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(1963) 07 AHC CK 0009

Allahabad High Court

Case No: Special Appeal No. 227 of 1963

Shiva Dayal

APPELLANT

Vs

S.D.O. and Others

RESPONDENT

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**Date of Decision:** July 29, 1963

**Acts Referred:**

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 110, 110(3), 12C(3)
- Uttar Pradesh Panchayat Raj Rules, 1947 - Rule 24(2)

**Citation:** AIR 1964 All 456

**Hon'ble Judges:** M.C. Desai, C.J; R.S. Pathak, J

**Bench:** Division Bench

**Advocate:** Brij Mohan Lal Srivastava, for the Appellant; G.D. Srivastava, for the Respondent

**Final Decision:** Dismissed

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### Judgement

M.C. Desai, C.J.

This is an appeal from a judgment of my brother Dwivedi rejecting the appellant's petition for certiorari to quash an order passed by a Sub-Divisional Magistrate setting aside the appellant's election as a Pradhan of a Gaon Sabha u/s 12-C of the U.P. Panchayat Raj Act. There were only two candidates nominated for the election, the appellant and respondent No. 2 Bheji Ram. Before the poll Bheji Ram withdrew and consequently the appellant was declared elected unopposed. Subsequently respondent No. 5 Jamuna Prasad, an elector, filed a petition challenging the appellant's election on the ground mentioned in Section 12-C (b) (i) that the result of the election had been materially affected by the improper acceptance of his nomination. u/s 5-6 of the Act a member of a Gaon Sabha is not qualified to be chosen as a Pradhan unless he is not less than 30 years of age and the contention of Bheji Ram in the election petition was that the appellant was of less than 30 years of age. The Sub-Divisional Magistrate who heard the election petition held that the appellant was less than 30 years of age and consequently set aside his election. His order was challenged before our brother Dwivedi through a petition for certiorari on two grounds. One related to the question of fact whether the

appellant was or was not of less than 30 years of age and the other raised a question of law. An application u/s 12-C may be presented by "any candidate at election or any elector".

Section 110 of the Act empowers the State Government, subject to the condition of previous publication by notification in the official gazette, to make rules consistent with "this Act" to carry out the purposes of "this Act", in particular, providing for "presentation and disposal of election petitions". The rules made by the State Government in regard to election petitions in the exercise of this power are contained in Ch 1 F of U.P. Panchayat Raj Rules, Rule 24(2) is to the effect that an application under Sub-section (i) of Section 12-C of the Act "may be presented by any candidate in whose favour votes have been recorded or whose nomination paper was rejected or by any 10 or more electors of the Sabha"". Here the election petition was filed by only one elector, namely Jamuna Prasad, and so it was contended on behalf of the appellant before our learned brother that it was not a valid application and should not have been entertained by the Sub-Divisional Magistrate. Our learned brother held that Rule 24(2) was inconsistent with Section 12-C (3) of the Act and was to that extent ultra, vires the State Government and that the election petition filed by Jamuna Prasad alone was in order. He did not find any defect in the finding of fact that the appellant was less than 30 years of age and consequently dismissed the petition for certiorari.

2. There is undoubtedly inconsistency between Section 12-C(3) and Rule 24(2). Under the former provision an election petition can be presented, by "any elector"" which means by any one elector, whereas the latter provision requires it to be presented by at least 10 electors. We reject the contention of Sri B.M. Lal Srivastava that "any elector" means "any number of electors" and that "any elector" is not the same as "an elector". There can be no distinction between "any elector" and "an elector". "Any elector" means "any one elector". If the Legislature intended that an election petition should be presented by at least 10 electors it should have used the words "any 10 or more electors". "Any elector" cannot be read to mean "any 10 or more electors". Rule 24(2) undoubtedly restricts the right given by Section 12(3). It is a trite "saying that a rule must be consistent with the Act and the power conferred upon the State Government by the very words of Section 110 was to make rules to carry out the purposes of the Act and consistent with its provisions. One of the purposes was to permit any one elector to present an election petition and the State Government could make rules to carry out this purpose but not to defeat it. Consequently, it could not make the rule requiring an election petition to be presented by at least 10 electors, which would defeat the purpose of permitting any one elector to present an election petition.

3. u/s 110(3), all rules made under the Act

"shall be laid for not less than 14 days before the State Legislature as soon as they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid".

This provision does not mean" either that the rules made by the State Government are to be confirmed or approved of by the Legislature and are not effective so long as they are not confirmed or approved of by it or that on being confirmed or approved of with or without modification they change their nature and become a part of the legislature enactment itself. Even when the State Legislature in the exercise of the power conferred by Section 110(3) modifies the rules they may have the force of law but are certainly not a part of the statute itself. In any case they have to be consistent with the provisions of the Act even if they are approved of or confirmed or modified by the Legislature. Further, it is not obligatory upon the Legislature to make any modifications in the rules even if it finds them to be inconsistent with the Act; if any rules are inconsistent they are null and void even if the Legislature has not modified them. It, therefore, cannot be contended that there was no inconsistency between Rule 24(2) and Section 12-C or that it disappeared when the State Legislature failed, to make any modification in the rule during the session in which the rules were laid before it.

4. Sri B.M. Lal Srivastava drew our attention to [Jagan and Others Vs. Ram Kishore Pandey and Others](#), in which Chaturvedi, J. held that there was no inconsistency between Rule 95-A of the Panchayat Raj Rules laying down that an application filed u/s 85 must be accompanied by an affidavit stating the specific grounds upon which it is based and a certified copy of the order against which it is made and Section 85 of the Act empowering a Sub-Divisional Magistrate or a Munsif to transfer a case from a Nyaya Panchayat on an application by any of the parties. The inconsistency that was alleged to exist between the provisions of Section 85 and Rule 95-A is materially different from the inconsistency existing between the provisions of Section 12-C(3) and Rule 24(2) and that there is no inconsistency between Section 85 and Rule 95-A is no justification for holding that there is no inconsistency between Section 12-C(3) and Rule 24(2). There was nothing in Section 85 to suggest that an application by a party for transfer of a case from a Nyaya Panchayat need not be accompanied by an affidavit and a certified copy mentioned in Rule 95-A. Section 85 only gave a right to a party to apply to a Sub-Divisional Magistrate for transfer of a case to a Nyaya Panchayat while Rule 95-A laid down the procedure to be followed by the party on whom the right was conferred by Section 85. Laying down a procedure, for the exercise of a right cannot be said to be a restriction on the right. What has happened in the instant case is that Section 12-C(3) gave a right to any single elector to present an election petition and that right was taken away by Rule 24(2) requiring that an election petition should be presented by at least 10 electors. Rule 24(2) did not merely lay down a rule of procedure; it restricted the very right conferred by Section 12-C(3) to present an election petition. There is nothing in what Chaturvedi, J. said in the case of Jagan [Jagan and Others Vs. Ram Kishore Pandey and Others](#), which militates against what we have said above.

5. The view that we take receives support from Mohan Singh v. Sub-Divisional Officer, Aligarh, 1959 All LJ 75 (Summary).

6. The petition was rightly dismissed by our brother Dwivedi and we dismiss this special appeals with costs. The interim order stands discharged.