

Restrictions Act, 1923, within which period over-paid rent is recoverable under section 14, Sub-section (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, by the tenant from the landlord, applies as well to recovery by deduction as to recovery by action.

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On behalf of the respondent reliance was placed on the words 'without prejudice to any other method of recovery', but these words also occur in the section interpreted by the learned Judges of the Saurashtra Court, and to my mind there is no doubt that their interpretation was correct and it is clear that where a tenant seeks to recover rent illegally paid either by deduction from such rent or by separate action he must do so within six months from the date of the payment. I accordingly accept the revision petition and dismiss the plaintiff's suit. In the circumstances of the case the parties shall bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua, JJ.

RAM SARUP AND OTHERS,—*Petitioners*

versus

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

Civil Writ No. 1212 of 1961.

Constitution of India (1950)—Article 226—Existence of alternative remedy—Whether per se a bar to the exercise of writ jurisdiction—No valid law providing for election petition on the date of the amendment of the impugned election—Subsequent law providing remedy by way of election petition—Whether serves as alternative remedy—Punjab Panchayat Samitis (Primary Members) Election Rules

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(1961)—*Rules 21 to 24—Fixation of time for filing nomination papers—Whether mandatory or directory—Returning Officer whether can condone delay and accept nomination papers after due date.*

Held, that it is well-settled that the existence of an alternative remedy is *per se* no legal bar to the exercise of writ jurisdiction.

Held, that unless the impugned election is, on the date of its announcement, governed by a valid law provided for election petition, the law, made at a later date without its being made retrospective either expressly or by necessary implication or intendment, cannot be made applicable to such election. Provisions for challenging or setting aside elections pertain to the domain of substantive law and not to the law of procedure with the result that a valid piece of legislation providing for such proceedings must exist at the time of the election sought to be challenged and no subsequent legislative measure (including delegated legislation) can without being made retrospective in its operation be deemed to be applicable to such prior elections.

Held, that looking at the scheme of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, in the background of the general object and purpose of fixing time for filing the nomination papers, the time fixed in the election programme must be considered to be mandatory, for, holding it to be merely directory may tend to lead to undesirable uncertainty thus facilitating arbitrary action on the part of the Returning Officers when there is no guidance in the rules. Such a position would clearly be unsatisfactory. Had power to accept nomination papers after the expiry of fixed time been intended, one would have expected to find some provision to this effect and perhaps also some guiding principle, however, general, for condoning delay. There is no such provision in the rules. On the other hand the nomination papers are required to be delivered on the date, time and place specified in the election programme and no provision has been made for condoning delay in filing nomination papers nor has any power been conferred on the Returning Officer or any other Authority for accepting nomination papers except in accordance with the election programme.

Case referred by the Hon'ble Mr. Justice Dua, on 10th May, 1962, to a larger Bench owing to importance of question of law involved in the case finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Grover and the Hon'ble Mr. Justice Dua, on 19th October, 1962.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the proceedings relating to the election of Block Panchayat Samiti, Madlaudha held on 23rd August, 1961.

ANAND SWARUP AND RAJINDER SWAROOP MITTAL, ADVOCATES, for the Petitioners.

MELA RAM SHARMA AND S. C. GOYAL, ADVOCATES, for the Respondents.

ORDER OF REFERENCE

DUA, J.—This is a petition under Article 226 of the Constitution assailing the election of the Madlaudha Block Panchayat Samiti and is based on the following allegations. The Punjab Government by a notification constituted a Panchayat Samiti for Madlaudha Development Block, in Tehsil Panipat, District Karnal, which was called Madlaudha Block Panchayat Samiti. The Assistant Registrar of Co-operative Societies, Karnal (respondent No. 3 in this Court), drew up an election programme under rule 21(1) of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961 in form IX for the election of two representatives of Co-operative Societies within the jurisdiction of the Madlaudha Samiti. Under Rule 21(2), respondent No. 3 also prepared a list of Co-operative Societies within the jurisdiction of the above Samiti. Notices in form X, calling upon the Chairman of each of the Co-operative Society within the jurisdiction of the said Samiti, to convene general meetings of the members of their societies and to elect one representative each for

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the election of the two members to the Block Panchayat Samiti, as mentioned above, were also sent as contemplated by Rule 22. In accordance with these notices general meetings of the members of the different Co-operative Societies were duly convened and one representative each was duly elected. The names of such representatives were also sent to respondent No. 3 the same day either through post or through the Secretaries of the Societies, who are under the over all control of the Assistant Registrar. The election of the aforesaid two representatives was held on 23rd August, 1961 at Madlaudha in the office of the Block Development Officer, Sardar Manmohan Singh, District Inspector of Schools, Karnal, respondent No. 7, acting as the Returning Officer, although respondent No. 3 had in the election programme mentioned Shri K. C. Mujhal, S.D.O., Drainage, Karnal as Returning Officer. Petitioners Nos. 1 to 3 had, according to the writ petition, been duly nominated as candidates for the election and their nomination papers had also been duly accepted by the Returning Officer on 18th August, 1961, the date fixed for scrutiny. Petitioner No. 4 had also been duly elected as representative of the Naultha Agriculture Service Society. On 14th August, 1961, the date fixed for filing the nomination papers, only four nomination papers including those of the petitioners Nos. 1 to 3 and Tara Chand, son of Kirori Mal, resident of Naultha, respondent No. 6, were filed. On 18th August, 1961, the date of scrutiny, the Returning Officer, Shri K. C. Mujhal, announced that another nomination paper, namely, that of Kidar Nath, son of Hem Raj, resident of Madlaudha (respondent No. 5 in this petition) had been handed over to him on 17th August, 1960, at 9 p.m. by an order of the Deputy Commissioner. In spite of objections raised by petitioners 1 to 3,

the Returning Officer accepted the nomination papers of Kidar Nath. On 23rd August, 1961, more than 60 representatives of Co-operative Societies, who had with them copies of the resolutions of their respective Societies duly attested by the Chairmen, authorising them to represent the Societies [as required by Rule 28(3)] were present outside the office of the Block Development Officer and were desirous of exercising their votes in the election. Petitioner No. 1 was one of those representatives. Respondent No. 1, who was acting as the Returning Officer on that date, refused to allow any of the persons mentioned above except five, namely (i) Mansa Ram, (ii) Chhotu Jat, (iii) Jage Ram Jat, (iv) Kidar Nath, respondent No. 5 and (v) Tara Chand, respondent No. 6, to exercise their votes on the ground that respondent No. 3 had only supplied with a list of five persons just mentioned, as voters for the election. Out of five persons just mentioned, the vote of Jage Ram, was rejected on the ground that the copy of the resolution with him was not proper. Mansa Ram, did not choose to exercise his vote. Respondents Nos. 5 and 6 were in the circumstances declared elected on the remaining three votes. It is then averred that copies of resolution passed by the two societies electing Mansa Ram of village Pathri and Risal Singh of village Sink were sent to respondent No. 3 in one envelope posted on 17th August, 1961, at the Model Town, Panipat post office. Of these two, Mansa Ram's name was included in the list of voters prepared by respondent No. 3, but that of Risal Singh was not included. Reasons for this non-inclusion were not disclosed to the voters or to the Societies by respondent No. 3 or any other official and indeed the petitioners are also unaware of any such reason. The list of voters prepared by respondent No. 3 was not published and no body was given any opportunity to file objections, etc.

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Validity of Rule 22(1) (b) (4) of the Punjab Panchayat Samitis (Primary Members) Election Rules 1961 has also been assailed as being *ultra vires* and illegal on account of the vagueness and arbitrariness.

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In the written statement filed by the Deputy Commissioner, Karnal, respondent No. 2, it is admitted that nomination papers of Kidar Singh (or Kidar Nath), respondent No. 5 were directed by him to be accepted as pleaded because it had been brought to his notice that in the copy of the election programme sent to this candidate the date for filing the nomination papers had been wrongly mentioned as 18th August, 1961 instead of 14th August, 1961. It has, however, been pleaded that his directions were to properly notify the nomination paper in question so that objections to it could be conveniently preferred. This written statement also contains an objection that an election petition is provided for in the statute and that the election in question cannot be challenged in the present proceedings. The Assistant Registrar, Co-operative Societies respondent No. 3 has also pleaded that respondent No. 5 had applied for extension of time for filing the nomination papers on account of mistake of date in the copy of the election programme sent to him and that this was forwarded to the Deputy Commissioner. Shri K. C. Munjhal, respondent No. 4 has admitted in his written statement that he had received the nomination papers of Kidar Singh, on 17th August, 1961, as there had crept in a clerical mistake regarding the date in the copy of the election programme sent to him and that the nomination papers were accepted in the interests of justice. Shri Munjhal has asserted that he accepted the nomination papers himself and that he did not do so under the pressure from the Deputy Commissioner. This written

statement is, however, completely silent even about the opinion expressed by the Deputy Commissioner in favour of the acceptance of the nomination papers as has been clearly pleaded by the Deputy Commissioner. This respondent has also asserted that after 19th August, 1961 he did not perform the duties of Returning Officer because Shri Man Mohan Singh began to act as such from that date. Shri Man Mohan Singh has in his written statement reproduced the remarks of the District Development and Panchayat Officer but has stated that he (respondent No. 4) declared the supplementary list of voters containing 64 names to be invalid and allowed only five voters to vote.

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At this stage I may observe that the Deputy Commissioner has in his reply also stated that the nomination papers and order of acceptance are lying in a sealed box and he sought permission to break open the seal for finding out the facts. On the suggestion by the parties, I sent for the parcel in this Court.

In reply to the preliminary objection raised by the respondents that the election petition is an adequate alternative remedy, the petitioner has assailed the vires of section 121 of the Punjab Panchayat Samities and Zila Parishads Act of 1961 and reliance has for this challenge been placed on *Harke v. Giani Ram and others* (1), the ratio of which does seem to lend some support to the respondents. The petitioner has also relied on *Bindra Ban and others v. Sham Sunder and others* (2), for the competency of the writ petition.

The main contention raised before me is that there is no law according to which nomination

(1) I.L.R. (1962) 2 Punj. 74 : 1962 P.L.R. 213.

(2) A.I.R. 1959 Punj. 83.

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papers submitted beyond the time fixed in accordance with the Act can be accepted. The respondents have attempted to meet this contention by relying on some inherent power in the authorities to accept the nomination papers if they feel that it would be fair, and this irrespective of the time limit fixed according to law.

The question raised appears to me to be of considerable importance and since it arises in a matter relating to the election of Panchayats it is highly desirable that this petition should be finally disposed of without undue delay. My decision whichever way it goes is subject to a Letters Patent Appeal as of right and such an appeal is, normally speaking, likely to take a fairly long time. In the circumstances, I think it would be more appropriate that this petition is decided by a larger Bench in the first instance. I, therefore, direct that the papers be laid before my Lord the Chief Justice for constituting a larger Bench for disposing of this writ petition.

ORDER OF THE DIVISION BENCH

DUA, J.—This writ petition has been placed before us in pursuance of an order passed by me sitting in Single Bench on 10th May, 1962, suggesting its disposal by a larger Bench on account of the importance of the question raised. The facts have been fully detailed in the referring order which may be treated as a part of this order and the same need not be repeated here.

In so far as the preliminary objection is concerned, reliance has been placed on behalf of the respondents on section 121 of the Punjab Panchayat Samitis and Zila Parishads Act (Punjab Act No. 3 of 1961) hereinafter called the Act. According to this provision, any person who is a voter for the election of a Member is entitled on furnishing the

prescribed security and on such other conditions as may be prescribed within twenty days of the date of announcement of the result of an election to present to the prescribed authority an election petition in writing against the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned. The prescribed authority is then empowered:—

- “(a) if it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the said election and a fresh election shall thereupon be held;
- (b) if it finds that the petition is false, frivolous, or vexatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.”

Sub-section (3) of this section then creates a bar providing that except as provided in this section, the election of Member, Vice-Chairman or Chairman shall not be called in question before any authority or in any Court. Emphasis is laid on this sub-section in support of the preliminary objection. It may, however, be stated without any fear of contradiction that this sub-section cannot control the power of this Court under Article 226 of the Constitution to grant suitable relief in a fit case. The argument, however, is that in view of the alternative remedy this Court should not in the exercise of its discretion go into the controversy on the writ side since there is an equally adequate, efficacious and speedy remedy available to the petitioners.

The petitioners have met this argument by a reference to a Bench decision of this Court in *Harke v. Giani Ram, etc.* (1), where my learned

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brother, who both referred that case to a larger Bench and prepared the judgment of the Bench (Falshaw C. J., agreeing) struck down section 8(2) (a) of the Punjab Gram Panchayat Act as void and unconstitutional on the ground that it did not contain any principle by which it could be said with certainty that the Legislature had laid down any rules of guidance for setting aside an election. The language of section 8 of the Punjab Gram Panchayat Act (Punjab Act No. IV of 1963), so far as material for our purposes, is substantially identical with the language of section 121 of the Act. It would, therefore, seem to me that section 121 must also attract the same challenge to its constitutionality which prevailed in the case of section 8(2) (a) of Punjab Act No. IV of 1953, but then the respondents have referred us to the rules framed by the Governor of Punjab under section 115 of the Act which are described as the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961 (hereinafter called the rules). In these rules, it is argued that sufficient guidance has been laid down by the rule-making authority with the result that the infirmity which initially attached to section 121 must be deemed to have been remedied by promulgating the rules. Assistance has also been sought in support of this contention from a recent unreported decision of a Division Bench of this Court in *Pala Singh v. Nathi Singh etc.* Civil Writ No. 131 of 1962, decided by Mehar Singh and Shamsheer Bahadur, JJ., on 1st August, 1962, in which the decision in *Harke's case* was distinguished and the validity of section 121(2) (a) of the Act was held not to be amenable to constitutional challenge on grounds of uncertainty, vagueness or conferment of unguided or uncanalised power. Reading this section with section 115(2) (b) and Rule 3 of the Rules, the constitutionality and validity of the impugned provision

was upheld. It may be mentioned that Rule 3 also contains a reference to the corrupt practices specified in the schedule and the rule read with the schedule, according to that decision, provides a complete guidance to the prescribed authority under section 121. On behalf of the petitioners, no cogent or convincing reason has been shown as to why the Bench decision in the case cited should not be followed by us. The petitioners' contention, however, is that *Pala Singh's case* is of no assistance to the respondents in the present case because the rules relied upon were published in the Punjab Gazette on 26th August, 1961 whereas the impugned order accepting the nomination papers of Shri Kidar Singh, respondent No. 5, had been passed on 18th August, 1961 and even the elections were held on 23rd August, 1961. It is argued with emphasis that not only on the date when Kidar Singh's nomination papers were illegally accepted but even when the result of the election was announced, section 121, as it then stood, was void and unconstitutional and, therefore, on the dates when the petitioners felt aggrieved with the impugned order, there was no lawful, alternative, equally adequate and efficacious remedy available to them. Even the decision in *Pala Singh's case* would merely connote that a proper, lawful alternative remedy came into being only on 26th August, 1961. This remedy, it is argued with vehemence, could not be held to be retrospective so as to entitle the petitioners to file an election petition in respect of an election the result of which had been announced prior to 26th August, 1961.

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The contention *prima facie* appears to have force and has not been met by the respondents by any convincing and logical argument, as indeed nothing reasonably cogent was urged at the bar in support of the retrospectivity of the provisions relied upon

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on their behalf. A faint-hearted attempt was made merely to urge that at worst the petitioners could claim extension of time for the purpose of presenting an election petition computing the prescribed period from 26th August, 1961 instead of the date of announcement of the result of the election. As at present advised, I am wholly unimpressed by the contention, for, unless the impugned election is on the date of its announcement governed by a valid law providing for an election petition, it is not understood by what process of reasoning it is possible to apply to the election the law made at a latter date without its being made retrospective either expressly or by necessary implication or intendment. Provisions for challenging or setting aside elections pertain to the domain of substantive law and not to the law of procedure with the result that a valid piece of legislation providing for such proceedings must exist at the time of the election sought to be challenged and no subsequent legislative measure (including delegated legislation) can without being made retrospective in its operation be deemed to be applicable to such prior elections. It may in this connection be remembered that an unconstitutional or a void piece of legislation is as good as non-existent. Now, if the law providing for election petitions, having not been validly brought into existence before 26th August, 1961, it is not applicable at all to the election in question and there can hardly be any point in adverting to the question of limitation. The impugned election must, therefore, be held to be immune from attack by means of an election petition.

A further argument addressed on behalf of petitioners in answer to the preliminary objection is that under section 121 it is only a voter for the election of a Member, who has been given a right to present an election petition. In the case in

hand, it is argued that the petitioners are not voters and that they are merely candidates under the statutory rules framed under section 115(2)(b) of the Act described as the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961. The respondents have on the contrary urged that every candidate must be considered, and, is indeed, a voter, and therefore, entitled to file an election petition.

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Now, though as a general rule, according to the broad principles usually applicable to the elections to representative institutions in a democratic set-up like ours a candidate for election is a voter, the matter is, strictly speaking, controlled by statute and in the case in hand the election of representatives of Co-operative Societies from the members thereof does seem to me to involve a procedure calling for interpretation. But since the provision enacting the remedy for an election petition has been held by me to be inapplicable to the election in question it is unnecessary to express any considered opinion on this precise point. In any case, as is by now settled on high authority, the existence of an alternative remedy is *per se* no legal bar to the exercise of writ jurisdiction and on the facts and circumstances of this case I do not find it possible to decline to the petitioners relief on the merits if otherwise they are found entitled to it. The preliminary objection must, therefore, be negatived.

Coming on the merits, it is common ground that there is no specific provision of law authorising the Returning Officer to accept nomination papers presented after the date fixed in the programme; it is also not disputed that the nomination papers of Kidar Singh were received on 17th August, 1961, though the due date fixed for filing nomination

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papers was 14th August, 1961. The short question raised in this connection is if this acceptance is in accordance with law and if the answer is in the negative then is this Court's interference on the writ side called for?

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A passing reference to the relevant rules contained in the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961 (hereinafter called the Rules) may also here be made. The relevant rules for our purposes are contained in Part II which deals with election from members of Co-operative Societies. Rule 21 provides for preparation of Election programme and of lists of Co-operative Societies by the Assistant Registrar Co-operative Societies within the jurisdiction of every Panchayat Samiti to be constituted in the district. Under Rule 22, the same officer has to send a copy each of such programme and of the list to the President or Chairman of every Co-operative Society in each block of this district with a prescribed notice calling upon him in accordance with the provisions of that rule to get elected a representative of the Society and send his name and also to direct the said representative to present himself along with the necessary authority from the Society before the Returning Officer at the required time and place for electing two representatives of the Co-operative Societies. This rule also contains some further provisions and finally enjoins the Assistant Registrar to prepare a separate list of representatives of Co-operative Societies in each block of his district. A copy of this list has to be posted outside his office and one copy is also to be sent to each Returning Officer. Rule 23 provides that any member of a Co-operative Society within the jurisdiction of the Panchayat Samiti may be nominated as a candidate for election under section 5(2)(a)

(ii) of the Act and lays down certain formalities to be complied with. One of the essential prerequisites provided is that the nomination paper completed in all respects is either delivered in person or sent through the representative of that Society on the date, time and place specified in the election programme. Then comes Rule 24 which deals with scrutiny of nomination papers. This, in my opinion, had better be reproduced in extenso:—

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“24. Scrutiny of nomination papers.—(1)

At the time appointed for the scrutiny of nominations, the candidate, his proposer and seconder may attend such place as may be specified in the election programme for the scrutiny of nomination papers and the Returning Officer shall give such persons all reasonable facilities to examine the nomination papers of all the candidates.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made at that time to any nomination by any candidate or his proposer or seconder and may, either on such objections, or on his own motion and after such summary enquiry, if any, as he may deem necessary, reject any nomination:

Provided that the nomination of a candidate shall be rejected, if—

(a) he suffers from any disqualification mentioned in section 6, or

(b) if the candidate, his proposer and seconder are not the members of the same society”:

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It is apparent that the nomination papers are required to be delivered on the date, time and place specified in the election programme and there is no provision for condoning delay to their delivery and no power seems to have been conferred on the Returning Officer or indeed on any authority for accepting nomination papers except in accordance with the election programme.

At this stage, it is worth remembering that respondent No. 4, the Returning Officer concerned, has admitted in paragraph 8 of his written Statement that he had on 18th August, 1961, the date of the scrutiny, announced the receipt of Kidar Singh's application on 17th August, 1961 and also its acceptance, on the ground that the said candidate had been delayed in filing his nomination papers on account of a clerical mistake having crept in the copy of the election programme sent to his Society by the Assistant Registrar, Co-operative Societies, Karnal. The mistake, as noticed in my referring order, was alleged to be that instead of 14th August, 1961, the actual date fixed for filing the nomination papers, 18th August, 1961 was mentioned to be such date. This respondent has also averred that in the interest of justice he *bona fide* believed that the said candidate should not suffer for such a mistake and that he actually acted in good faith without intending to favour any one. He has denied having acted under any pressure from the Deputy Commissioner, though he has so framed his reply to paragraph 8 of the writ petition that one does not find any clear reply to the petitioners' allegation that the nomination papers of respondent No. 5 had been handed over to respondent No. 4 by order of the Deputy Commissioner. However, we have in the written statement of the Deputy Commissioner (Respondent No. 2) himself a very clear statement of the position. He has in reply to paragraphs 6 to 8 very fairly and

frankly stated that it had been brought to his notice by the Assistant Registrar, Co-operative Societies, Karnal, and the District Development and Panchayat Officer, that a mistake in respect of the date of filing the nomination papers had crept in the copy of the election programme sent to Madlaudha Ex-Servicemen Co-operative Society and that he in good faith expressed his opinion on the papers submitted to him that in case there was such a mistake then the nomination papers should be accepted. It was further advised by him that in the event of acceptance of the papers the matter should be properly notified so that objections could be conveniently preferred on the due date. It may be mentioned here that respondent No. 4 has also denied that any objection was raised before him to the acceptance of the nomination paper of respondent No. 5, a fact strongly asserted on behalf of the petitioners. I should like to note at this stage that according to the Deputy Commissioner the records of the election including nomination papers and the order of acceptance were lying in a packet duly sealed by the Returning Officer under Rule 20. This packet was sent for by me by an order dated 25th January, 1962 and the seals were actually broken open at the time of hearing by the Division Bench, but no formal order by the Returning Officer accepting the nomination papers with his reasons as suggested by the Deputy Commissioner, was found among the papers. In the written statement filed by the Assistant Registrar (respondent No. 3) in reply to paragraph 8, it is stated that respondent No. 5, had on 17th August, 1961, applied to him for extension of time on account of mistake of date in the election programme received by his Co-operative Society. This mistake was realised by the Office of respondent No. 3 and communicated to the Deputy Commissioner.

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As mentioned earlier, we got the sealed packet opened and looked with care at the papers relating to the scrutiny proceedings, but were unable to find any formal order of the Returning Officer giving reasons for late acceptance of the nomination papers in question. Besides, we were also extremely suspicious about the genuineness of the story of the alleged mistake of date in the copy of programme actually sent to the Madlaudha Society. The typed carbon copy (presumably sent to all Societies) contained correct dates, and indeed, in one copy of the programme in Hindi suggested to have been sent to Madlaudha Society, 14th August, 1961, is correctly typed out whereas at its back in Punjabi script this date is wrongly stated as 18th August, 1961 in pen and ink. In another form again dates are wrongly stated in pen and ink, but there, the signatures of the Assistant Registrar did not appear to be above suspicion. The respondent's counsel was unable to dispel our suspicion and to convince us about the genuineness of the story of mistake.

But this apart, I am also inclined to think that in elections like the present, looking at things from a practical point of view, there was very little likelihood of any interested candidate remaining unaware of the correct date fixed for filing nomination papers. Elections were to be held in the office of the Block Development Officer at Madlaudha and it sounds rather unlikely in the circumstances mentioned above that the Madlaudha Society or respondent No. 5 were completely ignorant about the actual date and genuinely believed 18th August, 1961 to be the date fixed. But be that as it may, even assuming that there was such a mistake and the office-bearers of the Madlaudha Society were labouring under an honest mistake in regard to the correct date, no

power in the Returning Officer to accept the nomination papers after the due date has been shown to exist in law. The petitioner has in this connection relied on *Lakshmi Narain v. Balwant Singh, etc.* (3), on Allahabad Bench decision, in support of the contention that the provision relating to time for presenting nomination papers is mandatory and delay in doing so is fatal. The reported case relates to section 33(1) of the Representation of the Peoples Act, and, therefore, of no direct help, for, the question canvassed falls to be determined on the language and intendment of the relevant statutory provision. Now, looking at the scheme of the rules in the present case in the background of the general object and purpose of fixing time for filing nomination papers, the time fixed in the election programme must, in my opinion be considered mandatory, for, holding it to be merely directory may tend to lead to undesirable uncertainty thus facilitating arbitrary action on the part of Returning Officers when there is no guidance in the rules. Such a position would clearly be unsatisfactory. Had power to accept nomination papers after the expiry of fixed time been intended, one would have expected to find some provision to this effect and perhaps also some guiding principle, however, general, for condoning delay. I am unable to imply such power. Acceptance of the nomination papers of respondent No. 5 must, therefore, be held to be wholly unauthorised and contrary to law. This infirmity is by itself enough to vitiate the election and to entitle the petitioners to the relief claimed.

The petitioners have challenged the impugned election on another ground as well. It is undisputed that there are about 79 Co-operative Societies to whom notices were sent relating to the

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(3) (1959 XX E.L.R. 75.)

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election in question. According to the petitioners on 23rd August, 1961, representatives of more than 60 Co-operative Societies, who had with them necessary attested copies of resolutions of their respective Societies authorising them to represent the said Societies in accordance with Rule 28(3), were actually present outside the office of the Block Development Officer for the purpose of exercising their right to vote. Ganga Ram, petitioner No. 4, was one of them. Shri Manmohan Singh, respondent No. 7, who was acting as Returning Officer on that date (in place of Shri K. C. Munjal, who had been appointed Returning Officer in the programme) allowed only five persons to exercise their right to vote, disallowing the rest. The five persons thus permitted were—

- (i) Mansa Ram, Harijan of Pathri,
- (ii) Chhotu Jat, of Joshi,
- (iii) Jage Ram Jat of Sink,
- (iv) Kidar Nath, respondent No. 5,
- (v) Tara, respondent No. 6.

The reason for the exclusion of others was stated to be that the Assistant Registrar (respondent No. 3) had supplied to the Returning Officer a list containing only the said five names. Out of this list also, Jage Ram's vote was rejected on the grounds that the copy of the resolution with him was not in order and Mansa Ram, declined to exercise his right. In these circumstances, respondents Nos. 5 and 6 were declared elected on the basis of voting by only three persons. It is also averred that the list of voters prepared by respondent No. 3 was never published and no opportunity was given to interested parties to prefer any objection or claim with respect to it. *Vires* of Rule 22(1)(b)(4) has also been questioned.

According to the written statement of respondent No. 3, out of 79 Societies seven Societies never sent any reply. The remaining Societies are, however, admitted to have held general meetings and elected one representative each but their resolutions did not contain information generally as to the dates when the notices had been received by them with the result that it could not be ascertained whether or not general meetings convened by them had been held within twenty days of the receipt of the notice as required by the rules and also whether or not they had been "held after due notices and intervals as required under the respective by-laws of each Society" for in case of "certain Societies general meetings are to be held on fifteen days' notice." This respondent has, however, admitted that the lists containing names of the representatives authorised to vote were prepared and sent to the Returning Officer in two lists (Annexure 'K' and Annexure 'L' to the written statement). Annexure 'K' it may be mentioned contains five names and Annexure 'L' 64. Broadly stated, this is the position of respondent No. 3 on this point. Respondent No. 4, the original Returning Officer appointed on 18th July, 1961 and replaced by respondent No. 7 on 19th August, 1961, has obviously nothing to do with this point. Respondent No. 7 has in his written statement pleaded that in the papers handed over to him names of only five voters were mentioned. A supplementary list containing 64 names were later received by him on 23rd August, 1961 at 9.30 a.m. with a covering letter from the Assistant Registrar which bore some remarks from the District Development and Panchayat Officer, Karnal, without any final instructions to the Returning Officer. This respondent after reading the remarks decided to declare the list of 64 names as invalid and allowed only five voters to exercise the right to

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vote. The remarks of the District Development and Panchayat Officer as reproduced in paragraph 10 of the written statement are as follows:—

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“I have asked the party to prove that they passed the resolutions within 20 days of the receipt of notice and that the resolution was sent on the day of election of the representative, before any action can be taken in the matter. They have accepted this position as correct and gone away. Deputy Commissioner may kindly see for information”.

It is noteworthy that the Assistant Registrar, respondent No. 3, has not stated in his reply anything about the note of the District Development and Panchayat Officer which was as is obvious, marked to the Deputy Commissioner for information. He had, however, sent to the Returning Officer concerned two lists containing five and sixty four names, respectively.

Now, our attention has not been drawn to any provision of law according to which the District Development and Panchayat Officer is empowered to make any enquiry about the competency of a person to vote. On the present record it appears that it was only this officer's remark which has been reproduced by respondent No. 7 in his written statement which is the basis of the exclusion of sixty-four persons from the actual voting. The right to vote in our system of government is a very valuable right and it matters little whether the election is for choosing representatives of a legislative body or to the Panchayat Samiti. In the present case, several material aspects would call for consideration when dealing with the validity of the election of representatives of the Co-operative Societies for the purpose of

voting at the Panchayat Samitis. The mandatory or directory nature of the period for convening a meeting fixed in Rule 22(1) (a) would among other points, fall for determination. But be that as it may without pursuing the matter further, in my opinion, the decision of the Returning Officer to disallow sixty-four persons from voting has not been shown by the respondents to be in accordance with any provision of law to which our attention has been drawn. If this exclusion is contrary to law, then obviously the result of the election must be held to have been materially affected, and indeed, I find it exceedingly difficult to hold the election to be in accordance with law. This illegality must, in my opinion, vitiate the election. The present petition, therefore, deserves to succeed on this ground as well.

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For the foregoing reasons, this writ petition succeeds and allowing the same I would set aside the impugned election and direct that respondents Nos. 5 and 6 should not be considered to have been duly elected as Primary Members of the Madlaudha Block Panchayat Samiti and they are also hereby restrained from functioning as such. In these circumstances of the case there would be no order as to costs.

A. N. GROVER, J.—I concur.

Grover, J.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

VIR BHAN,—Petitioner.

versus

AVTAR KRISHAN AND ANOTHER,—Respondents.

Civil Revision No. 523 of 1962.

East Punjab Urban Rent Restriction Act (III of 1949)—
S. 13(3) (a)—Joint landlords—Whether any one of the joint

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Oct., 26th