

## **Prabhakar Yajnik vs Dist. Magistrate, Bulandshahr And Ors. on 23 October, 1953**

**Equivalent citations: AIR1954ALL415, AIR 1954 ALLAHABAD 415**

### **JUDGMENT**

Mootham, J.

1. This is a petition under Article 226 of the Constitution.
2. A general election to the Anupshahr Municipal Board will be held in the course of the next few days and the petitioner, who is at present the Junior Vice-Chairman of the Board, is desirous of becoming a candidate for the office of President. He duly filed his nomination papers, but on the 26th September last respondent No. 4 lodged an objection before the Electoral Registration Officer alleging that the petitioner was not entitled to stand as a candidate on the ground that his name was improperly included in the municipal electoral roll. A summary enquiry was held by the Electoral Registration Officer, the third respondent, who by an order of the 2nd October, 1953, upheld the objection and directed that the petitioner's name be removed from the municipal electoral roll. On the 6th October, 1953, the petitioner's nomination paper was rejected by the Returning Officer, who is respondent No. 2, on the ground that the petitioner's name did not appear in the municipal electoral roll.
3. The petitioner now comes to this Court with a three-fold prayer, for a writ in the nature of 'certiorari' to quash the order of the Electoral Registration Officer made on the 2nd October; secondly, for a writ in the nature of 'mandamus' to command the Electoral Registration Officer and the Returning Officer to restore his name to the municipal electoral roll; and, thirdly, for a writ in the nature of 'mandamus' to command the Returning Officer to re-scrutinise his nomination paper. Learned counsel for the petitioner concedes that unless he succeeds in obtaining the first two of these reliefs he cannot be entitled to the third.
4. It has been strongly urged before us that the petitioner is entitled to have his name restored to the municipal electoral roll. His name was ordered by the Electoral Registration Officer to be removed from that roll on the ground that he was not ordinarily resident within Ward No. 4 of Anupshahr Municipality; and the submission on behalf of the petitioner is that the Electoral Registration Officer acted wholly without jurisdiction in rejecting the nomination paper on this ground.
5. In order to understand the arguments which have been addressed to us in this case it is convenient to read the relevant parts of three sections of the U. P. Municipalities Act, 1916, (as amended by Act VII of 1953) and of two clauses of the Uttar Pradesh Municipalities (Preparation and Revision of Electoral Rolls) Order, 1953, an Order which it is convenient to refer to as the 1953

Order. These are Sections 12-B, Sub-sections (1) and (2), Section 12-C and Section 12-D, Sub-section (1), and Sub-clause (c) of Clauses 8 and 9 of the 1953 Order. They read as follows:

"12-B. 'Electoral Roll for every ward'. -- (1) There shall be an electoral roll for every ward which shall be prepared in accordance with the provisions of this Act under the supervision of the Director of Elections (Local Bodies).

(2) The Electoral Registration Officer shall, for purposes of preparation of the electoral rolls for the ward, adopt the Assembly rolls relatable to the area comprised in the said ward and published in the same manner prescribed, and upon its publication it shall, subject to any alteration, addition or modification made under or in accordance with this Act, be the electoral roll for the ward prepared in accordance with this Act.

12-C. 'Qualifications for electors' : Subject to the provisions of Section 12-D, every person who is qualified to be registered in the Assembly electoral roll relatable to the area comprised in the ward or whose name is entered therein shall be entitled to be registered in the electoral roll of the ward.

12-D. 'Disqualifications for registration in an electoral roll : (1) A person shall be disqualified for registration in an electoral roll if he is disqualified for registration in the Assembly rolls.

Clause 8. 'Claims to inclusion of names in the roll of a ward' : Any person

(c) whose name is not included in the Assembly rolls at all or in the rolls for the area relatable to the ward but who is otherwise qualified to be registered in the electoral roll of that ward;

may apply to the Electoral Registration Officer for the inclusion of his name in the electoral roll of the ward.

Clause 9. 'Objection to entries in the electoral roll' : Any person

(c) who objects to the retention of any name on the electoral roll of the ward on the ground that the person in question has become disqualified under Section 12-D of the Act for registration in the roll of the ward;

may apply to the Electoral Registration Officer for exclusion of the name or for correction of the particulars, as the case may be."

The argument of Sri S. N. Kacker for the petitioner is a straightforward one and, as usual, has been concisely stated. It is common ground that the petitioner's name is entered in the Legislative Assembly electoral roll relating to the area comprised in Ward no. 4 and that the petitioner is therefore entitled under Section 12-C of the Municipalities Act to be registered in the municipal electoral roll of that ward subject only to the provisions of Section 12-D. Now Section 12-D says that the petitioner shall be disqualified from registration in the municipal electoral roll if he is

disqualified for registration in the Assembly electoral rolls; and the contention is that the petitioner can be so disqualified only on one of the grounds specified in Section 16(1) of the Representation of the People Act, 1950. As those grounds do not include non-residence the Electoral Registration Officer had, it is argued, no jurisdiction to remove the petitioner's name from the roll on the ground that he did not ordinarily reside in Ward No. 4, Anupshahr. The argument for the respondents is that the grounds for disqualification for registration in the Assembly electoral rolls are not restricted to those mentioned in Section 16(1) of the Representation of the People Act but include also the absence or lack of either of the positive conditions for eligibility for registration which are specified in Section 19 of the Act. The question which we have therefore to decide is the meaning and effect of Section 12-D(1) of the Municipalities Act.

6. Now Sections 16(1) and 19 of the Representation of the People Act, 1950, read as follows :

"16. 'Disqualifications for registration in an electoral roll' : (i) A person shall be disqualified for registration in an electoral roll if he

(a) is not a citizen of India; or

(b) is of unsound mind, and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections.

19. 'Conditions of registration' : Subject to the foregoing provisions of this Part, every person who

(a) has been ordinarily resident in a constituency for not less than 180 days during the qualifying period, and

(b) was not less than 21 years of age on the qualifying date, shall be entitled to be registered in the electoral roll for that constituency."

I may add that nothing turns upon the meaning of the expression "qualifying date" and "qualifying period" which are denned in Section 21 of the Act.

7. I confess I have found it difficult to understand the grounds for the division made in this Act between circumstances which operate as a disqualification for registration and those which constitute conditions of entitlement to registration. Article 326 of the Constitution, which makes provision for adult suffrage, says that every citizen of India who has attained the age of 21 years shall be entitled to be registered as a voter unless he is disqualified under the Constitution or any law made by the appropriate Legislature on one of the grounds mentioned in that Article. Under Section 19 of the Representation of the People Act, the age of twenty-one is made a condition but not citizenship of India except by implication, 'not' being a citizen being a ground for disqualification under Section 16(1). Non-residence and unsoundness of mind are disqualifications under Article

326; under the Representation of the People Act the latter remains a disqualification but a prescribed period of residence becomes a condition of registration.

A further variation is to be found in the now repealed Section 14 of the Municipalities Act where, for example, the non-attainment of the age of twenty-one years and the fact of not being a citizen of India are both classified as disqualifications.

8. In support of his argument counsel for the petitioner draws attention to the use of the specific term "disqualified" in Clause 9(c) of the 1953 Order and in Section 12-D(1) of the Municipalities Act; and he points particularly to the fact that not only is the headnote to Section 12-D the same as that to Section 16 of the Representation of the People Act, but that the opening words of the section in each case are the same namely "A person shall be disqualified for registration in an electoral roll"; and from this he argues, with considerable cogency, that it must have been the intention of the State Legislature in enacting Section 12-D that the grounds for disqualification for registration in the municipal electoral rolls should be those grounds only which are specified in the Representation of the People Act 'as' grounds for "dis-

qualification for registration", namely, those mentioned in Section 16 and none other.

9. The argument is a forceful one, and my mind has fluctuated during the hearing; but on consideration I have come to the conclusion that we should not be justified in placing on Section 12-D the somewhat narrow construction for which the petitioner contends.

10. It is I think apparent that it is difficult to find any wholly satisfactory reasons for regarding certain circumstances as being in the nature of conditions entitling a person's name to be placed on the register of electors and other circumstances in the nature of disqualifications. There would, for example, be no difficulty in redrafting Sections 16(1) and 19 of the Representation of the People Act, in such a manner as to include in either section all that is now to be found in both sections. To the ordinary man the positive conditions specified in Section 19 and the absence of the disqualifications mentioned in Section 16(1) would all be regarded -- and I think not unreasonably -- as qualifications needed to obtain registration. The provisions of Section 19 are, it is to be noted, linked to those in Section 16 by the initial words of Section 19 "subject to the foregoing provisions of this part".

11. When we examine Clauses 8 and 9 of the 1953 Order we find that Sub-clause 8(c) refers to the inclusion of the names of persons who are "qualified" to be registered, and that Sub-clause 9(c) refers to the deletion of the names of persons who have become "disqualified". So also Section 12-C of the Municipalities Act refers to the "qualifications" of persons entitled to be registered while Section 12-D refers to "disqualifications" for registration. The conclusion which I have reached, although not without some hesitation, is that in Section 12-D of the Municipalities Act the word "disqualified" is used as meaning the opposite to 'qualified', that is as meaning 'not qualified'. It is also to be observed that although a period of residence in a particular area is prescribed almost invariably as a necessary qualification for entitlement to registration as a voter, non-residence, or the failure to fulfil such qualification, comes under the general term "disqualification" in Article 326 of the Constitution.

12. Taking this view of the matter it follows, that the meaning which should, in my opinion, be placed on Section 12-D(1) is this, that a person shall not be qualified for registration in an electoral roll if he is not qualified for registration in the Assembly roll. It further follows, in my opinion, that an objection may be taken to the retention of a name on the municipal electoral roll on any of the grounds specified in Section 16(1) or Clause (a) of Section 19 of the Representation of the People Act. I reserve my opinion on the question (which does not arise in this case) whether objection can be taken under Clause 9(c) of the 1953 Order to an objection based on the ground that the person concerned is under twenty-one years of age in view of the tense of the verb "has become disqualified" in Clause 9(c).

13. In my judgment the Electoral Registration Officer had jurisdiction to enter into the question whether the petitioner had the necessary residential qualification for his name to be entered on the electoral rolls. The correctness of his finding, although not accepted, is not challenged in this petition. I held therefore that the petitioner is not entitled to the first two reliefs for which he prays, and the question of his right to the third relief does not, in the circumstances, arise.

14. I dismiss the petition with costs which I would fix at two hundred rupees of which one hundred rupees will be paid to the fourth respondent.

Sapru, J.

14a. I agree with the order proposed to be passed by my brother Mootham.

15. I think a possible remedy which the petitioner has (I express no opinion as to whether he has or has not this remedy) is to file an election petition under Section 43(b) of the U. P. Municipalities Act. That section is to the following effect:

"43.B. No election of the President shall be called in question except by an election petition presented to the State Government in accordance with the provisions of this section."

Now, Sub-section (4) of that section states that "In hearing the petition the Tribunal shall follow such procedure and have such powers as may be prescribed and without prejudice to the generality of the foregoing provision, it may, if the petition is found to be frivolous, direct that the deposit mentioned in Sub-section (2) shall be transferred to the State Government."

Now, it has been pointed to us that the powers which the Tribunal will possess have not yet been prescribed by the State Government. In view of the fact that finality attaches to the order of the Returning Officer removing a person from the roll of a ward it may be worth while for the State Government to consider whether the position in regard to the powers of the Election Tribunal in dealing with petitions where the allegation is that the nomination was improperly rejected should not be precisely defined.

16. I agree that the petition should be dismissed with costs which I would assess at two hundred rupees.