st of March, 1965, fixing the last date for filing the nomination papers as 8th of March, 1965, does not, therefore, comply with the mandatory requirements of the aforesaid rule as after excluding both the 1st of March and the 8th of March, 1965, less than seven days are left as the intervening period. This interpretation of the phrase "not less than" is based on a large number of authorities which have been noticed in *I. M. Lall's case* (supra). I, therefore, hold:—

- (1) that rule 5(2) of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, is mandatory.
- (2) that the publication of the election programme at the office of the Market Committee, Kaithal, on

(2) I.L.R. (1963) 2 Punj. 571.

the 3rd of March, 1965 (less than seven clear days before last date for filing the nomination papers) vitiated the holding of the election to the Market Committee, Kaithal.

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- (3) that seven clear days must intervene between the date of publication of the election programme and the last date for filing of the nomination papers (after excluding both the terminal days) according to proper interpretation of sub-rule (2) of rule 5 of the aforesaid rules.
- (4) that the publication of the election programme even on the 1st of March, 1965 did not, therefore, satisfy the mandatory requirements of rule 5(2) of the aforesaid rules.
- (5) that rule 5(2) falls in that class of rules, non-compliance with which cannot be overlooked.
- (6) that the supervening considerations on account of which grant of relief was declined by this Court in *I. M. Lall's case* in spite of the above interpretation of the rule do not find place in the instant case.

I, therefore, grant this writ petition, set aside the election programme issued by the Deputy Commissioner, Karnal, in so far as it related to the Market Committee, Kaithal and consequently the election of the producer members to the Market Committee, Kaithal, held on 4th of April, 1965 and direct that fresh elections to the Market Committee, Kaithal, may be held in accordance with law. Parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before D. Falshaw, Chief Justice and Mehar Singh, J.

M/S. MOHAN LAL GURDIAL DASS,—Appellant

versus

STATE OF PUNJAB AND OTHERS,—Respondents

Letters Patent Appeal No. 352 of 1964.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—
Ss. 8 and 17—Goods-carrier registered in Rajasthan and transporting goods from Rajasthan to Delhi passing through some places in the Punjab without loading or unloading goods in the areas of Punjab—Permit countersigned by R.T.A., Ambala—Whether requires to be registered under S. 8—"Ply"—Meaning of.

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September, 16th.