

LETTERS PATENT APPEAL.

Before G. D. Khosla, C.J., and D. K. Mahajan, J.

PIARA SINGH AND ANOTHER,—*Appellants.*

versus

LACHHMAN SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 175 of 1959.

1960

Sept. 6th.

Punjab Municipal Election Rules—Rules 6 and 8—Ward-wise electoral rolls—Whether necessary to be prepared—Key chart issued by Deputy Commissioner with the electoral roll for the constituency of the Legislative Assembly—Whether sufficient—Proper roll of voters not prepared—Election of members—Whether can be set aside.

Held, that rules 6 and 8 of the Punjab Municipal Election Rules speak of voting in any particular ward. There can be no proper election unless the people entitled to vote know that they possess this right and also know in which ward or constituency they can exercise that right. It is not enough for them to know that their names are borne on the electoral rolls of the Punjab Legislative Assembly, nor can a reference to the key-chart issued by the Deputy Commissioner be deemed to be a legal way of determining the right to vote. The Deputy Commissioner did not issue this chart on any authority and in fact the note added to the chart is in the nature of a disclaimer. It was essential that separate electoral rolls should have been prepared showing the lists of voters for each ward, and these rolls should have been prepared in accordance with rules. It was perhaps not necessary to give opportunity for objections because of the provisions of rules 6 and 8, but objections on the ground of a person having died or moved from the place of residence might have been permitted. The unofficial key-chart issued by the Deputy Commissioner was not a lawful substitute and did not relieve the authorities of their responsibility of observing an essential formality relating to municipal elections. The election of the members of the municipal committee was rightly set aside on the ground that the rules had been violated inasmuch as a proper roll of voters was not prepared.

Letters Patent Appeal under clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice I. D. Dua, dated 29th May, 1959, passed in C. W. No. 212 of 1959.

H. L. SIBAL, N. S. CHHACHHI AND H. B. SINGH, ADVOCATES,
for the Appellants.

D. C. GUPTA, ADVOCATE AND MR. S. M. SIKRI, ADVOCATE-
GENERAL, WITH MR. L. D. KAUSHAL, DEPUTY ADVOCATE-
GENERAL, for the Respondents.

JUDGMENT

KHOSLA, C.J.—Letters Patent Appeals Nos. 175 to 182 of 1959 have arisen out of an order made by Dua, J., setting aside the election of members of the Municipal Committee, Morinda, held on the 26th of February, 1959, on the ground that the rules have been violated inasmuch as a proper roll of voters was not prepared. Khosla, C. J. -

A number of petitions were brought to this Court from which these appeals have arisen, the petitioners being voters qualified to vote at the elections and candidates who are unsuccessful in the elections.

The order of Dua, J., was announced on the 29th of May, 1959, and on the 24th of September, 1959, the Punjab Government issued a notification, superseding the Morinda Municipal Committee, which had been elected on the 26th of February, 1959, on the ground that the Committee had become legally incompetent to perform its functions by virtue of the orders of the High Court. The present state of affairs, therefore, is that there is no Municipal Committee and the functions of the Committee are being performed by an Administrator.

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The facts briefly are that 5th January, 1959 was fixed as the date for filing nomination papers on behalf of the various candidates. The polling took place on 26th February, 1959 and eight persons were declared elected. The election was governed by rules 6 and 8 of the Municipal Elections Rules. Rule 6 is in the following terms:—

“6. (a) subject to the provisions of rule 8, no person shall be entitled to vote unless the name of such person is included in the electoral rolls for the Legislative Assembly of the State of Punjab in relation to the constituency concerned.

(b) If any doubt arises as to whether or not a person is entitled to vote in a constituency, the decision of the State Government or an Officer appointed by it in this behalf shall be final.”

Rule 8 is as follows:—

“8. The roll of each constituency of a Municipality shall be the electoral roll for the Punjab Legislative Assembly in relation to the said constituency operative as on the date fixed by the Deputy Commissioner for the submission of nomination papers under rule 10.”

The Municipal Committee, Morinda, was divided into six wards by a notification, dated 11th April, 1958, issued under the provisions of section 240 of the Punjab Municipal Act. No separate voters' lists or rolls were prepared for the various wards of Morinda, and the only list

available was the electoral roll of voters for the Punjab Legislative Assembly published on 17th December, 1958. This is a comprehensive roll extending to the entire town of Morinda with no specification of any wards. The roll has also attached to it an addendum containing a list of additional voters, a list of voters who changed their residence and a list of voters whose names are to be deleted because of death or departure. At the time of voting the Deputy Commissioner issued a *pro forma* key chart in order to facilitate the task of polling officers. This key-chart, which forms annexure 'D' to Civil Writ No. 212 of 1959, out of which Letters Patent Appeal No. 175 of 1959 has arisen, indicates the voters in the various wards. There is, however, a note added to this *pro forma* which is in the following terms:—

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"This chart has been prepared for facility of the voters and prospective candidates for election to the Municipal Committee concerned, but it does not replace the prescribed Electoral Rolls. While every possible care has been taken to give correct information with regard to the electors entitled to vote in each ward, Government assume no responsibility whatsoever for any error or omission in the chart."

I may mention here that some errors were pointed out to us at the time of arguments in Court.

The argument raised on behalf of the petitioners was that the elections were bad and invalid, because no electoral rolls had been prepared for the six constituencies or wards of

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Morinda Municipality. Dua, J., upheld this contention and set aside the elections. The candidates, who were successful in the elections, have appealed, and the appeals are supported by the Punjab State.

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The main argument advanced on behalf of the appellants is that it was not necessary to prepare separate electoral rolls, because under rule 8, which has been quoted above, the electoral rolls for the Punjab Legislative Assembly were to be deemed the electoral rolls for the relevant constituencies of Morinda. The electoral roll relied upon gives the address of each voter, and the notification of 30th October, 1958, whereby the wards were finally defined, gives what areas lie in each ward. By reading together the electoral roll and the notification of 30th October, 1958, it is easy to determine which voter is entitled to vote in any particular ward. Rules 6 and 8, merely speak of a constituency, and a constituency does not mean a ward. The definition of "constituency" is, however, given in rule 2(a) of the Municipal Election Rules. According to this definition "constituency" means "a class or ward, for the representation of which a member or members is or are to be or has or have been elected under these rules." Therefore, rules 6 and 8 speak of voting in any particular ward. There can be no proper election unless the people entitled to vote know that they possess this right and also known in which ward or constituency they can exercise that right. It is not enough for them to know that their names are borne on the electoral rolls of the Punjab Legislative Assembly, nor can a reference to the key-chart issued by the Deputy Commissioner be deemed to be a legal way of determining the right to vote. The

Deputy Commissioner did not issue this chart on any authority and, in fact, the note, which I have quoted above, is in the nature of a disclaimer. In my view, it was essential that separate electoral rolls should have been prepared showing the lists of voters for each ward, and these rolls should have been prepared in accordance with rules. It was perhaps not necessary to give opportunity for objections because of the provisions of rules 6 and 8, but objections on the ground of a person having died or moved from the place of residence might have been permitted. Our attention was drawn to a number of errors. For instance, it was pointed out that voter No. 1604, Daya Ram, son of Sada Nand, was shown as residing in house No. 1086-C. According to the key-chart he was entitled to vote in ward No. 4. This assumes that house No. 1086-C, is situated within the limits of ward No. 4. Voter No. 3539, Jagdish Chand, son of Daya Ram, is also shown as a resident of house No. 1086-C, but according to the chart he is entitled to vote in ward No. 3. The failure to prepare wardwise lists of voters makes it extremely difficult for voters to know where they are entitled to vote. Responsibility for the key-chart was disclaimed, and this made the task even more difficult.

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A similar matter was considered by the Supreme Court in *The Chief Commissioner of Ajmer and another v. Radhey Shyam Dani* (1). In that case the High Court had set aside the elections of Municipal Committee, Ajmer, on similar grounds, and the Supreme Court upheld the order of the High Court. In that case rule 7 was similar to rule 6 of the Punjab Election

(1) A.I.R. 1957 S.C. 304.

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Rules, and rule 9 was almost exactly in the same terms as rule 8. Separate electoral rolls were not prepared, and the electoral rolls for the Parliamentary constituency were treated as the electoral rolls for the Municipal Committee. Bhagwati, J., who delivered the judgment in that case, observed—

“It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinise whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.”

The Patna High Court also had occasion to consider the question of municipal elections in *Parmeshwar Mahaseth and others v. State of Bihar and others* (1). In that case the Municipality of Darbhanga was divided into nine constituencies for the purposes of the Assembly elections, but for the purposes of the municipal

(1) A.I.R. 1958 Pat. 149.

elections it was divided into thirty-two wards. Rule 4 contained provision similar to rules 6 and 8 of the Punjab Rules. Rule 4 was in the following terms:—

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“So much of the electoral roll or rolls of an Assembly constituency of the State of Bihar for the time being in force, as relates to the local areas comprised within the limits of the municipality, shall be deemed to be the electoral roll for that municipality for the purpose of elections of Municipal Commissioners and so much of the said electoral roll or rolls as appertain to a particular ward of the municipality shall be deemed to be the electoral roll of that ward:

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* * * *

Rule 15 provided that every person, who was registered as a voter, would be entitled to vote at an election of municipal commissioners. No separate rolls for the municipal elections were prepared, and the petition was made to the Patna High Court for a writ of *certiorari* quashing the election. In granting this writ Kanhaiya Singh, J. (Ramaswami, C.J., agreeing), observed—

“It is manifest, therefore, that though the Assembly electoral roll, was to be the basis for the municipal electoral roll, there must be a separate roll for each ward and further that this roll must be prepared and published before the holding of the election is notified.”

These two decisions were relied upon by Dua, J. The law laid down by the Supreme Court is quite

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clear, and the case before us cannot be distinguished on any ground. Our attention was drawn to a Nagpur decision, *Mahadeo Nathuji and another v. Bishan Laghuji and others* (1). The facts of that case, however, were somewhat different. It was held that errors in the electoral roll were not sufficient to invalidate an election. In that case the electoral roll was prepared according to rules, and it was not till the list of voters was finally published that any objection was taken to its correctness. The Nagpur High Court held that the voters' list, as published finally, must be deemed to be correct; the time for objecting to it had passed.

After considering the matter from all aspects, I am of the opinion that separate electoral rolls should have been prepared for the various wards of Morinda Municipal Committee and that the unofficial key-chart issued by the Deputy Commissioner was not a lawful substitute and did not relieve the authorities of their responsibility of observing an essential formality relating to municipal elections. I have already stated that the Municipal Committee has been superseded by Government, and the Committee will remain superseded until such time as fresh elections are held.

I am, therefore, of the opinion that the decision of Dua, J., is correct and there is no substance in these appeals. I would, accordingly, dismiss them, but, in the circumstances of the case, make no order as to costs.

Mahajan, J.

MAHAJAN, J.—I agree.

B.R.T.

(1) A.I.R. 1953, Nag. 166.