

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

SHER SINGH AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Constitution of India (1950)—Article 226—Petition challenging the election on the allegation that the electoral roll was invalid or illegal—Whether maintainable—Gram Panchayat Act, 1952 (IV of

1965

January, 4th.

1953—S. 13-O—Prescribed Authority—Whether can determine the legality or illegality of the electoral roll—Representation of the People Act (XLIII of 1950)—S. 18—Electoral roll containing names of electors at more than one place—Whether legal.

Held, that if the electoral roll is illegal, no election on its basis can proceed or be allowed to stand. It will necessarily depend on the facts of each case whether the roll is illegal. It is clear that the supplementary roll in the present case was prepared in a wholly illegal manner inasmuch as the names of a large number of voters were entered at more than one place, which constitutes a clear violation and contravention of section 18 of the Representation of the People Act, 1950. The elections held on the basis of such roll were altogether invalid and the mere fact that the election petition is pending will not constitute a bar to the grant of appropriate relief in the present writ petition.

Held, that it is not open to the Prescribed Authority, while deciding the election petition under section 13-O of the Gram Panchayat Act, 1952, to go behind the electoral roll and decide whether the particular voter has been validly enrolled or not. It will not be open to him to reject as invalid a vote which has been cast more than once by a voter who has been entered in the electoral roll at more than one place and who has voted in accordance with the entries therein.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the elections of Gram Panchayat Kilianwali and further praying that respondent No. 3 be restrained from functioning as Sarpanch.

S. C. GOYAL, ADVOCATE, for the Petitioner.

N. L. DHINGRA, ADVOCATE, for the Respondents.

ORDER

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GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution of India challenging the election of respondent No. 3 as Sarpanch of village Kilianwali, Tehsil Muktsar. Petitioner No. 1 is a member of Sabha of that village and petitioner No. 2 is also a member of the Panchayat and Block Samiti, Lambi, apart from being a member of the Sabha of village Kilianwali. It is alleged in the petition that the electoral rolls of the Punjab Legislative Assembly pertaining to the Sabha

area of village Kilianwali contained voters Nos. 1232 to 2130, 8343 to 8671 and 10281 to 10291—the total number of votes being 1,239 out of which 4 were deleted leaving 1,235 votes. The filing of the nomination papers was to take place on 27th December, 1963, and the poll was to be held on 28th December, 1963. It is unnecessary to mention all the allegations which have been made by the petitioners because in my opinion they are hardly worth noticing. The main and substantial allegation which calls for decision is that a supplementary list of 558 or 559 voters was illegally prepared from serial Nos. 10685 to 11243 and it is the legality of this roll which has been seriously challenged. It has been alleged that the names of these voters were entered at more than one place and a list containing such names has been filed,—vide Annexure 'E'. It is apparent from this list that the names of all the persons mentioned therein with few exceptions have been entered at more than one place. The correct number of such persons, who have been entered twice ~~is~~ 56 according to the petitioners' counsel and 50 according to the respondents' counsel. It has been urged in the petition and before me by the learned counsel for the petitioners that when the election was held on the basis of this kind of electoral roll, it was wholly invalid.

In spite of an opportunity having been given to the counsel for the respondents to file a more detailed return on the above point, all that has been stated now in the return filed on 9th December, 1964, is that the electoral rolls, on which the impugned election of Panchayat Kilianwali was held, were prepared according to the instructions and rules as stated in paragraph 9 of the petition. It has not been denied or stated in detail whether the names together with parentage which appear in Annexure 'E' represent the correct state of affairs or not, namely, whether the names of the voters mentioned therein have or have not been entered at more than one place. Records were also sent for and it has not been shown that the names and parentage of the different voters who have been entered at more than one place were of different individuals and had been entered on their separate application made in accordance with the rules. In other words, there is hardly any challenge or denial of the allegation of the petitioners that the names

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of these voters with few exceptions have been entered at more than one place in the supplementary roll.

Now section 18 of the Representation of the People Act, 1950, which deals with, apart from other matters, the preparation of electoral rolls, lays down that no person shall be entitled to be registered in the electoral roll for any constituency more than once. It is, therefore, obvious that the supplementary roll, as prepared in the present case, was illegal. The learned counsel for the respondents has not been able to justify the inclusion or registration of the same voters at more than one place as indeed he could not in view of section 18, but he has contended strenuously firstly that even if elections were held on these rolls there should be no interference by this Court on the writ side inasmuch as an election petition has already been filed by the petitioners which is pending before the prescribed authority in which identical allegations have been made and secondly even if it is established that the rolls were defective, the petitioners cannot succeed unless they show that the result of the election was materially affected thereby. My attention has been invited to section 13-O of the Punjab Gram Panchayat (Amendment) Act, 1962, which gives the grounds for setting aside elections. Clause (d) of sub-section (1) of section 13-O of the Act reads as under:—

“(d) that the result of the election in so far as it concerns the elected person, has been materially affected—

* * * * *

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void.”

The argument raised is that if the same voter has voted twice it would be improper reception of the vote being contrary to the provisions of section 18 inasmuch as a voter is entitled to exercise only one vote. It would, therefore, be in the province of the prescribed authority to decide on the evidence which could be adduced before it whether in fact any such votes were cast. If it is found that the same person did not exercise his vote more

than once, then there would be no grievance. On the other hand, the learned counsel for the petitioners contends that the prescribed authority is totally debarred from going beyond the rolls and looking into the validity of the votes cast by the voters pursuant to the rules. It is said that it is settled law that the roll or the register of electors must be treated as final and the finality has been extended even *qua* the Election Tribunal. Reliance has been placed in this connection on my decision in *Lekh Raj v. The Cantonment Board* (1), and other authorities out of which *S. B. Javaregowda v. Lakkigowda* (2) may be mentioned. In that case it was held—

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“The Election Tribunal has no jurisdiction to go behind the electoral roll and decide whether the particular voter has been validly enrolled or not. Jurisdiction of the Election Tribunal at best extends to the consideration of the validity or otherwise, (a) of the acceptance or rejection of the nomination and (b) of the holding of the election. It does not extend to a consideration of the correctness or otherwise of the electoral roll.”

This seems to be, with respect, the correct view and the learned counsel for the respondents has not been able to point to any authoritative decision to the contrary in which any such view has been expressed that it would be open to the prescribed authority in the present case to reject as invalid a vote which has been cast more than once by a voter who has been entered in the register at more than one place and who has voted in accordance with the entries in the register.

The learned counsel for the petitioners has drawn my attention to *Lajpat Rai and others v. Khilari Ram and others* (3) which is a Bench decision in which it was stated that if from the point of view of the real object and scope of the rules the authorities have exercised their power so unreasonably or capriciously while preparing the rolls in violation of and not under the rules, then the rolls might well be struck down. It, however, does not

(1) I.L.R., 1958, Punj., 775=A.I.R., 1958, Punj., 356.

(2) A.I.R., 1958, Mysore, 73.

(3) I.L.R. (1960) 2 Punj., 192=1960, P.L.R., 377.

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mean that every defect or irregularity caused by the negligence or inefficiency or breach of rules by the authorities entrusted with the preparation of rolls must necessarily invalidate them but the Court should in each case examine the nature and extent of the breach, the circumstances in which it has been committed, and then determine whether the roll in question is so imperfect and improper as to invalidate the election held on its basis. In that case the election was actually set aside on the ground that the roll was not valid, having not been prepared in conformity with the Municipal Election Rules, 1952. This decision was commented upon in a Full Bench Judgment of this Court in *Shri Dev Parkash v. Babu Ram* (4) in which Dulat, J., who had agreed with the judgment in the previous case while delivering the judgment of the Full Bench observed that an election is in its nature an expensive and time-consuming process, and, if it is to be disturbed (after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely technical breach of a rule. Every body agrees that if the very foundation of the election, namely, the electoral roll is illegal, no election on its basis can proceed or be allowed to stand, but that does not mean that any kind of defect in the roll, however, technical in its nature, will suffice to reach such a conclusion. With regard to the decision in *Lajpat Rai v. Khilari Ram* (3) distinction was drawn and certain observations were made which according to the learned counsel for the respondents have the effect of over-ruling the Bench decision. It is not possible to say that the Bench view was over-ruled, but what was said was that "the present case does not resemble that case, and the whole controversy in the present case is whether the electoral roll can be called illegal because the preliminary roll, to which objections were invited, was partly prepared before the direction of the State Government for such preparation was received or because the existing Assembly roll was adopted as its basis." It does not follow, therefore, that the previous decision was over-ruled. On the other hand, it is obvious from the observations, to which reference has already been made, that if the electoral roll is illegal, no election on its basis can proceed or be allowed

(4) 1961, P.L.R., 485.

to stand. It will necessarily depend on the facts of each case whether the roll is illegal. It is clear that the supplementary roll in the present case was prepared in a wholly illegal manner inasmuch as the names of a large number of voters were entered at more than one place, which constitutes a clear violation and contravention of section 18 of the Representation of the People Act, 1950. I am, therefore, satisfied that the elections held on the basis of such roll were altogether invalid and the mere fact that the election petition is pending will not constitute a bar to the grant of appropriate relief in the present writ petition. As it has been held by me that the Tribunal is not entitled or empowered to go into the question of illegality or illegal preparation of the rolls, it is open to this Court to interfere in exercise of the powers conferred by Article 226. In the result this petition is allowed and the election of respondent No. 3 as Sarpanch is hereby quashed.

In the circumstances of the case I make no order as to costs.

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