

the learned Additional District Judge and restore that of the Court of first instance. I am informed at the bar that the pre-emption money has already been deposited as directed by the Court of first instance. The appellants are entitled to their costs in this Court as also in the lower appellate Court.

Inder Singh
and another
v.
Kartar Singh
and others

Dua, J.

B.R.T.

LETTERS PATENT APPEAL.

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

TELU RAM AND ANOTHER,—Appellants.

versus

NATHU RAM AND OTHERS,—Respondents.

Letters Patent Appeal No. 137 of 1965.

Punjab Panchayat Samitis (Primary Members) Election Rules (1961)—Rules 22 and 28—List of voters prepared under rule 22(4) of the representatives of co-operative societies—Whether exhaustive—Representatives of co-operative societies, whose names not included in the list, appearing with resolutions constituting them representatives—Whether entitled to vote—Constitution of India (1950)—Art. 226—Parties—Whether must confine to pleadings—Petition to challenge election—Whether should be rejected if the grounds stated are such that can be raised in election petition.

1965

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Held, that a duly selected representative of a co-operative society whose name could not reach the Assistant Registrar for one reason or the other and whose name was, therefore, not included in the list prepared under sub-rule (4) of rule 22 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, is entitled to vote in the election provided that the Returning Officer is satisfied that such a person had in fact been properly selected by the society. The list prepared by the Assistant Registrar under rule 22(4) is not an ordinary electoral roll in which there is an elaborate procedure for challenging the names entered therein or getting names entered therein which are omitted. It is not an electoral roll at all in the ordinary sense, but merely a list of an electoral college the members of which are to be selected by their own Co-operative Societies. Sub-rule (4) of rule 22 cannot be construed to mean that if duly selected representatives of Co-operative Societies turn up at the election with proper credentials, they should not be permitted to vote under rule 28(3).

Held, that in a writ petition under Article 226 of the Constitution, no party should be allowed to depart from his pleadings and set up a new case.

Held, that, in general, there should be no interference under Article 226 of the Constitution when an election petition lies and the grounds of the writ petition are such that they could be raised in an election petition.

Letters Patent Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice. P. D. Sharma passed in Civil Writ No. 1608 of 1964 on 10th March, 1965.

D. N. AGGARWAL AND B. N. AGGARWAL, ADVOCATES, for the Appellant.

HARBHAGWAN SINGH, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—This is an appeal filed under clause 10 of the Letters Patent by Telu Ram and Ram Singh, against the order of a single Judge allowing a petition filed under Article 226 of the Constitution by Nathu Ram and Ram Lal, respondents and setting aside the election of the appellants as representatives of the Co-operative Societies of Pundri block to the Panchayat Samiti of the said block.

The facts are that the panchayat samiti elections for the Pundri block were ordered to be held on the 22nd of June, 1964. Two of the members of the Panchayat Samiti were to be elected by representatives of the Co-operative Societies situated within the block and under rule 22(1) of the Punjab Panchayat Samitis (Primary Members) Elections Rules, 1961, the Assistant Registrar addressed a circular letter on the 19th of May, 1964, to the Chairman or President of every such Co-operative Society calling on him to convene within twenty days a meeting of the members of the Society for the purpose of selecting the society's representative. At the samiti elections held on the 22nd of June, 1964, there were three candidates for the two posts of representatives of the Co-operative Societies, the two appellants Telu Ram and Ram Singh and the first petitioner Nathu Ram. In all 61 representatives of Co-operative Societies cast their votes, Nathu Ram, receiving 18, Telu Ram 22 and Ram Singh 21 and the latter two were declared as elected by the Returning Officer. The position of the second petitioner Ram Lal was that he had been duly elected by the Co-operative Society of which he

was a member as its representative, but he was not permitted by the Returning Officer to vote in the election.

Although section 121 of the Punjab Panchayat Samitis and Zila Parishads Act permits the filing of an election petition by a voter within twenty days of the election, it does not seem that any election petition was filed within the said period, and the present writ petition was filed in this Court more than two months after the election in the end of August, 1964. Although a number of allegations are made in the petition regarding allegedly properly qualified representatives of Co-operative Societies not being allowed by the Returning Officer to vote, and other allegedly not properly qualified representatives being allowed to vote, these allegations are not at all easy to understand and the confusion with which the petition has been drafted is illustrated in the fact that respondent No. 2 was styled as the Returning Officer (Assistant Registrar), Co-operative Societies, Kaithal, district Karnal, although it is quite clear that even in the rules themselves the Returning Officer and the Assistant Registrar are two quite separate and distinct persons with different functions.

Indeed it is quite clear from the order of the learned Single Judge, that he has decided the matter and has quashed the election on a ground not specifically raised in the petition, but based on his interpretation of the rules the gist of which is as follows. Rule 21 calls on the Assistant Registrar of the District, once a notification to constitute a Panchayat Samiti has been promulgated, to draw up an election programme and to prepare a list of Co-operative Societies within the area of each samiti. Under Rule 22, the Assistant Registrar is ordered to send a copy of the election programme to each President or Chairman of Co-operative Society and ask him to convene a meeting of the members for the election of the representative of the Society, and sub-rule 1(b) provides that the names of the elected representative is to be sent to the Assistant Registrar on the day, the election is held. The President or Chairman is also instructed to furnish the representative of his society with an authenticated copy of the resolution appointing him as such. Much importance has been attached to sub-rule (4) of rule 22, which provides that the Assistant Registrar shall, for each block in his district, prepare a separate list of the names of representatives of

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the Co-operative Societies in that block received by him under clause (b) of sub-rule (1) and that he shall post a copy of this list outside his office and shall also send a copy thereof to each Returning Officer. "Rules 23 to 27 deal with the nomination of candidates to be elected in the samiti election and allotment of symbols to candidates. Rule 28 deals with the actual election. Sub-rules (1) and (2) deal with what is to happen if the number of contesting candidates equals or is less than the number of vacancies. Sub-rule (3) reads—

"If the number of such candidates exceeds the number of persons to be elected, an election shall be held by secret ballot. The votes of such electors, who bring with them a copy of the resolution of the society, duly attested by the Chairman or President, as the case may be, of that Society authorising the elector to represent the Society shall only be taken."

It seems that in the present case there was no proper compliance with the statutory provision by some of the persons concerned for communicating to the Assistant Registrar the names of the members elected to represent the various Co-operative Societies on the day, their election was held, with the result that the list of voters prepared by the Assistant Registrar under rule 22(4) contained only 54 names. It was elicited from the Assistant Registrar, who was examined in this Court that these 54 names were received by him in three batches, the first being of 47, the second of 5 and the third of 2, the last two names being added on the very morning of the election. However, 61 votes were cast in the election which meant that at least 7 more persons voted than were included in the list prepared by the Assistant Registrar, or more than 7, if some of the persons included in the list were not permitted by the Returning Officer to vote. In the opinion of the learned single Judge, this fact alone invalidated the election.

It seems to me that in deciding the matter in this way the learned Single Judge has ignored the general principle that, particularly in the matter of writ petitions under Article 226 of the Constitution, no party should be allowed to depart from his pleadings and set up a new case. The

case of the present petitioners was simply that the Returning Officer acted wrongly in rejecting the votes of a number of representatives of Co-operative Societies on the ground that they were not properly qualified, although in fact they were so qualified and at the same time that he allowed to vote a number of representatives, who were not properly qualified by reason of some defect in the resolutions of their Societies appointing them as representatives. As far as I can see the objections both to the alleged wrongful acceptance and alleged wrongful rejection of votes had nothing whatever to do with whether the names of those representatives were included in the list prepared by the Assistant Registrar under sub-rule (4) of rule 22.

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It becomes obvious at once that the examination of the records of Co-operative Societies for the purpose of ascertaining whether the resolutions selecting their representatives to the electoral college were in order or not was a matter which could only be properly investigated by the prescribed authority appointed under section 121 of the Act to hear election petitions, and, in my opinion, this petition is no more than an election petition which had been filed long after the prescribed period of limitation of 20 days, and it was liable to be rejected on this ground alone. Against this view the learned counsel for the respondents cited the case of *Devi Ram V. State of Punjab and others* (1), in which Dua and D. K. Mahajan, JJ., had held that the existence of an alternative remedy by way of an election petition was not a bar to a petition under Article 226, where the interests of justice demanded interference, but in that case it was found that the Deputy Commissioner, who was the prescribed authority under Section 121 of the Act to hear election petitions, had already taken a view which was wholly unsupportable against the petitioner, and interference might, therefore, be considered to be justified on the facts of that particular case. I am still of the opinion that in general there should be no interference under Article 226, when an election petition lies and the ground of the writ petition are such that they could be raised in an election petition.

Some attempt was also made to argue that the petitioners were not qualified to file an election petition

(1) 1964 P.L.R. 1185.

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which can only be done by a voter under section 121. This might apply in the case of the second petitioner Ram Lal, though I should have thought that even in this case, if his allegation was true that he was duly qualified as a voter by being selected in a regular manner as its representative by the Co-operative Society to which he belonged, and he was wrongly not permitted to vote by the Returning Officer, he might at least have had a try at filing an election petition. As regards Nathu Ram, the petition is completely silent as to whether in fact he was a voter or not. In order to be a candidate for election to the samiti all that was required by rule 23 was that he should be a member of a Co-operative Society, and I cannot see anything in the rules which debar the representative selected to cast a vote on behalf of his Co-operative Society at the Samiti election from also being a candidate. At any rate Nathu Ram does not allege in his petition that he could not have brought an election petition because he was not a voter, and in any case, since he obtained 18 votes he could surely have got one of the persons, who voted for him to file such a petition.

Although I consider that the petition might have been rejected on this ground alone I feel bound to deal with the ground on which the learned Single Judge set aside the election of the appellants. It seems that a number of judges of this Court have taken the view that unless the name of a representative selected by a Co-operative Society as a member of the electoral College appears in the list prepared under rule 22(4) by the Assistant Registrar, he is not qualified to vote even when he is able to present before the Returning Officer, proper credentials in the form of a duly authenticated copy of the resolution of the Society by which he was selected as required in sub-rule (3) of rule 28. A number of such cases are referred to in the latest reported decision on this point, *The Lutki Majra Agriculture Service, Co-operative Society Ltd. and another v. The State of Punjab and others* (2). In that case it appears that in the Samana Block in Patiala District, there was wholesale failure to comply with that provision in the rules which requires a Co-operative Society, after selecting its representative to vote at the election, to inform the Assistant Registrar of its selection without delay. In fact there were 145 Co-operative Societies in

(2) 1965 Current Law Journal (Pun.) 723.

the block, but only 29 of them had notified the Assistant Registrar of the names of their nominees with the result that there were only 29 names on the list on the date when the election was held. At the election, however, the three candidates obtained 42, 41 and 38 votes respectively, which meant that 121 votes were cast, i.e., nearly 100 more than the number on the list. In the circumstances, after referring to other decisions on the point including the one, now under appeal, R. S. Narula, J., set aside the election although it was pointed out to him that the Returning Officer had allowed so many voters not on the list to vote in consequence of instructions circulated in a letter, dated the 3rd of April, 1964, by the Deputy Secretary, Development, to the effect that the duly selected representative of a Society, whose name could not reach the Assistant Registrar for one reason or the other, and whose name was, therefore, not included in the list prepared under sub-rule (4) of rule 22, should be allowed to vote in the election provided that the Returning Officer was satisfied that such a person had in fact been properly selected by the Society. In my opinion this was an eminently sensible direction for the Government to circulate. Indeed the election would be reduced to a farce if the two members were to be elected by 29 voters out of 145 simply because through the negligence of the Secretary or some other officer of the Co-operative Society the name of the representative chosen by the Society had not been communicated in time to the Assistant Registrar. It is to be borne in mind that the list prepared by the Assistant Registrar under rule 22(4) is not an ordinary electoral roll in which there is an elaborate procedure for challenging the names entered therein or getting names entered therein which are omitted. It is not an electoral roll at all in the ordinary sense, but merely a list of an electoral college the members of which are to be selected by their own Co-operative Societies. In my opinion sub-rule (4) of rule 22 cannot be construed to mean that if duly selected representatives of Co-operative Societies turn up at the election with proper credentials, they should not be permitted to vote under rule 28(3). In the present case it was argued that the voters should be confined to the names on the list prepared under rule 22(4) in order to avoid imposters turning up at the election, but there is no allegation of this kind in the petition. Nowhere is it even suggested that the persons who turned up to register their

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votes at the election were not the persons whom they claimed to be, and all that was in dispute was whether the resolutions by which they had been selected were in order, and, as I have already said, that is a matter which could only be gone into in an election petition. The result is that I would accept the appeal and dismiss the petition under Article 226 of the Constitution, but leave the parties to bear their own costs.

Mehar Singh, J. MEHAR SINGH, J.—I agree.

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FULL BENCH

Before S. B. Kapoor, Inder Dev Dua and Prem Chand Pandit, JJ.

KRISHAN KUMAR GROVER,—Petitioner.

versus

PARMESHRI DEVI AND OTHERS,—Respondents.

Civil Revision No. 334 of 1962.

1965

September, 20th

Code of Civil Procedure (V of 1908)—Section 115—Revision against an order holding plaint to be insufficiently stamped and directing plaintiff to pay additional court fee within specified time—Whether competent.

Held, that under section 115 of the Code of Civil Procedure, a revision petition is competent at the instance of a plaintiff against an order holding that additional Court fee is payable on the relief claimed and directing him to pay the additional Court fee on his plaint within the time specified by the Court.

Case referred by the Hon'ble Mr. Justice S. B. Kapoor, on 28th January, 1964, for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice A. N. Grover further referred the case to a Full Bench. The Full Bench consisting of Hon'ble Mr. Justice S. B. Kapoor, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Prem Chand Pandit on 20th September, 1965, after deciding the question of law referred, returned the case to the Single Bench for decision.

Petition under Section 44 of the Punjab Courts Act, 1918, read with Section 115 of the Code of Civil Procedure, 1908, for revision of the order of Shri Kartar Singh, Senior Sub-Judge, Amritsar, dated the 17th May, 1962, requiring the plaintiff to pay ad valorem Court fee of Rs. 59,262, up to 31st May, 1962.

A. M. SURI, C. M. NAYAR AND S. M. SURI, ADVOCATE, for the Petitioner.

K. L. KAPUR, AND VINOD KUMAR SURI, ADVOCATES for the Respondents.