



materially affecting the result of the election insofar as the returned candidate was concerned. The bundle of facts constituting the cause of action as alleged by the appellant are briefly stated in the succeeding paragraph.

On 22.10.1986 the Chief Electoral Officer, Bihar in exercise of the powers conferred by Section 27 (3)(b) of the Representation of the People Act, 1950 (hereinafter the 1950 Act, for short) issued a notification No.1248 publishing a list of educational institutions of the State which shall be deemed to be not lower in standard than that of a secondary school. On 29.9.1995 a notice under Rule 31(3) of the Electors Registration Rules, 1960 was published by the Chief Electoral Officer, Bihar calling upon all eligible voters who wished to get their names entered in the electoral roll to apply in Form 19 on or before 6.11.1995. All persons who are citizens of India and are ordinarily residents of the constituency and engaged in teaching work for not less than three years during the preceding six years calculated from 1.11.1995 in an educational institution not lower in standard than that of a secondary school were eligible for enrolment as electors in the electoral roll. According to the election petitioner the authorities entrusted with the task of preparing the electoral roll included the names of many a voters in the electoral roll who were not at all eligible for being so included as they were teaching in the educational institutions which were neither permitted to be established nor affiliated nor recognised by the State Government which was mandatorily required under the provisions of The Bihar Intermediate Education Council Act, 1992. On 26.12.1995 Dr. P.N. Sharma, the then member of Legislative Council from Patna Teachers Constituency, filed objections to the inclusion of the names of such ineligible persons in the electoral roll seeking deleting of their names. In spite of repeated persuasions made by Dr. P.N. Sharma, the authorities did not hear and decide the objections and in the meantime the Governor of Bihar, as recommended by the Election Commission of India, issued notification dated 26.3.1996 fixing the schedule of election programme. On or about 1.3.1996, objections were also preferred by one Dr. Ram Padmadeo seeking deletion of the names of 1625 ineligible electors from the electoral roll. On 30.3.1996 the Assistant Electoral Registration Officer-cum-District Magistrate, Patna refused to consider the objection petition filed by Dr. Ram Padmadeo on the ground that the objection petition was not preferred in the prescribed proforma and further there was not enough time available before the date of filing of nominations, i.e. 2.4.1996 to hear and dispose of objections calling in question the inclusion of as many as 1625 names in the electoral roll. There were other objections filed by 17 persons laying challenge to the inclusion of 384 names of electors in the electoral roll which too met with the same fate on 30.3.1996. The election petitioner alleged that the election was vitiated by the improper reception of votes cast by ineligible persons and by non-compliance with the provisions of the Constitution, the 1950 Act and rules and orders relevant to the election. Such allegations, as abovesaid, formed contents of paragraphs 15 to 42 along with annexures 1 to 20 of the election petition. The respondent moved an application before the learned Designated Election Judge seeking striking out of the said paragraphs 15 to 42 along with annexures 1 to 20 of the election petition and submitting that the commission of any illegality and/or irregularity in the preparation of the electoral roll was beyond the ambit and scope of Section 100 of the 1951 Act and therefore the averments made in the said paragraphs 15 to 20 of the election petition along with the said annexures were liable to be struck down as irrelevant and not furnishing any cause of action to the appellant. It was prayed that the election petition was also liable to be summarily dismissed as consequent upon striking out the part of pleadings as above said, nothing survived for being tried and adjudicated upon at the trial of



(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

the High Court shall declare the election of the returned candidate to be void.

It was conceded by the learned counsel for the appellant, as was done by the learned counsel for the election petitioner before the learned Designated Election Judge, that the grounds canvassed by the election petitioner for avoiding the election of the respondent were covered by sub-clauses (iii) and (iv) of clause (d) of sub-section (1) of Section 100 of the 1951 Act and it was by reference to these two sub-clauses alone that the maintainability of the election petition was required to be decided by the Court.

Shri P.S. Mishra, the learned senior counsel for the appellant submitted that election of a returned candidate is liable to be set aside if there has been improper reception of any vote or the reception of any vote which is void. What has to be seen is whether a person not entitled to be enrolled under the law as an elector has voted and if that be so then it will be a case of improper reception of any vote or the reception of a void vote and it would not make any difference if the inelligible person was enrolled as an elector in the electoral list. It was further submitted by Shri Mishra that if a person is not qualified to be enrolled as a voter or is disqualified from voting and still casts a vote taking advantage of his being enrolled in the electoral list then the enrolment itself being in non-compliance with the provisions of the Constitution or an enactment, the case would be covered by sub-clause(iv) of clause (d) of Sub-section (1) of Section 100 of 1951 Act. On a further proof of the fact that the result of the election insofar as it concerns the returned candidate was materially affected, the election would be liable to be set aside. To test the validity of the plea so put- forth and forcefully canvassed we may proceed to notice the relevant constitutional and statutory provisions.

Article 326 of the Constitution is founded on the doctrine of adult suffrage. It provides that every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election. This Article clearly contemplates law being enacted by an appropriate Legislature providing for qualifications and disqualifications subject to which a citizen of India not less than 18 years of age shall be entitled to be registered as a voter and exercise his right to franchise. Article 327 provides for law being made by Parliament subject to the provisions of the Constitution with respect to all matters relating to or in connection with elections to either House of Parliament or to the House or either House of the Legislature of a State which law may include provisions for the preparation of electoral rolls, the de-limitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

The Representation of the People Act, 1951 was enacted to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising within or in

connection with such elections. So far as the exercise of right to franchise is concerned there are only two relevant provisions in this Act. Clause (e) of sub-section (1) of Section 2 defines elector in relation to a constituency to mean a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950. Section 62 provides as under:-

62. Right to vote - (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.

(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 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police.

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

Section 62 can clearly be divided into two parts. One part is sub-section (1), which is couched partly in positive form and partly in the negative. A person who is not entered in the electoral roll of any constituency is not entitled to vote in that constituency though he may be qualified under the Constitution and the law to exercise the right to franchise. To be entitled to cast a ballot the person should be entered in the electoral roll. Once a person is so entered he is entitled to vote in that constituency. The phrase for the time being has been significantly and strategically cast into the framing of the provision and qualifies the expression entered in the electoral roll of any constituency. It gives the factum of entry in the electoral roll of any constituency a decisive role to play for finding out whether he is or is not entitled to vote in that constituency. The other part of Section 62 consists of sub-sections (2) to (5). In spite of a person having been entered into an electoral roll and by virtue of such entry having been conferred with a right to vote, such right may yet be defeated by existence of any of the disqualifications or ineligibilities enacted by sub-sections (2) to (5).

The Representation of the People Act, 1950 was enacted to provide for, inter alia, the qualifications of voters at election to the House of the People and the Legislatures of States, the preparation of electoral rolls, and matters connected therewith - the subjects which have been left untouched by

the latter Act of 1951. Electoral rolls for Council constituencies are prepared under part IV of the 1950 Act which part now consists of only one section, i.e., Section 27, the relevant part whereof reads as under:-

27. Preparation of electoral roll for Council constituencies.- (1) In this section, local authorities constituency, graduates constituency and teachers constituency mean a constituency for the purpose of elections to a Legislative Council under sub-clause (a), sub-clause (b) and sub-clause (c), respectively, of clause (3) of article 171.

(2) xxxx xxxx xxxx xxxx@@ IIII xxxx xxxx xxxx xxxx (3) For the purpose of elections to the Legislative Council of a State in the graduates constituencies and the teachers constituencies, the State Government concerned may, with the concurrence of the Election Commission, by notification in the Official Gazette, specify - (a) the qualifications which shall be deemed to be equivalent to that of a graduate of a university in the territory of India, and

(b) the educational institutions within the State not lower in standard than that of a secondary school.

[(4) The provisions of sections 15,16,18,21,22 and 23 shall apply in relation to graduates constituencies and teachers constituencies as they apply in relation to assembly constituencies.] (5) Subject to the foregoing provisions of this section,

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[(a)] every person who [is] ordinarily resident in a graduates constituency and has, for at least three years [before the qualifying date] been either a graduate of a university in the territory of India or in possession of any of the qualifications specified under clause (a) of sub-section 3) by the State Government concerned, shall be entitled to be registered in the electoral roll for that constituency; and [(b)] every person who [is] ordinarily resident in a teachers constituency, and has, within the six years immediately [before the qualifying date for a total period of at least three years, been engaged in teaching in any of the educational institutions specified under clause (b) of sub-section (3) by the State Government concerned shall be entitled to be registered in the electoral roll for that constituency.

[(6)] For the purpose of sub-sections (4) and (5) the qualifying date shall be the 1st day of November of the year in which the preparation or revision of the electoral roll is commenced.] Sub-section (4) above-said refers to a few sections placed in part III entitled Electoral Rolls for Assembly Constituencies and makes them applicable to teachers constituencies also. Sections 16 and 19 provide as under:-

16. Disqualifications for registration in an electoral roll. - (1) A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India; or



Act are : (i) ordinary residence in a teachers constituency, (ii) being engaged in the relevant educational institution for a total period of at least three years within the six years immediately before the qualifying date. The enquiry into availability of these eligibility qualifications, under the scheme of the 1950 Act is to be made at the time of preparation of the electoral roll or while entering or striking out a name in or from the electoral roll. Section 62 of the 1951 Act does not provide that a person who is not qualified to be enrolled as an elector in the electoral roll shall not be entitled to vote at the election. To put it briefly a disqualification under Section 16 of the 1950 Act has a relevance for and a bearing on the right to vote under Section 62 of the 1951 Act but being not qualified for enrolment in the electoral roll under Section 27 of the 1950 Act has no relevance for or bearing on the right to vote at an election under Section 62 of the 1951 Act. That is the distinction between a disqualification and not being qualified.

It will be appropriate to take stock of the available judicial opinion on the issue at hand. We will straightaway proceed to refer to a Constitution Bench decision in Hariprasad Mulshanker Trivedi Vs. V.B. Raju and Ors. - 1974 (1) SCR 548. All the decided cases of this Court available till then were noticed by the Constitution Bench. The dispute arose out of an election to elect four members of the Council of States from the State of Gujarat held in April 1972. The main ground urged in the election petition for declaring the election of the respondents 4 and 5 in the election petition void was that they were not ordinary residents in the area covered by any Parliamentary constituency in the State of Gujarat and that their names had been illegally entered in the electoral roll of the respective constituency in Gujarat and as such they were not electors within the meaning of Section 2 (1)(e) of the 1951 Act and consequently were also not eligible to be candidates in the election. The Constitution Bench held that the question whether a person suffers from any of the disqualifications specified in Section 16 of the 1951 Act can always be gone into by the Court trying an election petition and the electoral roll was not conclusive or final in respect of these matters but the ground taken in the election petition to declare the election of the respondents 4 and 5 void was not that they suffered from any of the disqualifications mentioned in Section 16; the ground taken was that since the elected respondents were not ordinarily resident in any of the Parliamentary constituencies of Gujarat, they had not fulfilled one of the conditions necessary to be satisfied for registration in the electoral roll. In other words, the ground taken was not a disqualification but not being qualified to be enrolled as an elector. The Constitution Bench also drew a distinction between lack of jurisdiction or power and erroneous exercise thereof, placing on record the difficulty in formulating an exhaustive rule to tell when there is lack of power and when there is an erroneous exercise of it. The Constitution Bench concluded that a wrong decision on a question of ordinary residence for the purpose of entering a persons name in the electoral roll cannot be treated as a jurisdictional error which can be judicially reviewed either in a Civil Court or before an Election Tribunal. The Constitution Bench also held that the 1950 Act is a complete code in the manner of preparation and maintenance of electoral rolls. The relief of enrolment, or striking out the name of a person enrolled therein on the ground of his lacking in qualifications conferring a right to be enrolled, must be adjudicated in the manner prescribed by the 1950 Act invoking the jurisdiction of the authorities contemplated therein. The Constitution Bench held that non-compliance with the provisions of Section 19 of the 1951 Act (which in the case at hand is *pari materia* with Section 27 (5)(b) of the 1950 Act) cannot furnish a ground for declaring an election void.



In Nripendra Bahadur Singh Vs. Jai Ram Verma and Ors.

- AIR 1977 SC 1992 the election of the returned candidate was challenged and sought to be set aside on the ground of inclusion of certain electors in the electoral rolls though they had ceased to be qualified from being so enrolled and as such were not entitled to vote notwithstanding the presence of their names in the electoral rolls and that their participation in the election had materially affected the result. This Court, following the Constitution Bench decision in Hariprasad Trivedis case (supra), held :

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. In the case in question 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. [emphasis supplied] The Court in Nripendra Bahadurs case also noticed the provisions of sub-section (3) of Section 23 of the 1950 Act which is applicable to electoral rolls in relation to teachers constituencies and provides that 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 Section 23 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. During the course of its judgment this Court has also observed that mere remissness of the officers in performing their duty in preparation of the electoral rolls is not relevant for the purpose of determining the legality of an election in the entire scheme of the Act and the object and purpose of preparation of electoral rolls under the 1950 Act.

-(1985) 4 SCC 689. It was held:- Notwithstanding the fact that the roll contains these errors and they have remained to be corrected, or that the appeals in respect thereof are still pending, the Registration Officer is under an obligation to publish the roll by virtue of Rule 22.

..that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

During the course of its judgment the Constitution Bench has observed that election laws abhor a vacuum; the electoral rolls may contain errors and they may remain to be corrected or the appeals in respect thereof may be pending, the electoral roll effective for the ensuing election must achieve a finality at a given point of time (such as the last date prescribed for filing the nominations). It has to be remembered that right to contest an election, a right to vote and a right to object to an ineligible person exercising right to vote are all rights and obligations created by Statute. They are not the rights in common law. Bringing into existence Houses or Institutions responsible for functioning of a democracy have a vital constitutional objective to achieve as they are so essential for the functioning of a democracy. A breach of any statutory right or obligation should not come in the way of the process directed towards fulfilling the high objective of bringing into existence of a House or Institution contemplated by Constitution as enabling democratic functioning of the country.

[illegible]

the requisitive conditions as to age and residence in the Constituency; finality has been given to the decision of the officer preparing the roll insofar as the fulfilment of conditions of registration is concerned but it has not been considered desirable to extend the same finality to the decision on the subject of disqualification as the latter is a more serious matter.

The Full Bench decision of Allahabad High Court has been followed by the Punjab & Haryana High Court in Rool Lal Mehta Vs. Dhan Singh - 1967 (69) PunLR 618. The question arising for decision was whether an election petition can be filed on the ground of the voter below the age of 21 years having been allowed to cast vote at the election by virtue of his being enrolled as an elector in the electoral list. The Full Bench held that after the electoral rolls have been finalised the voting of a person whose name is on the electoral roll cannot be challenged as being void on the ground that he was under 21 years of age on the qualifying date and resort cannot be had to Section 100 (1)(d)(iv) of the 1951 Act to enable the dispute as to age being tried as an issue by an Election Tribunal in an election petition.

We find ourselves in agreement with the law so stated by the two Full Benches in Ghulam Mohiuddin (*supra*) and Roop Lal Mehta (*supra*) and record our approval of the same.

One of the principles underlying the plenary bar on judicial proceedings in election matters created by Article 329(b) is the pre-emptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (See Mohinder Singh Gill AIR 1978 SC 851, Para

30) The same principle underlies sub-section (3) of Section 23 of 1950 Act. The last date for making nomination for elections in a constituency and the date of declaration of result are the terminus a quo and terminus ad quem between which the electoral rolls must remain untouched. Amendment (which will include inclusion), transposition or deletion of entries in electoral rolls are all taboos in this interregnum.

It is true that the Assistant Electoral Registration Officer-cum- District Magistrate, Patna was not justified in sitting over the objections laying serious challenge to the legality of enrolment of a large number of voters in the electoral roll. Such objections should have been promptly dealt with and disposed of. Withholding of dealing with the objections on the ground that the officer did not have time enough available at his disposal was hardly any justification for the inaction on the part of the officer. The failure on the part of the officer to dispose of the objections has laid to an allegation being made in the election petition that the officer was obliging the ruling party in the State of Bihar as it stood to gain by inclusion of the names of ineligible voters in the electoral roll. Such delay in disposal of the objections has to be deprecated. Preparation and maintenance of electoral rolls is an ongoing process. A meaningful democracy means participation of all eligible citizens in the exercise

of right to vote and exclusion of ineligible voters therefrom. Such goal achieved, the result of election would reflect the will of the people. Watchful and alert citizenry assisted by responsible and responsive bureaucracy entrusted with the task as to electoral rolls is needed to reach the said goal. The need to hear and decide claims for inclusion in or exclusion from electoral rolls promptly and objectively hardly needs to be emphasised. However, we have already held this could not have been a ground for avoiding the election and we leave the matter at that.

To sum up we are of the opinion that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls though they were not qualified to be so enrolled cannot be a ground for setting aside an election of a returned candidate under sub-clause

(iii) or (iv) of clause (d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951. A person enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-section (2) to (5) of Section 62 of the Representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950.

The view taken by the learned Designated Election Judge in the judgment under appeal cannot be found fault with. The appeal is held liable to be dismissed and is dismissed accordingly. The respondent has chosen not to appear. Hence no order as to the costs.