(1959) 08 RAJ CK 0007

Rajasthan High Court

Case No: Civil Writ Petition No. 296 of 1959

Daulat Ram		APPELLANT
	Vs	
State of Rajasthan and Others		RESPONDENT

Date of Decision: Aug. 29, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226
- Town Municipal Boards Chairman Election Rules, 1951 - Rule 14

Citation: AIR 1960 Raj 86 : (1960) RLW 306

Hon'ble Judges: D.S. Dave, J

Bench: Single Bench

Advocate: Laxmi Mall Singhvi, for the Appellant; Raj Narain, A.G.A, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.S. Dave, J.
This is an application by Daulat Ram under Article 226 of the Constitution of India.

2. It is stated by the petitioner that he is a duly elected member of the Municipal Board. Ladnu and was personally interested in the election of its Chairman which was scheduled to be held at 11 A.M. on 20-8-1959. The District Magistrate and Collector, Nagaur, nominated respondent No. 2, Shri Kiran Babu, Sub-Divisional Magistrate, Didwana, to preside over the meeting for the said election and to receive nominations of candidates

The nominations were to be submitted to respondent No, 2 at least 48 hours before the time fixed for the meeting and, therefore, they should have been submitted before 11 A.M. on 18-8-1959. According to the petitioner, his nomination paper was taken to Didwana by Shri Kanhaiyalal Sethi, and Shri Gordhan. The petitioner and his supporters including Shri Atma Ram and Shri Mohanlal Bohra also accompanied the

above two named sponsors, who were the elected members of the Board and they reached the office of the Returning Officer Didwana, in the morning of 18-8-1959, at about 9-30

The petitioner proceeds to say that they found the office closed and the police guard, who was stationed there, told the petitioner and his companions that the office was closed on account of the holiday of Rakshabandhan and the Sub-Divisional Officer might be present at his residence. Thereupon, the petitioner and his companions went to the residence of respondent No. 2, but they were told by his servant that he had gone out with Shri Abdul Gani pleader for inspection of a certain site.

The petitioner and his companions, therefore, waited outside the office of respondent No. 2 till 11 A.M., but neither his office was opened by that time. nor did respondent No. 2 come to that place. The petitioner and his companions then went to the residence of respondent No. 2 at about 12.30 P.M. They were asked to wait for some time and then at about 1 P.M. respondent No. 2 came out and when the petitioner''s nomination paper was presented to him, he refused to receive it on the ground that it was presented after the prescribed time.

The petitioner and his sponsors explained to him that his office was closed, that he had gone out for some work and it was not their fault if he was not available before 11 A.M. but these arguments did not prevail with him and he rejected the petitioner''s nomination paper at 1.30 P.M. on account of its having been presented after the prescribed period of time.

It is contended by the petitioner that the refection of his nomination paper by respondent No. 2 was illegal and improper, because the petitioner and his sponsors had reached his olfice about one and a half hours earlier before the expiry of the prescribed time and it was none of their fault if the office of respondent No. 2 was closed or if he could not be found at his house having gone out for some other Work

3. It may be mentioned here that this application was presented on 19-8-1959, and therefore it was prayed that the election of the Chairman, Municipal Board Ladnu which was to be held on the next day i.e. 20-8-1959, at 11 A.M. should be. stayed by a writ of prohibition and that the order of respondent No. 2 rejecting the petitioner''s nomination paper should be quashed by a writ of certiorari or any other appropriate direction or order. It was further prayed that respondent No. 2 should be directed to include the petitioner''s name in the list of candidates for Chairmanship,

4. Along with the writ application the petitioner also filed another application for an interim stay order pending the decision of the writ application. Notice of the said application was given to the opposite party and it was put up for hearing on 19-8-1959. Learned Assistant Government Advocate appearing on behalf of respondents Nos. 1 to 3 stated that he was not in a position to reply to the

allegations made by the petitioner without collecting the requisite information.

At the some time, he raised a preliminary objection that Rule 14 of the Town Municipal Boards Chairman Election Rules, 1951, which will hereinafter be referred to as the Rules, provided that the validity of the election of a Chairman could be challenged by filing an application before the Government or any officer authorised by the Government within 7 days from the date of the election that the petitioner had an alternative remedy to challenge the correctness of the order of respondent No. 2 in that application, and thus an alternative, remedy being available to him, his writ application should be dismissed and the question of staying the election of the Chairman did not arise.

5. It is urged by learned counsel for the petitioner that his client has not contested the election of any particular Chairman, that the alternative remedy provided under Rule 14 can be available only after a certain Chairman is elected, that his client has only challenged the correctness of the order of the returning officer in rejecting his nomination paper, that no alternative remedy is provided for challenging the validity of such an order, that his client is entitled to obtain a writ of prohibition against the illegal exercise of jurisdiction by the returning officer and. therefore, there is no substance in the preliminary objection raised by the learned Asstt. Government Advocate.

6. Before proceeding to examine the weight of the arguments advanced bv learned counsel for both the parties, it would be proper to eproduce here Rule 14 whicl. runs as follows:

"14. The validity of the election may be contested by a petition signed by at least three members and filed before the Government or any officer authorised by Government in this behalf within seven days from the date of the election and shall state specific grounds on which the validity of the election is called into question".

It is clear from the provisions of the above rule that after the Chairman is elected the validity of his election may be contested by a petition which should be filed before the Government or any officer authorised by the Government in this behalf. It further requires that such petition should be signed by at least 3 members of the Municipal Board and it should be presented within 7 days from the date of the election.

It is also necessary to state specific grounds on whose basis the validity of the election is challenged. Rule 3 of the Rules provides that it is the duty of the District Magistrate to fix a date, place and time for special meeting of the Municipal Board for purposes of electing a Chairman and that a notice of least 7 days for such election should be given to the members.

The meeting should be presided either by the District Magistrate or by his nominee. Rule 5 further provides that after the notice under Rule 3 is issued, every candidate

should be nominated by at least two non-official members and such nomination form must reach the District Magistrate or if he has appointed his nominee, to the nominee, at least 48 hours before the time fixed for the meeting. Rule II then provides that as soon as practicable after the meeting the presiding authority shall report the name of the person elected as Chairman to the Government.

The perusal of the above rules would show that learned counsel for the petitioner is not justified in arguing that his client has got no alternative remedy or that the alternative remedy is not speedy, or adequate. Every candidate for election of a Chairman must file his nomination paper after a notice is issued by the District Magistrate under Rule 3 and that nomination paper must reach the District Magistrate or his nominee at least 48 hours before the time fixed for the meeting.

If some candidate''s nomination paper is rejected and if he feels aggrieved on account of such a wrong rejection, he can file an application under Rule 14 soon after the election of the Chairman within a period of 7 days. It is clear that the remedy of filing an application under Rule 14 is available to him soon after the election of the Chairman and, therefore, it cannot be urged with any justification that it is not a speedy remedy.

It is true that the above remedy is not open to him the very moment his nomination paper is rejected, but the duration of the period is hardly of 2 or more days, and therefore there is no substance in the alleged grievance about delay. Similarly, there is no substance in the argument that the remedy is against the election of the Chairman and not against the rejection of a nomination paper. It may be pointed out that in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , it was observed that word ''election'' is used both in a narrow sense and in a wide sense and that in its wide sense it may be taken to embrace the whole procedure whereby an elected member is returned.

It was also held that improper rejection of a nomination paper can also he a ground for challenging the validity of the election. The petitioner in the present case has, therefore, certainly got a right to challenge the validity of the election on the ground of the rejection of his nomination paper if its rejection was really wrong. It may be farther pointed out that in Tekchand Vs. Banwarilal and Others, a writ application was moved by one Tekchand challenging the election of the Karanpur Municipality on the ground that his nomination paper was wrongly rejected.

In that case it was held by a Division Bench of this Court that where an alternative remedy of an election petition was open to the applicant, this Court would not interfere before the said remedy is exhausted. The same view has been followed in Prithvi Raj v. State, (Civil Misc. Writ Petn. No. 146 of 1959 decided on 10-7-1959) and I see no good reason for its reconsideration.

7. It is contended by petitioner''s learned counsel that in Anandilal Vs. Chief Panchayat Officer and Others, it was held by another Division Bench of this Court

that :

"where a person stands as a candidate at an election, and his nomination paper is rejected, he has a right in himself to contest the rejection of his nomination paper if it has been done illegally, and he should not be compelled to beg nine other persons to come to his help".

It was also held that he cannot be called a defeated candidate as he had no opportunity of entering into a contest for election and solicit the votes of the voters because his name was rejected by the returning officer. It is urged that in the present case also the petitioner''s nomination paper was rejected and. therefore, he had a right to file the present writ application instead of filing a petition under Rule 14 of the Rules. I have given due consideration to this argument and, in my opinion, it is not correct.

In Anandilal Vs. Chief Panchayat Officer and Others, the words used in Rule 19 of the Rajasthan Panchayat Election Rules, 1954, were ''defeated candidate''. It may be observed that in the first instance the Court was considering the provisions of a different law, namely, the Rajasthan Panchayat Election Rules, 1954, and not the Town Municipal Boards Chairman Election Rules, 1951. The provisions of law have to be interpreted as they stand and the language of one law cannot be imported into the other. In Rule 19 of the Rajasthan Panchayat Election Rules, 1954, the legislature had used the words ''defeated candidate'' and therefore the learned Judges gave a specific meaning to them.

No such words appear in Rule 14 of the Rules and therefore the argument used in Anandilil''s case AIR 1957 Raj 163 cannot be utilised in the present case with any justification. On the other hand, it may be minted out that in Tekchand Vs. Banwarilal and Others, the Court was considering the Rajasthan Town Municipalities Act under which the Town Municipal Boards Chairman Election Rules have been framed. In that case also it was urged that Section 19 of the Rajasthan Town Municipalities Act excluded the possibility of an election petition being filed in a case where a nomination paper was rejected. This contention was however repelled.

8. Learned counsel for the petitioner has next urged that under Rule 14 of the Rules the petitioner cannot file an election petition unless he begs two ether persons to join him in filing the said application and if he cannot get hold of two more members, he can have no remedy. It has been argued that for this reason also the Court should allow his writ application. To mv mind this argument is also not correct, because the petitioner could not file his nomination paper unless he was nominated by at least two non-official members as required bv Rule 5.

This means that every candidate for the election of a Chairman must have at least 2 members to sponsor and endorse his candidature and that is why it seems to have been provided in Rule 14 that the election petition should be signed it least by three members. Moreover, if the law requires that an election petition should be signed

by at least 3 members, it would not be proper for this Court to allow the petitioner to circumvent that law. It may be pointed out that in Milakhraj Vs. Jagdish Chandra and Others, a writ application was filed by a voter while Section 19 of the Rajasthan Town Municipalities Act, 1951, required that an election petition could be filed either by a candidate who stood for election or any 10 persons qualified to vote at the election. It was held that :

"in the face of that provision, it would, ia our opinion, be improper lor any one elector like the applicant to come to tin''s Court to challenge an election even after it has heen held on the ground that the law only entitles ten electors to present an election petition and therefore one elector should be allowed to come to the Court under Art. 220 and challenge the election. If this were permitted, we would be negativing the policy of the legislature which in its wisdom has thought fit that an election to a municipal board, if it is to be challenged by electors, should be challenged by at least 10 of them".

9. Learned counsel for the petitioner has urged in the end that on the elate this application was presented, his client had requested for a writ of prohibition, because the election of the Chairman was not held by that time and that a writ of prohibition must be given to prevent illegal exercise of jurisdiction even though an alternative remedy is available. In support of his contention learned counsel has referred to Burder v. Veley (1840) 113 ITR 801. It would suffice to say that the facts of that case were very different.

It was a case of illegal imposition of rats by Church wardens and the learned fudges thought it fit to issue a writ of prohibition on account of want of jurisdiction in an inferior Court. In the present case, it cannot be said that the returning officer or that any one of the other respondents have exercised or that they are going to exercise any jurisdiction not vested in them. The returning officer had jurisdiction to accept the nomination papers and be also had jurisdiction to reject the nomination papers according to law.

It may be that the petitioner may be able in his petition under Rule 14 of the Rules to show that respondent No. 2 had committed an error in rejecting his nomination paper. But it cannot be said for that reason that he had no jurisdiction to reject the nomination paper. It is one thing to exercise a jurisdiction not vested in a particular body and it is quite another for that body to pass a wrong order! in exercise of its jurisdiction. The above case is, therefore, of no help to the petitioner. Learned counsel has next referred to Jeewan Ram Vs. United State of Rajasthan and Another, In that case it was observed after referring to a number of cases as follows :

"The basis of these decisions is that where an authority or tribunal is acting without or in excess of its jurisdiction, the Court would issue a writ of prohibition, even though there might have been an alternative remedy which might not have been availed of, for the Court having come to know of want or excess of jurisdiction would

not allow the authority or tribunal to carry on further in the same manner".

It would suffice to say that this case is also of little help to the petitioner, because in the present case it cannot be said that respondent No. 2 is acting without jurisdiction or in excess of his jurisdiction.

Learned counsel for the petitioner has next referred to Gangadhar v. State of Rajasthan AIR 1953 Raj 71 , but for the reasons given above this case also is not helpful to him. Learned counsel has further referred to Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, and Sri Lakshmindra Theertha Swamiar v. Commissioner, Hindu Religious Endowments, Madras AIR 1952 Mad 613. Learned counsel has drawn the attention of this Court to the following observation made in the latter case AIR 1952 Mad 613:

"A writ of prohibition lies to prevent an inferior tribunal from exceeding its jurisdiction or even from assuming a jurisdiction which does not vest in it under law. It also lies if a provision of a statute is contravened by the tribunal or even if any principles of law are contravened. In deciding the question whether a writ of prohibition should issue or not, the existence of an alternative remedy is in our opinion, an irrelevant consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law".

It would suffice to say that the same view had been followed by this Court in Jeewan Ram Vs. United State of Rajasthan and Another, and I respectfully agree with it, but itr has no application to the present case, because, as pointed out above, the grievance of the petitioner is in fact not against illegal exercise of jurisdiction by respondent No. 2, but his allegation is that he has committed a mistake in exercise of his jurisdiction. It may be pointed out here that respondent No. 2 has rejected the petitioner''s nomination paper on the ground that it was presented to him at 1-30 P. M.

It is not disputed even by the petitioner''s learned counsel that if the nomination paper was really presented at 1-30 P.M. on 18-8-1959, the order of respondent No. 2 cannot be challenged. What the petitioner means to challenge is that respondent No. 2 has wrongly stated that the nomination paper was presented at 1-30 P.M. It is asserted that the petitioner and his sponsors were present at the returning officer''s office from 9-30 A.M. onwards and if respondent No. 2 was not available till 1 P.M., it was none of their fault.

10. It may be pointed here that on 24-8-1959, when arguments were being heard it was urged by learned Assistant Government Advocate that he had come to know that the facts stated by the petitioner may not be correct. He presented an affidavit of one Manak Chand Sharma, who has controverted the correctness of the facts as stated by the petitioner in his affidavit and application. Ho lias stated that in connection with the election of the Chairman of the Municipal Board, Ladnu, he had gone to Didwana with Shri Abdul Latif, Shri Khinv Raj Pandya and Aleem Khan on the

morning of 18th by train from Ladnu and they reached Didwana at 7 in the morning.

He, Abdul Latif and Khinv Raj then went to the returning officer and submitted to him the nomination paper of Shri Sukhdeo Deepankar, who was standing for the election of chairmanship. He proceeds to say that the office and residence of the returning officer (respondent No. 2) was in the same compound and that he was residing on the first floor of the Court premises. According to him, the returning officer was continuously present at bis residence on 18-8-1959 from 9 A.M. to 12 A.M. He has asserted that he himself was present in the Court premises from 7 A.M. to 12 A.M. to watch other nomination papers which were filed on that date.

Out of the persons named in the writ application he saw only Atma Ram present outside the court premises after 8 A.M. and others namely, Kanhaiyalal Sethi and Gordhan came to Didwana by car after half past 11 A.M., while Shri Mohanlal never went to Didwana on that day. It is further stated that besides the nomination paper of Deepankar, the nomination paper of Prem Raj Vaid was also filed by Shri Movan Ram Ragor and Dungar Mal Patni at 10 A.M. Thus according to him. it was incorrect on the part of the petitioner to say that the returning officer was absent from his residence till 11 A.M. on 18-8-1959, or that Shri Kanhaiyalal Sethi and Shri Gordhan who sponsored the petitioner''s candidature reached Didwana before 11 A.M. He has also stated that Shri Sukhdeo Deepankar was elected as chairman on 20-8-1959, and that he had assumed charge of that office on 22-8-1959.

11. I have given the facts as stated by the petitioner and Shri Manak Chand Sharma in their respective affidavits in detail in order to show that the truth of the facts stated by the petitioner is in serious dispute and unless evidence is recorded ana scrutinised closely, it is not possible to say which of the two versions is correct. It is very unfortunate that people are neither ashamed or afraid of giving false affidavits in the Court. It cannot be said at present which of the two persons filing the affidavits has given a wrong version.

But it is obvious that one of them has certainly perjured himself, because both the versions cannot be correct at the same time. Proper action may be taken against the person who is found to have given a false affidavit after the enquiry into the application under Rule 14 is complete. This Court has held in Civil Misc. Writ Petn. No. 146 of 1959, D/- 10-7-1959 (Raj) and in Malchand v. The State of Rajasthan ILR (1955) Raj 327, that it will not ordinarily decide disputed questions of fact in its extraordinary jurisdiction. There is, therefore. all the more reason that the petitioner should first file an application under Rule 14 if he so desires, so that the facts may be thrashed out by recording evidence.

Learned counsel has urged that in Vishwanath v. Thaman Lal ILR (1957) Raj 1041, this Court bad declared the election of the Chairman Municipal Board Bhadra, as invalid in its extraordinary jurisdiction But it may be pointed out that in that case an application was filed after the validity of the election under Rule 14 was already

challenged and after that application was dismissed. In the present case, the petitioner has come even before taking recourse to Rule 14 and, therefore, it would not be proper for this Court to interfere at this stage. The preliminary objection raised by learned Assistant Government Advocate prevails.

12. The writ application is rejected. No order as to costs since the application has not been decided on merits.