

Shri Shreewant Kumar Choudhary vs Shri Baidyanath Panjiar on 27 October, 1972

Equivalent citations: AIR1973SC717, (1973)1SCC95, AIR 1973 SUPREME COURT 717, 1973 (1) SCC 95 1973 SCC (CRI) 157, 1973 SCC (CRI) 157

Bench: A.K. Mukherjea, A.N. Grover, K.K. Mathew

JUDGMENT

1. The appellant filed an election petition before the High Court under Section 81 of the Representation of the People Act, 1951 (hereinafter called the Act) for setting aside the election of the respondent in the election held in April 26 1970 to the Bihar Legislative Council from Darbhanga Local Authorities' Constituency and for declaring the appellant as the duly elected member from the aforesaid constituency. The High Court dismissed the petition and this appeal is directed against that Order.

2. The election from the constituency was notified on March 26, 1970: the last date for filing nominations was April 2, 1970 (3 p.m.). The appellant and respondents 1 to 5 in the election petition filed their nomination papers and they were all found valid after scrutiny. Respondent No. 5 in the election petition withdrew her candidature. Thereafter the contest was between the appellant and respondents 1 to 4. The poll took place on 26-4-70 and the result of the poll was announced on 27-4-1970. The Appellant secured 60 votes and Respondent No. 1 86 (Respondents Nos. 2, 3 and 4 secured 27, 6, 6 votes respectively) and so Respondent No. 1 (hereinafter referred to as the respondent) was declared elected.

3. The appellant alleged in the election petition that on April 2, 1970, only 145 persons were entered as voters in electoral roll of the constituency, which comprised the Municipalities and notified area committees specified in paragraph 4 of the election petition and that the number of voters of Jainagar Notified Area Committee, which was also included in this constituency, was only 15. He further alleged that the Government of Bihar published notification No. 2308/LSC on March 27, 1970, in pursuance to an order of the Minister for Local Self-Government made on March 28. 1970, under Section 389 of the Bihar and Orissa Municipal Act, 1922, by which he appointed 31 new commissioners to the Jainagar Notified Area Committee and dropped 6 out of the 15 existing commissioners and that the names of the 31 commissioners have been "entered in the electoral roll of the constituency. The appellant urged that the Minister for Self-Government acted mala fide in passing! the Order as the Minister was on inimical terms with him and that he wanted the respondent who belonged to his political party to win in the election by appointing men belonging to his political party as commissioners of the area committee in question. It was also alleged in the petition that the election was vitiated by corrupt practices, namely, that the respondent gave bribes to 3 voters and offered bribes to 6 other voters and that he canvassed votes on the basis of his caste from among the voters belonging to his caste.

4. The High Court considered these allegations and the evidence adduced to prove them and came to the conclusion that as the life of the previous committee had expired, the Minister had power to appoint, new commissioners under Section 389 read with Section 13 of the Bihar and Orissa Municipal Act, 1922, and that there was no irregularity in the notification or in the proceedings of the Registration Officer in entering the names of the new commissioners of the Area Committee in the electoral roll of the constituency. The Court further found that there was no creditable evidence to substantiate the allegations of the appellant that the Minister for Self-Government was actuated by mala fides in passing the Order. The Court also held that the charge of corrupt practice either of bribery or appeal to the caste of the respondent as the basis for canvassing votes from among the voters of the constituency belonging to his caste has not been substantiated.

5. In this appeal under Section 116-A of the Act, the main contention urged on behalf of the appellant was that the Minister for Local Self-Government was actuated by mala fides in passing the order appointing the 31 commissioners to the Jainagar Area Committee and that he committed an illegality in appointing the commissioners without the previous recommendation as required by Section 13(1)(a) of the Bihar and Orissa Municipal Act.

6. As regards the question of mala fides, the evidence adduced by the appellant was carefully considered by the High Court and it came to the conclusion that the evidence cannot be believed. We see no reason to interfere with that conclusion.

7. We also think that the question whether the Minister committed any illegality in the matter of the appointment of the Commissioners could not have been considered by the High Court in this proceeding. In a petition to set aside an election, it is not open to the High Court to go into the question whether the names entered in the electoral roll were entered therein illegally. The allegation of the appellant at best amounts only to this: that the inclusion of the names of the 31 Commissioners of the Notified Area Committee in the electoral roll was illegal as they were not validly appointed as Commissioners of the Area Committee in question. Even assuming that they were not validly appointed as Commissioners of the Area Committee and, therefore, the entry of their names in the electoral roll was illegal, could the High Court have gone into the question? We think not.

8. Section 30 of the Representation of the People Act, 1950 states :-

Jurisdiction of Civil Courts barred. - 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.

9. In *B. N. Ramaswamy v. B.M. Krishnamuthy* . this Court held that under Section 30 of the Representation of the People Act, 1950, no civil court shall have jurisdiction to question the legality of any action taken by, or under the authority of the electoral registration officer and that the terms of the section are clear that the action of the electoral registration officer in including the name of the appellant in the electoral roll, though illegal, cannot be questioned in a civil court, and it could be rectified only in the manner prescribed by law.

10. In *Kabul Singh v. Kundan Singh*, this Court said that in view of Section 30 of the 1950 Act, civil courts have no jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled to register himself in the electoral roll in a constituency or to question the illegality of the action taken by or under the authority of the electoral registration officer or any decision given by any authority appointed under that Act for the revision of any such roll. The Court then considered the provisions of Ss. 14 to 24 of that Act and said that it is clear from these provisions that the entries found in the electoral roll are final and they are not open to challenge either before a civil court or before a tribunal which considers the validity of any election."

11. In *Pampakavi Rayappa Belagali v. B.D. Jatti* this Court again considered the question and said that no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled for registration in an Electoral Roll for a constituency-----".

12. Appellant's counsel, however, referred to the decision of this Court in *Chief Commr., Ajmer v. Radhay Shyam Dani* and submitted that as the electoral roll has been illegally prepared, there was no electoral roll in the eye of the law and as the existence of an electoral roll legally prepared is the foundation for a valid election the election in question must be declared to be bad. In that case, the respondent in this Court whose father's name was recited wrongly in the electoral roll for the municipality in question applied for rectification of the mistake In the Parliamentary Electoral Roll, on August 10, 1955, but it was rejected on the ground that the roll of the Municipal elections had been finally published on August 8, 1955, and therefore no correction could be made. The respondent challenged the validity of the notification and the electoral roll in a writ petition. The High Court allowed the petition and in appeal this Court held that under Section 30(2) of the *Ajmer-Merwara Municipalities Regulation, 1925*, the electoral roll for the Parliamentary constituency was only treated as the basis for the electoral roll of the Municipality and that the rules in so far as they made no provision for the revision of the electoral roll, for the adjudication of claims to be included therein, or for entertaining objections to such inclusion, were defective and, therefore, the electoral roll of the Ajmer Municipality, which was authenticated and published by the appellant on August 8, 1955, was not in conformity with the provisions of Section 30(2) and the relevant provisions of the Regulation, and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee. There is no dispute here that the electoral roll in question has been validly prepared. The only question is whether the entry of the names of the 31 commissioners appointed by the Minister in pursuance of his order in the electoral roll of the constituency was legal or not. That question, we think, cannot be gone into in a petition challenging the validity of the election. In other words, even assuming that the Inclusion of the names of these persons was illegal as their appointment as commissioners of the Area Committee in question was in contravention of the provisions of the Bihar Municipality Act, it was not-open to the High Court, when trying an

election petition, to go behind the electoral roll and enquire into the question whether these persons were validly appointed as commissioners and the inclusion of their names in the electoral roll was legal. Besides, the decision of this Court in (1957) SCR 68 = (AIR 1957 SC 304) *ibid* was in an appeal from an order in a writ petition directly challenging the validity of the electoral roll and can have no application here.

13. The appellant, However, contended that the amended roll was not ready until 5.30 P.M. on April 2, 1970, the date fixed for nomination and, therefore, the election held in pursuance to that electoral roll was bad. The appellant relied on Section 23(3) of the Act in support of this contention. That section is as follows:

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.

We are not sure whether the appellant's contention is supported by the wording of the section. But we do not wish to express any opinion on the point in view of the finding of the High Court that the amended roll was published before the time fixed for submission of nominations by the candidates, namely, 3 P.M. on April. 2, 1970. The High Court did not believe the evidence adduced by the appellant to support his contention that the electoral roll was not ready till 5.30 P.M. on April 2, 1970. We see no reason to interfere with that finding.

14. Then the question is whether there is any substance in the contention of the appellant that the election was vitiated by corrupt practices. . The witnesses examined to prove that the respondent bribed 3 voters and that he offered bribes to 6 other voters and made his taste the basis for canvassing votes from among the voters belonging to his caste were disbelieved by the High Court, It is not the practice of this Court to re-appreciate the evidence, especially on a question of corrupt practice. In *Meghraj Patodia v. R.K. Birla* , this Court said:

Taking Into consideration the fact that a plea of corrupt practice is somewhat akin to a criminal charge and the further fact that the election cases are tried by experienced Judges of the High Court, this Court ordinarily does not go behind the findings of fact reached by the trial Judge who had the benefit of seeing the witnesses examined before him unless there is something basically wrong in the conclusions reached by him or the procedure adopted by him. This is not a rule of law but a rule of prudence.

These observations were quoted and followed by Grover, J. speaking for the Court in :

15. In the light of these pronouncements, we see no reason to disturb the finding of the High Court on the question of corrupt practices alleged by the appellant.

16. We dismiss the appeal but in the circumstances make no order as to costs.