

Ashok Kumar Mishra & Anr vs Collector, Raipur & Ors on 4 September, 1979

Equivalent citations: 1980 AIR 112, 1980 SCR (1) 491, 1980 UJ (SC) 133, (1980) 1 SCJ 365, AIR 1980 SUPREME COURT 112, 1980 (1) SCC 180, (1980) 1 SCR 491 (SC), (1979) 2 SCWR 273

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, A.C. Gupta

PETITIONER:

ASHOK KUMAR MISHRA & ANR.

Vs.

RESPONDENT:

COLLECTOR, RAIPUR & ORS.

DATE OF JUDGMENT 04/09/1979

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

GUPTA, A.C.

CITATION:

1980 AIR 112 1980 SCR (1) 491

1980 SCC (1) 180

CITATOR INFO :

RF 1987 SC 251 (23)

RF 1988 SC 268 (30)

ACT:

Constitution of India 1950, Art. 226 & Madhya Pradesh Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councillor.) Rules 1963, Rules 4(1), 4(3)-Notification issued stipulated 20 days time for filing objections to electoral roll-Rule provided 30 days-Writ Petition filed three days before election impugning, electoral roll-Writ if could be issued.

HEADNOTE:

On September 30, 1978 the Collector published the preliminary electoral roll under Rule 4(1) of the Madhya

Pradesh Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councillors) Rules, 1963 for the purpose of holding elections in December, 1978 to the Municipal Corporation, and also issued a notice under the said rule inviting claims or objections to be filed within twenty days from the date of publication of the notice. A period of 30 days was however actually provided in the rule. The final publication of the electoral roll was made on November 16, 1978. After November 25, 1978 a large number of nominations were received by the Returning officer and the final list of candidates for the elections with their symbols was published on December 20, 1978 and the poll took place on December 31, 1978.

The appellants (Petitioners 1, 5 and 6) along with some others in their writ petition filed on December 28, 1978 contended that the entire election process had become vitiated on account of the defect in the notice issued by the Collector under Rule 4 (1) providing 20 days for preferring claims and objections while the rule prescribed 30 days and that by non-compliance with this mandatory requirement, the entire election process held on the basis of the defective electoral roll, became a nullity and therefore the declaration of results of the successful candidates was liable to be quashed.

The High Court held that the appellants were not entitled to any relief as they had approached the Court after undue delay.

Dismissing the appeals this Court,

^

HELD: 1. It is well settled that the power of the High Court under Art. 226 of the Constitution to issue an appropriate writ is discretionary and if the High Court finds that there is no satisfactory explanation for the inordinate delay, it may reject the petition if it finds that the issue of writ will lead to public inconvenience and interference with rights of others. This rule applies also to a case in which the validity of an election to a local authority is challenged. The question whether in a given case the delay involved is such that it dissents a person to relief under Art. 226 is a matter within the discretion of the High Court which as in all matters of

492
discretion has to exercise it judiciously and reasonably having regard to the surrounding circumstances. [497C-D]

2. If the appellants felt that the notice under Rule 4(3) suffered from any illegality, they could have brought it to the notice of the Collector immediately thereafter. It was open to them to move the State Government under Rule 6 of the Rules to make an order directing the Collector to follow the provisions governing the preparation of the electoral roll. It was also open to them to file a writ petition immediately after the publication of the said notice questioning its legality. None of the above courses was

adopted by the appellants. Persons whose claims were rejected could have filed an appeal under Rule 5 before the Collector. No such appeal was presented. [495H-496B]

3. It was only on December 5, 1978 for the first time a letter was addressed by one of the petitioners to the Collector drawing his attention to the error that had crept into the notice under Rule 4(1) of the Rules. By that time, the nominations had all been received. The final list of candidates for the election with their symbols was published on December 20, 1978. The writ petition itself was filed on December 28, 1978 when the poll had to take place on December 31, 1978. No satisfactory explanation was given in the course of the petition by the petitioners as to why they delayed the filing; of the petition till December 28, 1978, even though they knew that there was an error in the notice issued under Rule 4(1). [496C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1617 and 1640A of 1979.

Appeals by Special Leave from the Judgment and order dated 20-1-1979 of the Madhya Pradesh High Court in Misc. Petition No 884 of 1978.

R. P. Bhatt and Sri Narain for the Appellant (In CA 1617/79).

G. L. Sahu and Miss Maya Ra for the Appellant (In CA 1640A/79) and R. 54 in CA 1617/79.

Shiv Shankar Rao, H. K. Puri, V. K. Bahl and Miss Madhu Moolchandani For RR 7-10, 13, 14, 16, 18-25, 27-29, 33-36, 39-42, 45, 49 and 50 in CA 1617 and for RR 7, 10, 13, 14, 16, 18-25, 27-29, 33-36, 39-42, 45, 49 & 50 in C.A. 1640A/79.

S. K. Gambhir for RR. 5-6 in CA 1617/79.

The Judgment of the Court was delivered by VENKATARAMIAH, J. For the purpose of holding election to the . Municipal Corporation of Raipur in the month of December, 1978 under the provisions of the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956) (hereinafter referred to as 'the Act'), the Collector of Raipur published the preliminary electoral roll on September 30, 1978 under Rule 4(1) of the Madhya Pradesh Municipi-

pal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councillors) Rules, 1963 (hereinafter referred to as 'the Rules') promulgated under the Act by the Madhya Pradesh State Government and issued a public notice under Rule 4(1) of the Rules calling upon persons whose names had not been included in the electoral roll and who claimed to be included in i. and persons who had any objection to the inclusion of the name of any person in the said electoral roll to submit their claims and/or objections within 20 days from the date of the

publication of the said notice before Shri K. P. Pande, Deputy Collector, Raipur who had been authorised to pass orders on such claims or objections. It was also notified that claims or objections which had not been preferred as required under the Rules within the prescribed period would be rejected. The final publication of the electoral roll under Rule 8 of the Rules was done on November 16, 1978. Thereafter the calendar of events was published on November 25, 1978 notifying that the poll, if necessary would take place on December 31, 1978 in all the 44 constituencies: Six petitioners including the appellants herein presented a petition under Article 226 of the Constitution before the High Court of Madhya Pradesh at Jabalpur on December 28, 1978 requesting the Court to make an order quashing the electoral roll and the calendar of events issued for the purpose of the said election and directing the respondents to refrain from conducting the poll on December 31, 1978. They prayed for a further direction to be issued to the respondents calling upon them to hold the election after preparing the electoral roll afresh in accordance with the provisions of the Act and the Rules. They also prayed for the issue of an interim order staying the poll which had been fixed to be held on December 31, 1978. On December 30, 1978, the learned Single Judge before whom the case came up for orders directed the issue of notice of the petition and the stay application to the respondents and issued an interim order directing the respondents not to notify the results of the election under Rule 46 of the Rules pending disposal of the petition. On December 31, 1978, the poll was held and 44 persons were declared elected. Their names were, however, not published under Rule 46 of the Rules in view of the interim order made by the Court. Thereafter the successful candidates were also impleaded as respondents and the petition was amended by the inclusion of an additional prayer that the declaration of the results of the election should also be quashed. After the respondents filed their counter affidavits, the petition was heard and it was dismissed by a Division Bench of the High Court on January 20, 1979. Aggrieved by the order passed by the High Court, Ashok Kumar Mishra and Bhagwat Singh Thakur (Petitioners No. 1 and 5 respectively in the petition before the High Court) filed a petition for special leave to appeal to this Court and Purshottam Lal Sharma (petitioner No. 6 before the High Court) filed another petition. On special leave being granted, the above petitions were registered as appeals.

One of the grounds on which the appellants challenged the validity of the electoral roll, the calendar of events and the declaration of results of election was that the entire election process had become vitiated on account of the defect in the notice issued under Rule (1) of the Rules notifying that claims and objections should be preferred within a period of 20 days from the date of the publication of that notice when sub-rule (3) of Rule 4 of the Rules prescribed that such claims and objections could be preferred within 30 days from the date of publication of that notice. It was alleged that by reason of a shorter period being fixed for entertaining claims and objections, a large number of people who could have filed claims and objections were prevented from preferring them within 30 days from the date of publication or the notice which was the prescribed period. It was alleged that petitioner No. 5 had filed a claim to include his name in the electoral roll on October 19, 1978 and that was rejected by the Deputy Collector without following the procedure prescribed for the purpose. It was also alleged that on October 20, 1978, 34 persons mentioned in Annexure P-7 approached the Deputy Collector to entertain their claim for inclusion in the electoral roll and he refused to receive their applications. It was contended that on account of noncompliance with Rule 4(3) of the Rules, which was mandatory, the entire election process held on the basis of the defective electoral roll ' became a nullity and that therefore, the declaration of results of all the 44 successful candidates was liable to

be quashed.

On behalf of the respondents, it was pleaded that while it was true that the period of 20 days had been mentioned in the notice issued under Rule 4(1) of the Rules, it was open to all the persons who were interested in preferring claims or objections to file them within 30 days from the date of publication of the notice under Rule 4(1). It was pleaded that pursuant to the notice published under Rule 4(1) of the Rules only four claims including that of petitioner No. S were received by the Deputy Collector; that all the applicants were asked to appear on October 30, 1978 to substantiate their claim and that the applications were disposed of on October 30, 1978. The claim of petitioner No. 5 was rejected as no evidence in support of his claim was produced before the Deputy Collector. It was further pleaded that no other claims or objections were preferred either on October 20, 1978 or on any other subsequent date. The allegation that 34 persons had approached the Deputy Collector requesting him to receive their applications for inclusion of their names in the electoral roll on October 20, 1978 was denied. They further pleaded that the authorities would have taken action to correct the error in the notice issued under Rule 4(1) of the Rules granting 20 days' time to prefer claims and objections if it had been brought to their notice by the petitioners immediately after it was noticed by them. The petitioners were not entitled to any relief under Article 226 of the Constitution on account of the inordinate delay involved in the presentation of the writ petition.

The High Court after hearing the parties dismissed the petition holding (i) that respondent No. 2, the Deputy Collector had asked petitioner No. S to appear before him on October 30, 1978 and that as he did not produce any evidence in support of his claim, his application was dismissed, (ii) that none of the persons mentioned in Annexure P-7 preferred any claim before respondent No. 2 on October 20, 1978 and that he did not refuse to receive any such claim and that no person preferred any claim or objection after October 19, 1978 before respondent No. 2 and (iii) that the petitioners were not entitled to any relief as they had approached the Court after undue delay.

Since one of the grounds on which the High Court dismissed the petition was that the petitioners were not prompt in moving the High Court, we shall first examine whether the High Court was right in doing so, since if we agree with the High Court on the above question, it would become unnecessary to go into the other questions raised before us.

The Collector published the notice under Rule 4(1) of the Rules on September 30, 1978 and also called upon interested persons to prefer claims and/or objections thereto within a period of 20 days. In paragraph 7 of the notice, it was mentioned that claims and objections received beyond the prescribed period would not be considered. The period prescribed for preferring claims and objections under Rule 4(3) was 30 days. It is not the case of the petitioners that they did not know immediately after the publication of such notice that in the said notice a period of 20 days had been mentioned in its preamble as the period within which the claims and objections could be preferred and in paragraph 7 thereof it had been stated that any such claim or objection filed beyond the prescribed period was liable to be rejected. If they felt that the said notice suffered from any illegality, they could have brought it to the notice of the Collector immediately thereafter. It was open to them to move the State Government under Rule 6 of the Rules to make an order directing the Collector to follow the provisions governing the preparation of the electoral roll. It was also

open to them to file a writ petition immediately after the publication of the said notice questioning its legality. None of the above courses was adopted by the petitioners. Persons whose claims were rejected could have filed an appeal under Rule S before the Collector. No such appeal was presented. The final electoral roll was published on November 16, 1978. It was notified that the nominations could be filed on and after November 25, 1978 and the poll, if necessary, would take place on December 31, 1978. After November 25, 1978, a large number of nominations were received by the Returning officer. It was only on December 5, 1978 for the first time that a letter was addressed by petitioner No. 6 to the Collector drawing his attention to the error that had crept into the notice published under Rule 4(1) of the Rules. By that time, the nominations had all been received. The final list of candidates for the election with their symbols was published on December 20, 1978. The writ petition itself was filed on December 28, 1978 when the poll had to take place on December 31, 1978. When the petition came up for order on December 29, 1978, it had to be adjourned to December 30, 1978 at the request of the counsel for the petitioners. No satisfactory explanation was given in the course of the petition by the petitioners as to why they delayed the filing of the petition till December 28, 1978 even though they knew that there was an error in the notice issued under Rule 4(1) of the Rules in the month of October, 1978 more than two months before the date on which it was filed. It was, however, argued before us relying upon a news item which had appeared in a daily called 'Nav-Bharat' dated October 21, 1978 in which there was a reference to a statement made by the Minister for Local Self Government of Madhya Pradesh regarding the irregularity in the division of Raipur town into different wards for purposes of election. It was also stated therein that in the course of the discussion with the press-reporters on that day, the Minister had stated that he had directed the Commissioner, Raipur Division, Raipur that the date for inclusion of names in the electoral roll could be extended if the election date was not affected. There was a further reference to dates of election to Bilaspur Municipal Committee having been adjourned twice before. It is difficult to place any reliance on the above news item for the purpose of concluding that the Collector, Raipur had been informed about the defect in the notice issued under Rule 4(1) of the Rules by October 21, 1978. The other documents produced along with the writ petition referred to omissions of certain names from the electoral roll. They do not show that any of the petitioners had raised any objection with regard to the date within which the claims and objections could be preferred to the electoral roll mentioned in the notice. We have, therefore, to proceed on the basis that it was only on December 5, 1978 for the first time that the attention of the Collector was drawn to the said error and that the writ petition itself was presented on December 28, 1978. No satisfactory reason for the delay was set out in the petition.

It is well settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ is discretionary and if the High Court finds that there is not satisfactory explanation for the inordinate delay, it may reject the petition if it finds that the issue of Writ will lead to public inconvenience and interference with rights of others. This rule applies also to a case in which the validity of an election to a local authority is challenged. The question whether in a given case the delay involved is such that it dissents a person to relief under Article 226 is a matter within the discretion of the High Court which as in all matters of discretion has to exercise it judiciously and reasonably having regard to the surrounding circumstances.

We are not, therefore, impressed by the argument that the petitioners were entitled to the issue of the writ prayed for as of right and the delay in filing the petition should have been ignored.

On the facts and in the circumstances of the case, we are of the view that the writ petition was rightly dismissed by the High Court as there was no satisfactory explanation for the delay in preferring it. We, therefore, find it unnecessary to deal with the other points urged before us.

For the foregoing reasons, the appeals fail and are dismissed. We make no order as to costs.

N.V.K

Appeals dismissed