

Procedure Code, acts as a Court subordinate to the High Court for the purposes of the Contempt of Courts Act. In view of the Supreme Court decision to which a reference has been made above the Rangoon decision cannot be accepted as correct law. The learned Advocate-General also made a reference to *Maqbool Hussain v. State of Bombay* (1), and *The Bharat Bank Ltd., v. The Employees of Bharat Bank, Ltd.*, (2), to support the argument that even though a tribunal or an individual has some of the attributes of a Court, it does not become a Court unless the tests laid down in *Brajnandan Sinha v. Jyoti Narain* (3), are satisfied.

Piara Singh  
v.  
The State and  
S. Partap Singh  
Kairon, Chief  
Minister, Punjab  

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Khosla, J.

In this view of the matter it must be held that the Magistrate was not acting as a Court within the meaning of the Contempt of Courts Act and that even if there was any interference with this inquiry, no contempt of a Court subordinate to the High Court was committed.

I would, therefore, dismiss this petition, but as our decision rests on a technical ground and the case was not argued on merits, I would make no order as to costs.

K.S.K.

CIVIL WRIT.

Before Grover, J.

SHREE LEKH RAJ,—Petitioner.

versus

THE CANTONMENT BOARD, JULLUNDUR CANTT.,

AND OTHERS,—Respondents.

Civil Writ No. 978 of 1957.

*Constitution of India (1950)—Article 226—Petition under, for restraining the holding of elections on the basis of the electoral rolls being defective—Whether competent—Alternative remedy—Whether a bar to the maintainability*

1957

Nov. 12th

(1) A.I.R. 1953 S.C. 325  
(2) A.I.R. 1950 S.C. 188  
(3) A.I.R. 1956 S.C. 66

*of the petition—Indian Cantonments Act (II of 1924)—Election Rules framed under—Rules 6 to 13 and 43—Electoral rolls—How far final—Defective and improper electoral rolls—Whether can be challenged in a petition under Article 226, before the elections are held.*

*Held*, that a petition under Article 226 of the Constitution of India for restraining the holding of elections on the basis of the electoral rolls being defective is competent and ought to be entertained.

*Held*, that the existence of an alternative remedy is not an insuperable bar to the maintainability of a petition under Article 226 of the Constitution. The powers of the High Court under the aforesaid Article are untrammelled by law and even though there is a provision that elections can be challenged only by way of an election petition before a Tribunal created by the Rules, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. Where the point raised is of fundamental character and will affect the elections as a whole, the High Court can interfere in a suitable case in exercise of the extraordinary jurisdiction conferred by Article 226.

*Held further*, that one of the main principles which has been generally accepted in the law of elections is that the roll or the register of electors or voters has to be treated as final and finality has been extended even *qua* the Election Tribunal. The Rules framed under the Indian Cantonment Act, 1924, contemplate that finality would attach to the roll as prepared and published after following the machinery given in Rules 6 to 13, and this seems to be particular so in view of the proviso to Rule 43. Thus it is difficult to see how the petitioner cannot agitate the question of defective and improper rolls at an earlier stage and there seems to be no reason why he should wait till the entire elections are over and file an election petition in which he may be completely precluded from taking up the grounds which have been raised.

*Kinglu Baula v. Chief Executive Officer* (1), *Provat Chandra v. R. C. Sen* (2), and *Chief Commissioner, Ajmer v. Radhey Shyam* (3), relied on; *Dr. N. B. Khare v. Election Commission of India* (4), distinguished.

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- (1) A.I.R. 1955 Nag. 49
  - (2) A.I.R. 1955 Cal. 83
  - (3) A.I.R. 1957 S.C. 304
  - (4) A.I.R. 1957 S.C. 694

*Petition under Article 226 of the Constitution of India, praying that a Writ of mandamus, order or direction be issued restraining the respondents not to hold election on the basis of the Electoral Roll illegally prepared in violation of the provisions of law and that the proceedings taken upto now be quashed, and further praying that till the disposal of this petition, the respondents be ordered not to take any further steps for the completion of the election of the Members of the Cantonment Board, Jullundur. ...*

*Dated, the 12th November, 1957.*

H. S. DOABIA and ANAND SARUP, for Petitioner.

F. C. MITTAL and J. N. PURI, for Respondent.

#### JUDGMENT

GROVER, J.—This petition under Article 226 of the Constitution raises an important question with regard to the validity and legality of the holding of elections to the Cantonment Board, Jullundur Cantonment, which are scheduled to be held on the 11th, 12th, 13th and 14th of November, 1957.

Grover, J.

The petitioner claims to be a voter duly qualified to vote in the election of members to the Cantonment Board, Jullundur, Cantonment. He is entered as a voter in ward No. III in the electoral roll for the elections. He has also been an elected member of the Board for the years 1946 to 1954 and he was Vice-President of the said Board for about three years during that period. According to the Cantonments Electoral Rules, 1945, as amended and published in Gazette of India, Part II on October 2, 1954, provisions have been made for preparation of the electoral rolls on the basis of which election of the elected members is to take place. Rule 6 provides that the Board, or where a Board is not constituted, the Officer Commanding the Station, shall have prepared by the

Shree Lekh Raj v. The Cantonment Board, Jullundur Cantt; Grover, J.

1st July of each year an electoral roll in Form I drawn up on street basis, and divided into separate parts for each ward. The revision of electoral rolls is an annual obligation in view of section 26 of the Indian Cantonments Act, 1924 (Act II of 1924), hereinafter referred to as the Act. According to the petitioner the Executive Officer without obtaining the decision of the Board ordered the preparation of the rolls under Rule 6 which he had no power to do. The roll as prepared was published on the 1st July, 1957, and objections were invited as also claims within a period of twenty days. It is stated that after the publication of the rolls and giving of notice inviting objections and claims under Rule 8 no further names could be added or deleted, but it is alleged that the Executive Officer of the Board included the name of 156 persons in ward No. V and 336 persons in ward No. VI many days after the roll was published under Rule 8. It is further mentioned that under section 27 of the Act the Central Government issued a notification dated the 6th June, 1953, (Annexure 'B' to the petition) by which the 1st day of March was fixed as the "qualifying date". Instead of the said date, the Executive Officer directed that in preparing the list the qualifying date for the purpose of residence of the persons entitled to be recorded as voters should be taken as the 1st April, 1957. This mistake in preparation of the preliminary roll went to the root of the matter and no election can take place on the basis of such rolls. The validity of the meeting of the Board held on the 10th October, 1957, which was presided over by Col. J. S. Sekhon, at which the election programme was drawn up, was also attacked on various grounds set out in paragraphs 14 and 15 of the petition. It is thus asserted by the petitioner, who is contesting the seats from wards III and V, that the elections which are sought to

be held on the basis of the rolls as prepared would be wholly illegal and the entire elections will be vitiated. The respondents filed a written statement, dated the 19th October, 1957, in which certain preliminary matters were raised, apart from objections on merits. It was objected *inter alia* that the petitioner had an adequate and proper remedy provided by the Electoral Rules and therefore, the petition ought not to be entertained. Reliance was placed on section 24 of the Act for the authority of the Executive Officer to take proper proceedings for the revision of electoral rolls. It was stated that the provisions of Rule 8 had been strictly complied with and that the rolls were revised in accordance with law. Moreover, the petitioner had by his conduct accepted the same and it was not open to him to agitate the matter. In paragraph 11 of the written statement some important matters were stated. It was admitted that for the inclusion of the names of the military personnel a letter dated the 21st March, 1957, (Annexure '1' to the written statement) was issued in which by a typing mistake the qualifying date was mentioned as 1st April, 1957, instead of 1st March, 1957. Information was received from the respective Officers Commanding Units by April, 1957, and the names supplied by them were included in the voters' lists. The mistake with regard to the qualifying date was admitted, but it was explained that when the aforesaid mistake was discovered, letters were addressed to Officers Commanding the Units to inform whether the persons mentioned in their lists were twenty-one years of age or over and whether they had resided in the cantonment for six months or more as on 1st March, 1957. After the replies had been received a thorough checking was done and the rolls were prepared according to law.

It is significant that along with the written statement affidavits of certain persons were filed.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullundur  
Cantt ;  
and others  
—  
Grover, J.

Shree Lekh Raj  
 v.  
 The Cantonment  
 Board, Jullun-  
 dur Cantt ;  
 and others  
 \_\_\_\_\_  
 Grover, J.

Out of these, the affidavits of Joginder Singh Jogi, Mohinder Singh, Tarsem Lal, Bhagwan Das, and Kirpa Ram are of teachers working in the Cantonment Board High School. It was sworn by them that they had been directed by the Executive Officer to carry out the preparation of the electoral rolls of certain wards and that they had collected particulars for preparation of the lists of voters as regards their age and residence taking the qualifying date to be the 1st March, 1957. The affidavit of Rakha Ram, Sanitary Officer, was filed in similar terms. The affidavit of Shiva Shankar, Electricity Sanitary Superintendent of the Board, contained a statement that the revision of the rolls had been completed by the 26th June, 1957, and that the teachers deputed to prepare the voters' lists had been directed to take the qualifications for age and residence as on the 1st March, 1957. To the same effect was the affidavit of O. P. Gupta, Second Clerk of the Board. It is curious that on the 21st October, 1957, Bhagwan Das, one of the teachers, sent a telegram to this Court making certain allegations of his affidavit having been obtained under pressure. I have before me further affidavits of all the aforesaid teachers of different dates subsequent to the 22nd October, 1957, wherein an allegation is made that they had been asked on the previous occasion to sign a prepared affidavit by the Executive Officer and that the latter had put pressure on them to sign without asking to see the relevant documents. It was further stated that the particulars of age and residence of the voters collected by the aforesaid teachers were on the basis of the 1st April, 1957, as being the qualifying date and not the 1st March, 1957, as stated in the previous affidavits. Alongwith these affidavits a printed form, in which it is stated as follows, has been attached :—

“I give below a declaration containing the names of persons whose age is 21 years

or more as on 1st April, 1957, who are residing at the address noted below :—

“I request you to kindly register the names in the electoral rolls of the cantonment for elections to Cantonment Board.”

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt ;  
and others  
—  
Grover, J.

Mr. Faqir Chand Mital, who appears for the respondents, has raised a strong objection to my entertaining the petition under Article 226 of the Constitution on the allegations on which it has been founded. According to him, the preliminary roll had admittedly been published on the 1st July, 1957, and it was open to the petitioner to file objections under Rule 9 objecting to the inclusion of the names of various persons whose names should not have been included in the roll and this he could do within twenty days from the date of publication of a notice under Rule 8, which admittedly had been given. Rule 11 provides for the publication of list of claims and objections and the time and place of their hearing. Rule 12 provides for hearing of claims and objections and orders to be made thereon. Sub-rule (3) of Rule 12 provides—

“The President or his nominee, after hearing the party or parties to a claim or objection, \* \* \* \* \*  
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shall pass orders in writing thereon, \* \* \* and such orders shall be final, when passed by the President, but subject to the result of an appeal, if any, made within two days to the President when passed by his nominees.”

Rule 13 provides for final publication of the electoral rolls and it is enjoined on the Executive

Shree Lekh Raj  
 v.  
 The Cantonment  
 Board, Jullun-  
 dur Cantt ;  
 and others  
 \_\_\_\_\_  
 Grover, J.

Officer to correct the same in accordance with the orders passed under Rule 12. It is stated that the rolls were finally published on the 5th October, 1957. Mr. Mital's argument is that it was open to the petitioner to file objections to the roll as finally prepared in accordance with the Rules, and as the petitioner never did so, he was not entitled to raise them after the final publication of the rolls. He further submits that the only mode and manner in which the petitioner can agitate the questions now sought to be raised is by way of an election petition after the elections have been held. He has referred to Rule 42 which provides as follows :

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

Rule 47 gives the grounds for declaring the election void, and ground No. (iv) is—

“(iv) the failure to comply with any provision of the Act or of these Rules.”

Mr. Mital invites attention to a decision of the Supreme Court, *Dr. N. B. Khare v. Election Commission of India* (1), in which the question of the remedy and the point of time at which that remedy can be availed of in matters, of elections was considered in connection with the Presidential election which had been fixed for the 6th May, 1957, There were two petitioners who had moved the Supreme Court to exercise the jurisdiction and power vested in it by and under Article 71(1) of the Constitution of India to inquire into and decide what had been described as a “grave doubt” in connection with the election of the President of India and to direct the Election Commission not

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(1) A.I.R. 1957 S.C. 694



to proceed with the polling in connection with the said election, but to hold the same after duly completing all the elections to the Lok Sabha and the Legislatures in all the States of the Indian Union including the Union territory. In the second petition before their Lordships the petitioner had alleged that as a prospective member of Lok Sabha he would be deprived of his right to vote for the election of the President of the Union if the Presidential election was held before the election to the Lok Sabha which had not been held from the Kangra Parliamentary constituency in the State of Punjab till then. A reference was made to the previous decision in *N. P. Ponnuswami v. Returning Officer, Namakhal Constituency* (1), in which it had been observed that in the wide sense the word "election" had been used to connote the entire process culminating in a candidate being declared elected.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others  
Grover, J.

While examining the meaning of the word "election" as used in Article 71, the Supreme Court saw no reason why the accepted meaning should not be given to the critical word. Reliance was placed on the Presidential and Vice-Presidential Act, 1952, section 14 of which provided that no election shall be called in question except by an election petition and that one of the grounds for declaring the election to be void would be non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act. Their Lordships observed as follows at page 698 of the report *Dr. N. B. Khare v. Election Commission of India* (2) :—

"In our judgment Article 71 postulates an election and the word 'election' occurring in Article 71 means the entire election process culminating in a candidate

(1) 1952 S.C.R. 218

(2) A.I.R. 1957 S.C. 694

Shree Lekh Raj  
 v.  
 The Cantonment  
 Board, Jullun-  
 dur Cantt ;  
 and others  
 -----  
 Grover, J.

being declared elected and doubts and disputes arising out of or in connection with any of the stages of such completed election have to be inquired into and decided by this Court which, in point of time must necessarily be after the completion of the entire process compendiously called the election."

Basing himself on the above decision, Mr. Mital contends that the only remedy which the petitioner can seek is by challenging the election by way of an election petition after the elections are over, and if he can make out the grounds as alleged by him it will be open to the Election Tribunal to set aside the election. The reply on behalf of the petitioner is that in the present petition the entire foundation and basis on which elections are to be held is being challenged and that the petitioner as a voter and as a candidate is fully competent to agitate the matter at this stage. He submits that on the contentions raised by Mr. Mital himself the final roll as published has become immune from all attack and that it will not be possible for the petitioner to agitate the question of the legality and validity of the electoral roll before the Election Tribunal at a later stage. He relies on a statement contained in Parker's Elections Agent and Returning Officer (Fifth Edition) in the following terms :—

"The register is conclusive on the questions : whether or not a person registered therein was on the qualifying date resident at the address shown ; whether that address is in any constituency or any particular part of a constituency ; and whether or not a person registered is registered as a service voter."

In answer to the other contentions raised on behalf of the respondents Mr. Doabia strongly relies on another recent decision of the Supreme Court, *Chief Commissioner, Ajmer v. Radhey Shayam* (1). In that case it was observed that it was of the essence of elections that proper electoral rolls should be maintained and in order to do so it was necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. There should also be a provision for the revision of the electoral roll and unless opportunity was given for such a revision and for the adjudication of claims and objections, the entire obligation cast upon the authorities holding the election was not discharged and the elections held on such imperfect rolls would be invalid and would be liable to be challenged at the instance of the parties concerned.

Shree Lakh Raj  
v.  
The Cantonment  
Board, Jullun-  
dar Cantt ;  
and others  
Grover, J.

According to the contention of Mr. Doabia the entire elections in the *Ajmer case* (1), had been set aside on the ground that they could not be held on the imperfect electoral rolls, and this had been done on a petition under Article 226 of the Constitution filed by a person who claimed to be a voter of the Ajmer Municipality. It will be noticed that in the aforesaid decision of the Supreme Court the main reason for which the elections were held to be void was that no rules had been framed by the Chief Commissioner providing for the revision of the electoral roll after giving proper opportunity to the parties concerned for scrutinizing whether the persons enrolled possessed the necessary qualifications.

It cannot be said in the present case that the rules are defective and do not provide for the

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

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt ;  
and others  
Grover, J.

revision of electoral rolls. Rules 6 to 13 contain a complete machinery for revision after entertaining the claims and objections at the instance of the parties concerned. But the decision in the *Ajmer case* (1), certainly helps the present petitioner to this extent that the entire elections were declared to be void on the ground of imperfect rolls. In the present case if it can be determined that the rolls as prepared were highly defective and had been made on wholly incorrect basis, it will be possible to apply the ratio of the Supreme Court decision and decide the matter in the light of the same. I have been referred to a recent decision of the Rajasthan High Court, *Prabhudyal v. Chief Panchayat Officer* (2). In that case Wanchoo, C.J., and Bapna, J., held in a matter of election of Panches that a notice announcing the election for a Panchayat on a particular date which did not confirm to the mandatory provisions of rule 4 of the Rajasthan Panchayat Raj Rules was no announcement under the law and a subsequent election in consequence of such an announcement was no election at all, The entire election was set aside. It was further held that where by a petition under Article 226 it was not the election of any individual that was attacked, but that the entire election was challenged as void on the ground of a fundamental deficiency in the procedure, the High Court was entitled to interfere in the exercise of its extraordinary jurisdiction, This case certainly seems to be very much in point because the argument of Mr. Doabia is that the entire election will be void if his contentions are accepted.

Another point that has to be determined in this connection is whether it will be at all possible

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

(2) A.I.R. 1957 Raj. 95

for the present petitioner to agitate the question of defective and improper rolls after the elections by way of an election petition. The proviso to Rule 43 of the Rules is in the following terms:—

Shree Lakh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others

“Provided that no such petition shall be presented on the ground either that the name of any person qualified to vote has been omitted from the electoral roll or that the name of any person not so qualified has been inserted in the roll.”

Grover, J.

Reading Rule 43 together with Rule 12(3) it seems that it will not be possible for the petitioner to agitate the question whether the name of any person not qualified has been inserted in the roll in an election petition. Mr. Mital's argument is that the proviso to Rule 43 does not debar such questions being raised before the Election Tribunal and the bar operates against a petition being presented on the sole grounds given in the proviso. He has referred to the Law of Elections by Nanak Chand Pandit wherein it is stated at page 19 that the Election Tribunal is entitled to go behind an electoral roll, and to enquire into the correctness of any entry therein and that it is open to the Tribunal, in spite of the entry in the electoral roll, to enquire whether a voter is qualified or disqualified or is entitled to vote. This is based on some election cases which it will not be proper to consider authoritative for the purposes of the present petition. Moreover, there are other authoritative statements which do not support the contention of Mr. Mital. In the law of Municipal Corporations in British India by P. Duraiswami Aiyangar (1924 edition) it is stated at page 40 that the orders of the appellate or revising authority as to entries on the electoral register are final and instances are given from England

Shree Lakh Rai  
v.  
The Cantonment  
Board, Jullun-  
dar Cantt;  
and others  

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Grover, J.

where in the general elections of 1922 a boy aged 5 years voted at Heywood and a boy 12 in South-West Hull, and the vote of an infant aged 2 years was allowed to be recorded at Portsmouth on the view that the presiding officer had no authority to enquire into the capacity of any voter on the register, the same being conclusive. It is further stated that the entries in the roll are final even as regards a returning officer at the time of nomination, or an election Court of enquiry. In the well-known book of Rogers on Elections, Volume II, 1928 edition, it is stated at page 221 that the votes of persons on the register cannot be struck off on a scrutiny on the ground that their names ought not to be on by reason of non-residence, insufficiency of qualification, etc.; but the votes of persons who are under a personal disqualification may be struck off although their names are on the register. I have already referred to the view expressed by Parker. In *Stowe v. Jolliffe* (1), it has been held that notwithstanding the Ballot Act has repealed sections 68 and 70 of the Reform Act and section 19 of the Registration Act, the register is conclusive not only on the returning officer, but also on every tribunal which has to enquire into elections except only in the case of persons prohibited from voting by any statute or by the common law of parliament. The Madras High Court held in *Palanisami Pillai v. Srinivasarangachariar* (2), that a Judge inquiring into an election dispute could not go behind the electoral roll which was final and inquire into alleged defects in the procedure followed by the authority revising the roll. This case, however, may be distinguishable on the ground that there was a special rule under the Madras District Municipalities Act which made a provision to that effect.

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(1) (1874) L.R. 9 C.P. 734

(2) 85 I.C. 322

It seems to me that one of the main principles which has been generally accepted in the law of elections is that the roll or the register of electors or voters has to be treated as final and the finality has been extended even *qua* the Election Tribunal. The Rules in the present case appear to contemplate that finality would attach to the roll as prepared and published after following the machinery given in Rules 6 to 13, and this seems to be particularly so in view of the proviso to Rule 43. Thus it is difficult to see how the petitioner cannot agitate the question of defective and improper rolls at this stage and there seems to be no reason why he should wait till the entire elections are over and file an election petition in which he may be completely precluded from taking up the grounds which have been raised.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others  
Grover, J.

There is no doubt that the decision of the Supreme Court relied upon by Mr. Mital *Dr. N. B. Khare v. Election Commission of India* (1) the facts of which have been fully stated before, seems to lend support to the contention of Mr. Mital, that since no election can be called in question except by an election petition, the petitioner must agitate the matter in that manner alone after the election has been held, but on a closer examination it appears that there are many points of distinction. Their Lordships of the Supreme Court in that case were considering the true import and scope of Article 71 of the Constitution which made the Supreme Court itself the forum for deciding all doubts and disputes arising out of or in connection with the election of the President. The grievance of the petitioners was primarily individual and no such question as a fundamental mistake in the preparation or publication of the rolls had been raised, nor could it be raised. The question of

(1) A.I.R. 1957 S.C. 694

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others  
Grover, J.

entertaining a petition under Article 226 of the Constitution was not in issue and one of the main points which naturally was of importance was that the election of the President could not be held up as the President's term was to expire on the midnight of the 12th of May, 1957, and it was not possible to hold up the election under the Constitution whose pre-emptory requirement was that the election to fill up the vacancy caused shall be completed before the expiration of his term. I would, therefore, hold that the petition under Article 226 of the Constitution can be entertained and ought to be entertained in case the contentions of the petitioner are well-founded.

Even if it be assumed that it will be possible for the petitioner to agitate the questions raised by him with regard to the rolls being defective in an election petition, it only means that he can avail of an alternative remedy and therefore, there should be no interference under Article 226. The existence of such a remedy is not an insuperable bar. The powers of the High Court under the aforesaid Article are untrammelled by law and even though there is a provision that elections can be challenged only by way of an election petition before a Tribunal created by the Rules, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. Where the point raised is of fundamental character and will affect the elections as a whole, the High Court can interfere in a suitable case in exercise of extraordinary jurisdiction conferred by Article 226. I am fortified in this view by the judgment of the Full Bench in *Kinglu Baula v. Chief Executive Officer* (1), The Calcutta High Court in *Provat Chandra v. R. C. Sen* (2), also interfered under

(1) A.I.R. 1955 Nag. 40

(2) A.I.R. 1955 Cal. 85



Article 226 where an election had been held contrary to the law. It was decided in that case that where a public body was going to be constituted wrongly and in violation of the provisions of law, the Court is bound to intervene and put the matter right. The objection, therefore, raised by Mr. Mital to entertaining the present petition at this stage cannot be sustained.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others  
Grover, J.

The main and the principal point that has been raised by Mr. Doabia relates to the electoral rolls being wholly defective and illegal with regard to all the wards and, in particular, with regard to wards V and VI. I should like to decide the matter with regard to the particular wards first. The case of the petitioner is that although the publication of the preliminary electoral roll took place on the 1st July, 1957, in the list regarding ward No. V voters from No. 1909 to No. 2064 were added subsequent to the 1st July, 1957, and, similarly, voters from No. 2664 to 2999 were added after that date in the list for ward No. VI (*vide* para 3(c) of petitioner's additional affidavit dated the 27th of October, 1957), It is pointed out that it was on the 21st March, 1957, (*vide* Annexure 'I' to the written statement) that the Executive Officer wrote to the Officer Commanding Station, Jullundur, requesting him to issue instructions to all Officers Commanding Units to prepare the preliminary electoral rolls in respect of their units on the prescribed forms and submit the same to his office before the 31st March, 1957. In paragraph 2 of that letter it was stated that any military personnel who fulfilled the following conditions would be qualified to be enrolled as a voter :—

- (a) who has been residing in the cantonment limits for a period of not less than six months immediately preceding the qualifying date, i.e., the 1st April, 1957;

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others  

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Grover, J.

(b) who is twenty-one years of age or more on the 1st April 1957.

It seems that the Officer Commanding, 16 Engineers, sent a letter dated the 9th April, 1957, enclosing list of voters from the personnel under his command, but neither the fathers' names nor the residential addresses of the electors were stated. The Executive Officer therefore, wrote a letter on the 11th July, 1957, (Annexure 'R' to the supplementary affidavit of O. P. Gupta, dated the 1st November, 1957). It was stated in this letter that the list of voters received was being returned as neither the fathers' names nor the residential addresses of the electors had been given as asked for in the station Order dated the 22nd March, 1957. The Officer Commanding was, therefore, requested to prepare the list in accordance with the instructions contained in the aforesaid Station Order. It was on the 7th September, 1957, that the Executive Officer wrote for the first time a letter to the Officer Commanding which was in the following terms:—

“Will you kindly supply the following information immediately:—

The period of residence in the cantonment of all the persons mentioned in the list received from you with your letter under reference as on the 1st March, 1957.”

(See Annexure 'X' which was filed in Court by the respondents.)

Two matters emerge out of this correspondence—

(i) The names and addresses of the personnel of the 16 Engineers were not supplied before the 1st July, 1957, without which it was not possible to make the roll.

- (ii) The qualifying date, which had been mentioned by the Executive Officer, was stated to be the 1st April, 1957, instead of 1st March, 1957, as prescribed by the notification under the Act.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullun-  
dur Cantt;  
and others

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Grover, J.

The position taken up in the written statement, dated the 19th October, 1957, by the respondents was that by a typing mistake the qualifying date had been mentioned as the 1st April, 1957, instead of the 1st March, 1957. It was further stated that information had been received from the respective Officers Commanding Units by April, 1957, and the names supplied by them were included in the voters' lists. It was also said that the information which was wanting in the list supplied by a unit had already been collected by O. P. Gupta and Shiva Shankar Dikshit, employees of the Board, and embodied in the rolls, but for the sake of a further check the unit concerned was asked to supply the deficient information officially which it did. Both the informations tallied and when the data had been collected by the staff and compliance reports had been received from the various field workers, the revised rolls were published on the 1st July, 1957. Subsequently, when the aforesaid typing mistake was discovered, letters were addressed to the Officers Commanding the units concerned to verify whether the persons mentioned in their lists were twenty-one years of age or over or whether they had resided in the cantonment for six months or more as on the 1st March, 1957. Replies were received from them that all the persons mentioned in the lists supplied by them had the qualifications of age and residence as on the 1st March, 1957, excepting nine persons in ward No. V. The following matters, thus, stand substantively established :—

- (i) That nine persons in ward No. V did not have the qualifications on the 1st March,

Shree Lekh Raj  
 v.  
 The Cantonment  
 Board, Jullun-  
 dur Cantt ;  
 and others  
 \_\_\_\_\_  
 Grover, J.

1957, which was the qualifying date, and this information was supplied after the 7th September, 1957, when the letter Annexure 'X' had been addressed by the Executive Officer to the Officer Commanding. This was long after the preliminary rolls had been prepared under Rule 6 of the Rules and it was also after the period of twenty days allowed for claims and objections under Rule 9 had expired. It is not clear what was finally done about the nine persons mentioned above, but the roll as prepared with regard to ward No. V was apparently defective, and even otherwise it was not open to the Executive Officer or the Board to delete the names of those persons from the preliminary roll as prepared unless any objections had been made and there had been an opportunity for the matter being decided by the proper authority who was the President or his nominee according to the Rules.

- (ii) Although the qualifying date was the 1st March, 1957, but the instructions which had been sent to the Officer Commanding were that the list was to be prepared treating the 1st April, 1957, as the said date. Now this related to both the questions of age as well as residence. According to section 27 of the Act, every person who, on such date as may be fixed by the Central Government in this behalf (referred to as the "qualifying date"), is not less than twenty-one years of age and who has resided in the cantonment for a period of not less than six months immediately preceding the

qualifying date shall be entitled to be enrolled as an elector. Even when the mistake with regard to the aforesaid date is said to have been discovered and when the letter dated the 7th September, 1957, was written by the Executive Officer, the only information he sought was with regard to the period of residence and that also as on the 1st March, 1957. No effort was made to verify the mistake with regard to age which might have occurred in the previous lists supplied by the Station Commander treating the qualifying date as the 1st April, 1957. Moreover even in the letter dated the 7th September, 1957, and in the written statement it is admitted that the period of residence was taken into consideration as on 1st March, 1957, whereas the statute provided "immediately preceding" that date. When the written statement was filed, an affidavit of Tarsem Lal, a teacher of the Cantonment Board High School, dated the 19th October, 1957, was filed in which it was stated that he had collected the particulars under instructions of the Executive Officer for preparation of the list of voters and this was done by taking twenty-one years or above as the age and residence for six months or more as on the 1st March, 1957. This teacher subsequently filed another affidavit dated the 28th October, 1957, along with an application under section 151, Civil Procedure Code, through Shri Anand Swaroop, Advocate, In this affidavit he has stated that the previous affidavit had been signed under pressure and that he had not been shown the relevant documents to ensure that the statements of

Shree Lekh Raj  
v.  
The Cantonment  
Board, Jullundur Cantt ;  
and others  

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Grover, J.

Shree Lekh Raj  
 v.  
 The Cantonment  
 Board, Jullun-  
 dur Cantt ;  
 and others  
 \_\_\_\_\_  
 Grover, J.

facts were correct and that the real facts are that he prepared the electoral rolls for ward No. V along with Shri Bhagwan Das, teacher Cantonment Board High School, on the basis of the 1st April, 1957, as the qualifying date in terms of a form entitled "Electoral Roll, revision of" wherein 1st April, 1957, instead of 1st March, 1957, as given in the previous affidavit, was mentioned as the qualifying date. Along with this affidavit he has attached a printed blank form which shows the date to be 1st April, 1957. Bhagwan Das in his affidavit dated the 23rd October, 1957, makes a similar statement. It is regrettable that this state of affairs should exist in the Cantonment Board and the very fact that a teacher of the Board, who naturally is taking a very big risk, has filed the subsequent affidavit, raises a doubt as to the position taken up on behalf of the respondents. I am inclined to take a serious view of the allegation about pressure having been put by the Executive Officer, but it will not be proper for me to give any finding on this point in these proceedings. However, on admitted and proved facts it would appear that the roll was prepared treating the 1st April, 1957, as the qualifying date and not the 1st March, 1957, as prescribed by the notification issued under section 27 of the Act. Even otherwise, the residence was said to have been calculated as on the 1st March, 1957, which was, also, contrary to section 27 of the Act.

(iii) The fathers' names and addresses of the military personnel of the 16 Engineers

were not supplied till the 15th of July, 1957, which was long after the publication of the preliminary roll. Therefore, the roll as published on the 1st July, 1957, was incomplete and there was no machinery provided by the Rules, except by way of objections and claims and their decision for making any changes before publication of the final roll. The procedure as laid by the Rules is not shown to have been followed in this respect.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Julun-  
dur Cantt;  
and others  
Grover, J.

- (iv) According to the supplementary affidavit of the petitioner, dated the 27th October, 1957, paragraph 8, the Unit 16 Engineers was stationed within ward No. VI prior to the 3rd July, 1957, and it was subsequent to this date that this unit changed its location and was stationed within ward No. V. In the affidavits filed on behalf of the respondents subsequent to this affidavit there is no clear and specific denial of this allegation. These names could not possibly have been included before the 1st July, 1957, which was the date when the preliminary roll was published. Nor could 156 names of the personnel of that unit be shown as electors in ward No. V as they could not be said to be residing before the qualifying date, namely the 1st March, 1957, in that ward. For all the aforesaid reasons, the roll of ward No. V must be regarded as not having been prepared according to law.

The case of ward No. VI will be considered alongwith other wards.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Julun-  
dur Cantt;  
and others

Grover, J.

With regard to the other wards including ward VI, very little material has been placed on the record which is of a specific nature. There is no doubt that one common feature exists, namely that even regard to those wards it is admitted that by mistake when letters were addressed to the Administrative Commandant, the qualifying date was mentioned as the 1st April, 1957, instead of the 1st March, 1957, and it has further been stated in the written statement that when the mistake was discovered letters were addressed to Officers Commanding the units to verify whether the persons mentioned in their lists were twenty-one years of age or over or whether they resided in the cantonment for six months or more as on the 1st March, 1957. Replies were received from them that all the persons mentioned in the lists supplied by them had the qualifications of age and residence as on the 1st March, 1957. It is to be noticed that even with regard to these rolls, the period of residence was to be computed as on 1st March, 1957, whereas it should have been a day immediately preceding the said date. However, there is no material showing how many mistakes occurred in this manner. I have already mentioned that certain affidavits were filed by various teachers along with the written statement, all in identical nature and terms, bearing the same date, i.e., the 19th October, 1957, wherein it was stated that the list had been prepared taking the 1st March, 1957, as the qualifying date. Out of these teachers, in addition to Tarsem Lal, Joginder Singh Jogi, Mohinder Singh, Kirpa Ram and Bhagwan has have filed affidavits subsequent to the 22nd October, 1957 making allegations of pressure in similar terms as made in the affidavit of Tarsem Lal mentioned by me before. The Executive Officer has also filed an affidavit dated the 3rd November, 1957 in which he has denied having put any pressure on the afore-



said persons and has controverted the other allegations of the aforesaid teachers. On the material before me it is very difficult to say as to where the truth lies. However much suspicion may be raised, it cannot take the place of proof.

There is another matter which has to be taken into consideration in connection with the electoral rolls of the wards except ward No. V. The facts alleged with regard to the lists of these wards are more or less contested and I am bound by the decision of the Division Bench reported in *State of Punjab v. Sukhbans Singh* (1), according to which there should be no interference under Article 226 of the Constitution where facts are in dispute or contested. Even otherwise no specific correspondence or material has been placed with regard to the electoral rolls of these wards as has been done in the case of ward No. V, with regard to which, apart from the mistake of the qualifying date other irregularities have been found to exist. In these circumstances I consider that so far as the electoral rolls of the other wards are concerned, they cannot be held to be irregular and improper or illegal on the material placed before me. No other point of substance was pressed by Mr. H. S. Doabia.

The result is that I allow the petition to the extent of granting it with regard to the elections to ward No. V only. That I can do so with regard to one ward alone was not disputed by Mr. Mital. A writ will, therefore, issue directing that elections to ward No. V on the basis of the electoral roll as prepared shall not be held until there has been compliance with the provisions of the Act and the Rules framed thereunder. In all other respects, the petition will stand dismissed. In the circumstances I leave the parties to bear their own costs.

B.R.T.

Shree Lekh Raj  
v.  
The Cantonment  
Board, Julun-  
dur Cantt;  
and others

Grover, J.

(1) I.L.R. 1957 Punjab 1222.