

PETITIONER:
KUNWAR NRIPENDRA BAHADUR SINGH

Vs.

RESPONDENT:
JAI RAM VERMA AND OTHERS

DATE OF JUDGMENT 28/07/1977

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
KRISHNAIYER, V.R.

CITATION:
1977 AIR 1992 1978 SCR (1) 208
1977 SCC (4) 153

ACT:
Representation of the People Act, 1951-Election to
Legislative Council from local authorities' constituency-
Electoral roll not corrected and brought upto-date-If would
vitiate an election held on that basis.

HEADNOTE:
Article 171(3) of the Constitution provides that of the
total number of members of the Legislative Council of a
State one third shall be elected by electorates consisting
of members, among others, of local authorities in the State
as Parliament may by law specify. Part IV of the
Representation of the People Act, 1950 which deals with
electoral rolls for Council constituencies, provides in s.
21(2) that if the electoral roll is not revised in the
manner stated therein, the validity or continued operation
of the said electoral roll shall not thereby be affected.
Section 27(2) of this part prescribes the procedure for
maintaining the electoral roll corrected upto date.
In the election to the State Legislative Council from the
local authorities' constituency, the appellant was declared
elected by a majority of 18 votes. In this election
petition, the respondent, who was the defeated candidate,
alleged that although long before the notification of the
election new office bearers in place of 13 Presidents of
cooperative societies and 4 coopted members of Kshetra
Samities were elected, the electoral rolls were not
corrected and brought upto date as a result of which persons
who were not entitled to vote in the election, participated
and that this had materially affected the result. Upholding
the contention, the High Court held that the electoral roll
could not be deemed to be an electoral roll for the time
being in force within the meaning of s. 2(1) (e) read with
s. 62 of the Representation of the People Act, 1951 because
it was not brought upto date in accordance with the mandatory
provisions of s. 27 of the 1950 Act and that an election
held on the basis of an invalid and ultra vires electoral
roll was void.
Allowing the appeal,
HELD : The High Court is clearly wrong in holding that the
electoral roll was illegal or ultra vires with reference to
the particular entries of voters and that on that account

the election was liable to be set aside. [216G]

1. Although under s. 27 the electoral registration officer has to maintain in his office the electoral roll corrected upto date and this had not been done in this case, mere remissness of the officers in performing their duty in preparation of the electoral rolls is not relevant for the purposes of determining the question in the entire scheme of the Act and the object and purpose of preparation of electoral rolls under the 1950 Act. [213G]

2.(a) In a catena of cases this Court has consistently taken the view that the finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparation of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score not been corrected before the last hour of making nominations. After that dead line the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under s. 16 of the 1950 Act. [216D]

Baidydnath Panjiar v. Sitaram Mahto & Ors., [1970] 1 SCR 839, Kabul Singh v. Kundan Singh & Ors. [1970] 1 SCR 845, Pampakavi Ravappa Balagali v. B. D. Jatti & Others. [1971] 2 SCR 611 and Hariprasad Mulshankar Trivedi v. V. BRaju & Others. [1974] 1 SCR 548 followed.
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2(b) There is a clear distinction between a challenge to the right of a voter to be registered in an electoral roll and the jurisdiction of an authority appointed under the Act to enter a name in the electoral roll. [215F]

Ramji Prasad Singh v. Rain Bilas Jha & four Ors. [1977] 1 SCR 741 and B. M. Ramaswamy v. B. M. Krishnamurthy and Others [1963] 3 SCR 479 applied.

3. The voters whose participation in the election was questioned, were electors within the meaning of s. 2(1)(e) of the 1951 Act, entitled to vote under s. 62 of that Act and were not disqualified under s. 16 of the 1950 Act. Therefore, it would have been wrong on the part of the presiding officer not to allow those voters from participating in the voting even though their names could, at the appropriate time, have been legitimately excluded from the electoral roll. [215B-C]

4. The respondent's contention that by reason of the deliberate omission or s. 21 in, s. 27 (2) (e), no finality is intended in the case of an electoral roll for a council constituency is without force. The proviso to s. 21(2) relates to revision of in electoral roll and sets at rest any possible controversy in case there was no revision of electoral roll for one reason or other. The proviso, therefore, has been advisedly inserted in s. 21(2) with a specific purpose of forestalling a situation. The same caution is not necessary in the case of preparation of electoral rolls under s. 27(2), the alterations whereof are concomitant with statutory transformations of the local authorities under provisions of the local Acts. If any modicum of caution is yet necessary, even that is preserved by s. 23(3) which is made applicable, in terms, under s. 27(2)(e). [216A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 875 of 1975.
From the Judgment and Order dated the 2nd May 1975 of the Allahabad High Court (Lucknow Bench), Lucknow in Election

Petition No. II of 1974.

P. R. Mridul and E. C. Agrawala, for the Appellant.

P. H. Parekh, (A. C.), for Respondent No. 1.

The Judgment of the Court was delivered by Goswami, J. This appeal under section 116A of the Representation of the People Act, 1951, is directed against the judgment of the Allahabad High Court in the matter of an election to the U.P. Legislative Council held on April 28, 1974, from the Local Authorities' Constituency, Faizabad. We are concerned here with Kshettra Samitis which are the local authorities (see Fourth Schedule of the Representation of the People Act, 1950, Uttar Pradesh). Besides the appellant, ten candidates (respondents 1 to 10) filed their nomination papers. Six of them (respondents 5 to 10) had withdrawn their candidature. Out of the five left there was no contest worth the name from respondents 2, 3 and 4. The principal contest, therefore, was between the appellant and respondent No. 1 (hereinafter to be described only as respondent). The last date for submission of nomination papers was April 2, 1974. At the poll the appellant secured 927 votes and the respondent 909, the difference being only of 18 votes. The appellant was, therefore, declared elected on April 29, 1974.

The respondent filed an election petition (being No. 11 of 1974) before the Lucknow Bench of the Allahabad High Court. As many as 13 issues were raised before the High Court and we are principally

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concerned with only one question which is the subject matter of issue Nos. 1, 4 and 13. The issues read as follows :-

1. (a) Whether the votes cast by the persons mentioned in clause (a) of para 4 of the election petition were void ?

(b) Were those persons not electors within the meaning of section 2(1) (a) of the Representation of the People Act, 1951 on 28-4-1974 when the election was held ?

4. (a) Whether the five persons named in para 8 of the election petition had ceased to be coopted members of Kshettra Samitis after the expiry of the term of Kshettra Samiti Bhiaon in the year 1973 ?

(b) Can this question be enquired into by this Tribunal ?

(c) If so were the said persons not electors on the date of election and as such not entitled to vote ?

(d) Whether the votes of the said persons are void ?

(e) Whether the reception of the void votes of the said persons materially affected the result of the election ?

13. (a) Whether the electoral roll on the basis of which election was held is ultra vires as alleged in para 17 of the election petition ?

(b) Whether this question can be taken notice of by the Tribunal in this election petition ?

(c) Whether the election held on the basis of the said electoral roll is void ?

These issues cover the case of 17 persons whose names were recorded as electors in the electoral rolls grounded on the requisite qualifications that 13 of them were Presidents of their respective Cooperative Societies and the remaining 4

were coopted members of Kshettra Samitis. But since they had ceased to be the Presidents or coopted members on the new office bearers being subsequently elected in their places long before the notification of the election, they were wrongly continued in their electoral rolls and as such were not entitled to vote, notwithstanding the presence of their names in the electoral rolls. Their participation in the election has materially affected the result. This is the case of the respondent.

The High Court accepted the contention and set aside the election observing as follows :-

"On these facts it is more than evident that the concerned officers failed in their mandatory duty and they did not correct the electoral roll upto date as required by section 27. This incorrect electoral roll could not therefore be deemed to be the electoral roll for the time being in force within the

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meaning of section 2(1)(e) read with section 62 of 1951 Act. The election held on the basis of this invalid and ultra vires electoral roll is also void".

The High Court, however, observed that "it is not known in whose favour they exercised their votes so as to exclude them".

We may here observe that if the High Court is right on the first point a further question will arise whether the election of the appellant has been materially affected by the reception of void votes in his favour. As stated earlier, the High Court has not addressed itself to this aspect.

The principal question that arises for consideration in this appeal is whether the High Court is right in holding that the electoral roll was invalid and the voters recorded therein were, as such, disqualified from voting on the date of election.

Article 171 of the Constitution provides for composition of the Legislative Councils. Under sub-article (3) thereof "Of the total number of members of the Legislative Council of a State-

(a) as nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify".

Part IV of the Representation of the People Act 1950 (briefly the 1950 Act) deals with electoral rolls for Council Constituencies. Section 27 in that Part provides for preparation of electoral rolls for Council Constituencies. Sub-section (2) of that section reads as follows

"(2) For the purpose of elections of the Legislative Council of a State in any local authorities' constituency-

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities'

constituency shall be entitled to be registered in the electoral roll for that constituency.

(c) the electoral registration officer for every local authorities' constituency shall maintain in his office in the prescribed manner and form the electoral roll for that constituency corrected up-to-date;

(d) in order to enable the electoral registration officer to maintain the electoral roll corrected up-to-date, the chief executive officer. of every local

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authority (by whatever designation such officer may be known) shall immediately inform the electoral registration officer about every change in the membership of that local authority; and the electoral registration officer shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that local authority; and

(e) the provisions of sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities' constituencies as they apply in relation to assembly constituencies".

This sub-section was substituted by the Amendment Act 2 of 1956, There were also some significant changes in the 1951 Act by Amendment Act 27 of 1956. For example, the words "or of any other Act or rules relating to election" were deleted from the original section 108(2)(c) by the 1956 Amendment Act, which goes to show that violation of the provisions of the 1950 Act were not included as one of the grounds, in the above clause, liable to materially affect the result of an election. In the context of sub-section (2) of section 27 of the 1950 Act, section 23 provides for correction of entries in electoral rolls either on application made to the electoral registration officer or on his. own motion. Section 23 of the 1950 Act is material for our purpose and may be, read :

"23. (1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein : Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is

comprised and before the completion of that election".

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Under section 24, there is provision for appeal from any order passed under section 22 or section 23.

We may also refer to section 30 which has been relied upon by the appellant.

"30. No civil court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or

(b) to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under this Act for the revision of any such roll".

Section 32 provides for punishment of the officer concerned for breach of official duty in connection with the preparation, revision or correction, etc. of electoral rolls.

We are not required to write on a clean slate with regard to the controversy raised in this appeal. The High Court appears to have been impressed by the fact that a duty is cast under section 27 of the 1950 Act on the electoral registration officer to maintain the electoral roll corrected up-to-date and that since this had not been done the names of the voters who had admittedly ceased to be Presidents or coopted members some time in 1973 ought not to have appeared in the electoral rolls and that as such they were disqualified from voting in the election.

It is true that under 'section 27 the electoral registration officer has to maintain in his office an electoral roll corrected up-to-date. So far as any change in the membership of a local authority is concerned there is also a duty cast under section 27(2)(d) on the chief executive officer of every local authority to immediately inform the electoral registration officer about such a change. The electoral registration officer, on receipt of such information from the chief executive officer, shall strike off the old names and substitute the new names of members of the particular local authority. Even the new members, themselves, could apply for registration of their names by deletion of those of their predecessors in due time. This was not done.

Mere remissness of the officers in performing their duty in preparation of the electoral rolls is not relevant for the purpose of determining the question in the entire scheme of the Act and the object and purpose of preparation, of electoral rolls under the 1950 Act.

In Baidyanath Panjiar v. Sitaram Mahto & Ors.(1) this Court, categorically held as follows

(1) [1970] 1 S.C.R. 839.

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"A fair reading of the various clauses in S. 27(2) will make it clear that the entries in an electoral roll of a constituency, as they stood on the last date for making the nominations for an election in that constituency should be considered as final for the purpose of that election".

In Kabul Singh v. Kundan Singh & Ors., (1) it was further held as, follows :-

"The mandate of that provision is plain and unambiguous. It prohibits inclusion of any name in the electoral roll after the prescribed date whether the application for inclusion was made before or after that date". In Pampakavi Rayappa Balagali v. B. D. Jatti & Others(2), this Court again held as follows :-

"The entire scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved".

In Hariprasad Mulshanker Trivedi v. V. B. Raju and Others, (3) Mathew, J. speaking for the Constitution Bench and after referring to, several earlier decisions of this Court reached the conclusion as follows :

"Section 30 of that Act makes it clear that civil courts have no power to adjudicate the question. In these circumstances we do not think that it would be incongruous to infer an implied ouster of the jurisdiction of the court trying an election petition to go into the question. That inference is strengthened by the fact that under S. 100(1)(d)(iv) of the 1951 Act the result of the election must have been materially affected by non-compliance with the provisions of the Constitution or of that Act or of the rules, orders made under that Act in order that High Court may declare an election to be void. Non-compliance with the provisions of S. 19 of the 1950 Act cannot furnish a ground for declaring an election void under that clause".

In the above context we may also refer to section 62 of the Representation of the People Act 1951 (briefly the 1951 Act) which reads as follows :-

"62. (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(1) [1970] 1 S.C.R. 845.

(2) [1971] 2 S.C.R. 611.

(3) [1974] 1 S.C.R. 548

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(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (48 of 1950)".

It is not disputed that the persons whose names were recorded in the electoral roll and participated in the voting were not disqualified under section 16 of the 1950 Act. That being the position it would have been wrong on the part of the Presiding Officer not to allow the voters whose names were recorded in the electoral roll of the constituency to participate in the voting, even though their names could have been earlier at the appropriate time legitimately excluded from the electoral roll. These voters are electors within the meaning of section 2 (1) (e) of the

1951 Act and were entitled to vote under section 62 of the 1951 Act.

In a democracy and for that matter in an election, perennial vigilance should be the watch-word for all. If, therefore, notwithstanding the provisions of the law, appropriate action was not taken at the appropriate time, the provisions of the election law which have got to be construed strictly, must work with indifference to consequences, immediate or mediate. On the part of the officers also it will vitalise and invigorate a healthy democratic practice if, charged with the electoral duties, demanding high probity, they neither exhibit rank remissness nor accelerated alacrity apt always to breed suspicion of partisanship.

Mr. Parekh appearing, as amicus curiae, has drawn our attention to a decision of this Court in *Ramji Prasad Singh v. Ram Bilas Jha & Four Ors.* (1) to which I was a party. It is not possible to hold that *Ramji* decision (supra) is of any aid to counsel in his submission in support of the impugned judgment. This Court in that case referred to the earliest case on the subject, namely, *B. M. Ramaswamy v. B. M. Krishnamurthy and Others* (2) that it "bad come to the conclusion that the finality of the electoral roll cannot be challenged in a proceeding in which the validity of the election is questioned". This Court has further clearly observed in *Ramji's* case (supra) as follows

"There is a clear distinction between a challenge to the right of a voter to be registered in an electoral roll and the jurisdiction of an authority appointed under the Act to enter a name in the electoral roll".

Mr. Parekh also invited our attention to section 27 (2) (e) of 1950 Act wherein section 21 of that Act is omitted. He submits that under proviso to sub-section (2) of section 21 "if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected". From this he submits that deliberate omission of section 21 in section 27 (2) (e) is very significant and no finality is intended in the case of electoral roll for a Council Constituency in Part IV of the 1950 Act.

(1) [1977] 1 S.C.R. 741.

(2) [1963] 3 S.C.R. 479.

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We appreciate the ingenuity of the submission. We are, however, unable to accept the submission notwithstanding the omission of section 21 in section 27(2)(e) of the 1950 Act. The proviso to section 21(2) relates to revision of an electoral roll and sets at rest any possible controversy in case there happens to be no revision of electoral rolls for one reason or other. The proviso, therefore, has been advisedly inserted in section 21(2) with a specific purpose of forestalling a situation. The same caution is not necessary in the case of preparation of electoral rolls under section 27(2), the alterations whereof are concomitant with statutory transformations of the local authorities under provisions of the local Acts. If any modicum of caution is yet necessary, even that is preserved by section 23(3) which is made applicable, in terms, under section 27(2)(e). The submission of counsel, thus, flies in the face of the scheme and object of the above provisions.

Thus in a catena of cases this Court has consistently taken the view that the finality of the electoral roll cannot be challenged in an election petition even if certain

irregularities had taken place in the preparation of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score not been corrected before the last hour of making nominations. After that dead line the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under section 16 of the 1950 Act.

The election could be set aside only on the grounds mentioned in section 100 of the 1951 Act. In this case reliance was placed under section 100(1)(d)(iii) for invalidating the election on the ground of reception of void votes. We have already shown that the electoral roll containing the particular names of voters was valid and there is, therefore, no question of reception of any vote which was void. There is, thus, no substance in that ground for challenging the election.

It is true, the result is that with a small margin the appellant landed first as the victor in the election and even the balance might have tilted in favour of the respondent if the so-called invalid votes were to be excluded. But this uncanny consequence cannot be helped on the law laid down by this Court and for very good reasons impregnated in the electoral provisions demanding constant awareness on the part of all and, above all, of the citizenry.

We are, therefore, of opinion that the High Court is clearly wrong in holding that the electoral roll was illegal or ultra vires with reference to the particular entries of votes and that on that account the election was liable to be set aside. We, therefore, set aside the judgment and order of the High Court and restore the election of the appellant to the U.P. Legislative Council. The election petition stands dismissed with costs. In the view we have taken it is not necessary to consider the second question with regard to the point whether the result of the election of the appellant was materially affected or not. In the result the appeal is allowed, but since the respondent has not entered appearance we will make no order as to costs.

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We are thankful to both Mr. Mridul for his well planned submission with considerate brevity and to Mr. Parekh for his able assistance as amicus curiae on a very short notice from the Court.

We may say at end that this case discloses in an election matter, the negative attitude of officialdom while Ramji's case (supra) exposed a lurid instance of an over-zealous positive drive.

P.B.R.

Appeal

allowed.

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