

such facts as would disentitle the specified landlord from obtaining an order for the recovery of possession of the residential building. Apart from that, 15 days period is given for appearance as well as to obtain leave of the Controller to contest the application under section 13(A) of the Act. It is not obligatory on the tenant to put in appearance unless he has the inclination to contest the eviction petition. That itself is enough to suggest that if he, makes up his mind to appear, he must apply for leave to contest within the period allowed i.e., 15 days from the date of service. In default, the landlord will be entitled at any time after the expiry of the said period of 15 days to obtain an order for his eviction as provided in the summons itself. That further makes the period of 15 days relevant. In these circumstances, I do not find any illegality or infirmity in the order of the Rent Controller as to be interfered with in this petition.

(10) Once the application to obtain leave to contest is dismissed as barred by time, the landlord was entitled to obtain an order for eviction. Moreover, in the present case, the Rent Controller was satisfied from the affidavit filed by the landlord in support of his application of ejection that the landlord required the premises for his own occupation as he does not possess any other suitable accommodation in the area concerned. Consequently both the petitions fail and are dismissed with costs. However, the tenant is allowed two months time to vacate the premises provided all the arrears of rent up-to-date are deposited or paid within a fortnight with a further undertaking in writing that after the expiry of the said period vacant possession will be handed over to the landlord.

S.C.K.

Before S. S. Kang, J.

DEEP CHAND,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8563 of 1987.

December 4, 1987.

The Haryana Municipal Election Rules, 1978—Rules 74 & 85(1)(d) & (IV)—Constitution of India, 1950—Articles 226 & 329—Municipal

Deep Chand v. State of Haryana and others (S. S. Kang, J.)

Elections—Authority cancelling election proceedings and ordering re-poll—Order—Whether a step in the electoral process—Validity of order—Whether can be called in question at an intermediate stage in a petition under Article 226.

Held, that it is the essence of a democratic polity that the elections to the elective bodies, which perform various statutory functions, must be held expeditiously and within the time frame set therefor. The elections should not be held up at any intermediate stage. Disputes about elections have to await their resolution after the declaration of the result. Elective enterprises in the High Court or any other Court for that matter should not be allowed to hold up on-going electoral process. This principle has been enshrined in Article 329 of the Constitution. Elections should not be unduly protracted or obstructed. The speed and promptitude in getting due representation for the electors in the legislative bodies is the real reason for the embodiment of this principle in Art. 329 of the Constitution and later in Rule 74 of the Haryana Municipal Election Rules, 1978.

(Para 7).

Held, that the order cancelling poll and directing re-poll is an integral part of the electoral process. It is an order during the course of elections passed with the object of completing the election. It can be challenged only after the declaration of the result and that too by means of an election petition. A writ petition challenging the cancellation of the poll coupled with re-poll amounts to calling in question a step in the election process and is not an appropriate remedy.

(Para 11).

B Representation of the People Act (XLIII of 1951)—Section 153—Haryana Municipal Election Rules, 1978—Rule 74—Rule 74 in pari materia with Section 153—Remedy by way of election petition after declaration of result—Such rule of Representation Act—Whether applies to municipal elections.

Held, that the language of Rule 74 of the Haryana Municipal Election Rules, 1978 is similar to the provisions of section 153 of the Representation of People Act, 1951. Hence the principle that an election petition can be presented only after the election is over is equally attracted to the election disputes arising out of municipal elections.

(Para 8).

Petition under article 226 of the Constitution of India praying that the following relief be granted:—

- (i) *a writ in the nature of writ of certiorari be issued calling for the record of respondent Nos. 1 and 2 relating to the*

impugned order and after perusal of the same, the impugned order be quashed;

- (ii) *a writ in the nature of mandamus directing the respondents No. 1 and 2 not to treat the polling at Booths No. 86 and 87 of Ward No. 33 that took place between 8.00 A.M. and the time of suspension of polling and as void and to order further polling in respect of the voters who had not polled their votes during the time between 8.00 A.M. and the time of suspension;*
- (iii) *any other suitable writ, order or direction that this Hon'ble Court may deem fit in the circumstances of the case, be issued;*
- (iv) *an ad-interim order be issued restraining respondents Nos. 1 and 2 from holding repoll in ward No. 33 of Hissar Municipal Committee pending decision of this writ petition; and*
- (v) *costs of the petition be allowed to the petitioner.*

Anand Swaroop, Senior Advocate (Mr. Jaswant Jain, Advocate with him), for the Petitioner.

S. V. Rathee, Advocate for A.G. (Haryana) for respondents 1 and 2.

Ashok Bhan, Senior Advocate (M/s A. K. Mittal, Punit Jindal and R. K. Garg, Advocates with him), for the respondent No. 3.

JUDGMENT

Sukhdev Singh Kang, J.—

(1) Community of forensic issues and similarity in the fact situations in the two writ petitions (C.W.P. Nos. 8563 and 8765 of 1987) call for a common judgment.

(2) A brief reference to the skeletal facts is a prefatory necessity.

(3) Elections to the Municipal Committee, Hissar were held on October 30, 1987. Deep Chand, petitioner in C.W.P. No. 8563 of 1987 and Chhattar Pal, petitioner in C.W.P. No. 8765 of 1987 were candidates from Ward No. 33 and 25 respectively. The polling

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continued at the polling booths till after lunch when there was violence and acts of arson near and in front of the polling booths. Criminal cases with regard thereto were registered with the police. On receipt of the reports from the Presiding Officers of the two Wards, the Deputy Commissioner, Hissar cancelled the election proceedings and ordered re-poll for these wards. The petitioners assail the orders of cancellation of the poll held on October 30, 1987 and directions for re-poll. Respondents have resisted the writ petitions and have controverted the factual assertions.

(4) At the hearing of the writ petitions, a preliminary objection has been raised on behalf of the respondents that the impugned order cancelling the election proceedings and ordering re-poll were steps in furtherance of the election process. They have been made with a view to complete the election process. The process of the election having been set in motion should not be stopped at any intermediate stage. The aggrieved persons could seek the redressal of their grievances after the declaration of the results of the election by filing election petitions. The objection has merit and must prevail.

(5) The Haryana Municipal Elections Rules, 1978 (hereinafter referred to as 'the Rules') enact the procedure, *inter alia*, for preparation of the electoral rolls, conduct of elections to the Municipal Committees, the disqualifications for membership thereto, the declaration of the election results, the determination of the election disputes. The Rules take care of all matters relating to the elections to the municipal committees in the State. The duty to conduct these elections is entrusted by the Rules to the Deputy Commissioner. Under Rule 19, the Deputy Commissioner shall frame a programme for elections of a committee. He shall designate or nominate a Returning Officer, fix the date for filing the nomination papers, scrutiny thereof, dates for the poll and declaration of the result of the poll. Rule 58 vests in the Deputy Commissioner the power to declare the polling at any station to be void and to fix a day for taking a fresh poll for that particular polling booth. Rules 73 to 88 deal with and contain provisions relating to the resolution of the election disputes. They, *inter alia*, define corrupt practices, make provision for filing election petition, the appointment of the Commission to dispose of election petition, devise and lay down the procedure for enquiry into the disputes and the grounds for declaring the election to be void. Rule 74, which is

of prime importance in the context of the preliminary objection, reads :—

“No election shall be called in question except by an election petition in accordance with these rules.”

Rule 85(1)(d)(iv) lays down that if the Commission was of the opinion that the result of the election, in so far as it concerned a returned candidate, had been materially affected by any material irregularity in the procedure of the election, the Commission shall declare the election of the returned candidate to be void.

(6) The learned counsel for the parties are agreed that the allegations contained in the writ petitions constitute grounds for setting aside the elections, as enumerated in Rule 85.

(7) It is the essence of a democratic polity that the elections to the elective bodies, which perform various statutory functions, must be held expeditiously and within the time frame set therefor. The elections should not be held up at any intermediate stage. Disputes about elections have to await their resolution after the declaration of the result. Elective enterprises in the High Court or any other court for the matter thereof should not be allowed to hold up the on-going electoral process. This principle has been enshrined in Article 329 of the Constitution. It ordains, *inter alia*, that notwithstanding anything contained in the Constitution, no election to either House of Parliament or to the Houses or either House of Legislature of a State shall be called in question, except by an election petition. The reason for postponement of election disputes after the declaration of the election result is that elections in these bodies should not be unduly protracted or obstructed. The speed and promptitude in getting due representation for the electors in the legislative bodies is the real reason for the embodiment of this principle in Article 329 of the Constitution and later in Rule 74. This principle was recognised by the final Court in the very third year of the Republic in *N. P. Ponnuswami v. Returning Officer, Namokkal Constituency*, (1), wherein it was observed :

“Having regard to the important functions which the legislatures have to perform in democratic countries, it has

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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 retarded or protracted.

In conformity with this principle, the scheme of the election law in this country as well as in England, is that no significance should be attached to anything which does not affect the 'election', and if any irregularities are committed while it is in progress and they belong to the category or class, which, under the law by which elections are governed would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress."

(8) After examining and analysing the various provisions of the Representation of the People Act, 1951, their Lordships had pointed out that it will be fair inference that the Act provides for only one election petition to be presented after the election was over, and there was no remedy provided at any intermediate stage. The word "election" connotes the entire procedure to be gone through to return a candidate whenever we talk of elections in a democratic country. Since the language of Rule 74 is similar to the provisions of the Representation of the People Act, which came for construction before the apex Court, the principles enunciated above are equally attracted to the election disputes arising out of municipal elections.

(9) Even in the absence of express and explicit provisions like Rule 74 *ibid*, the apex Court in the context of Uttar Pradesh Municipalities Act, 1916, applied the same principle in *Nanhoo mal and others v. Hira Mal and others*, (2), wherein it was observed :

"The election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by the U. P. Municipalities Act and that

(2) A.I.R. 1975 S.C. 2140.

is by means of an election petition presented in accordance with the provisions of the Act and in no other way. An election petition is to be presented after the election is over and there is no remedy provided at any intermediate stage. The election itself can be questioned only on one or more of the three grounds mentioned in sub-section (2) of Section 438. The only ground in the present case on the basis of which the election of the President was questioned in writ jurisdiction of High Court was that there was a non-compliance with the provisions of Rule 6 made under the Act. The jurisdiction to decide the validity of the election of a President is an exclusive one conferred on the District Judge. In the circumstances there was no room for the High Court exercising its powers under Article 226 in order to set aside the election. In setting aside the election the High Court plainly erred because it did not consider whether the result of the election had been materially affected by non-compliance with the rules in question. In any case that is a matter within the exclusive jurisdiction of the district Judge."

(10) The question then arises that whether an order cancelling the election proceedings and ordering re-poll in a Municipal Committee is a step in the process of election. This question is fully answered by the Supreme Court in *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi and others*, (3). It has been held therein :

"Election covers the entire process from the issue of the notification under Section 14 of the Representation of the People Act to the declaration of the result under Section 66 of the Act. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefor, with the amended date, is passed as an integral part of the electoral process. When the Election Commission amended its notification and extended the time for completion of the election by ordering a fresh poll, it is an order during the course of the process of 'election'. Even if it is wrong order it does not cease to be an order passed by a competent authority charged with

(3) A.I.R. 1978 S.C. 851.

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the conduct of elections with the aim and object of completing the elections. Although that is not always decisive, where the impugned order has been passed in the exercise of power under Article 324(1) of the Constitution and Section 153 of the Representation of the People Act, such an order, relating, as it does, to election cannot be questioned except by an election petition under the Act. If during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The petitioner, then, will have a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll.

“The catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the *prime facie* purpose of such a re-poll is to restore a detailed poll process and to complete it through the salvatory effort of a re-poll. A writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in ‘election’ and that is therefore barred by Article 329(b).”

(11) It is, thus, clear that election covers the entire process from the issuance of the election programme to the declaration of the result of the election and that the order cancelling poll and directing re-poll is an integral part of the electoral process. It is an order during the course of elections passed with the object of completing the election. It can be challenged only after the declaration of the result and that too by means of an election petition. A writ petition challenging the cancellation of the poll coupled with re-poll amounts to calling in question a step in the election is not an appropriate remedy.

(12) Consequently, the preliminary objection is upheld and the writ petitions are dismissed. It is made clear that the writ petitions have been dismissed on a technical ground and there was no

intention to express any opinion on the merits of the controversy. Any reflection on merits which may be deducible from the judgment was totally unintended and shall not influence the mind of the Commission, who may be seized of the election dispute. No costs.

R. N. R.

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

BHAGWAN DUTT SHARMA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 551 of 1986.

May 12, 1988.

Constitution of India, 1950—Article 226—The teachers in service—Such teachers acquiring higher qualifications—Whether entitled to higher scale of pay—Date of such entitlement—Adjustment against post of Master—Relevancy of.

Held, that the teachers who acquired the B.T. or B.Ed qualification would be entitled to the higher scale of pay as soon as they acquired the qualification irrespective of the dates when they were adjusted against the post of Masters. The adjustment against the posts of Masters was relevant only for the purpose of seniority in the posts of Masters and for the further promotion from that post. So far as the scale of pay was concerned, irrespective of adjustment against the post of Master, a teacher was always held to be entitled to the higher scale of pay from the date of acquisition of the B.T. or B.Ed qualification. The writ petitioners are entitled to the Master's pay from the date they acquired the higher qualifications.

(Para 1).

The case was referred to Larger Bench by Hon'ble Mr. Justice D. V. Sehgal,—vide order dated May 23, 1986 in view of the fact that the common question of Law and similar facts are involved in all the petitions and the decision of the Division Bench of this Court in CWP No. 7553/76 is not in accordance with judgment of the Supreme Court on a similar matter.