

## Babulal Gayaprasad Vs Collector, Damoh and others

**Court:** Madhya Pradesh High Court

**Date of Decision:** Feb. 9, 1965

**Acts Referred:** Constitution of India, 1950 " Article 226, 227

**Citation:** (1965) LJ 361 : (1965) MPLJ 599

**Hon'ble Judges:** P.V. Dixit, C.J; K.L. Pandey, J

**Bench:** Division Bench

**Advocate:** Y.S. Dharmadhikari and M.V. Tamaskar, for the Appellant; R.J. Bhawe, Govt. Advocate for Respondents Nos. 1, 2, 9 and 10 and R.K. Thakur, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

This is an application under Articles 226 and 227 of the Constitution for the issue of writs of certiorari for quashing an order made by the Sub-

Divisional Officer, Hatta, on 20th November 1964, excluding the name of the Petitioner from the voters list of Ward No. 1 of Chheola Dube

village finalised under the Madhya Pradesh Gram Panchayats Election and Co-option Rules, 1963 (hereinafter called the Rules), for election to the

Gram Sabha of the village, and for quashing an order of the Returning Officer appointed for conducting the election declaring the Respondent No.

8 Dashrath as duly elected.

The material facts are that after the preparation and finalisation of the voters list in accordance with Rules 6, 7 and 8 of the Rules, a programme for

election of Panchas to the Gram Sabha was fixed and published by the Collector-According to this programme the dates fixed for filing the

nomination papers were from 10th November 1964 to 20th November 1964, and 21st November 1964 was fixed as the date for scrutiny of the

nomination papers. The applicant and the Respondent No. 8 Dashrath filed their nomination papers. The Respondents Nos. 3 to 7 and one

Rahimkhan all made applications under Rule 11 after 10th October 1964 for deleting the name of the applicant from the voters list of Ward No. 1

on the ground that his name was recorded in the voters list of another ward in Hatta. The Sub-Divisional Officer, after hearing the Petitioner and

the objectors, passed the impugned order dated 20th November 1964 deleting the Petitioner's name from the voters list. Thereafter on the date of

scrutiny of nomination papers the Returning Officer rejected the Petitioner's nomination paper on the ground that his name had been excluded from

the voters list, and accepting the nomination paper of Respondent No. 8 Dashrath, who was the sole candidate left in the field, declared him as

duly elected unopposed.

The Petitioner's contention is that under Rule 11(6), no application for exclusion of a person's name from the voters list could be entertained within

a period of one month from the date fixed for election; that the date fixed for election was the date on which the election commenced; that the

election commenced on 10th November 1964 when nomination papers could be filed; that the Sub-Divisional Officer erred in taking the view that

the date fixed for election was the date of poll, namely, 4th January 1965; and that, therefore, the applications of Respondents Nos. 3 to 7 and

Rahimkhan for the exclusion of the Petitioner's name having been made within a period of one month from the date fixed for election could not be

entertained by the Sub-Divisional Officer and on those applications the Sub-Divisional Officer had no jurisdiction whatsoever to pass an order

deleting the applicant's name from the voters list. The further contention of the applicant is that on 20th November 1964 Dashrath made an

application before the Returning Officer withdrawing his candidature but that the Returning Officer asked Dashrath to take back his application;

and that under Rule 28 the Returning Officer was bound to accept Dashrath's withdrawal of candidature and he was not justified in asking

Dashrath to countermand his application for withdrawal of his candidature. The Petitioner, therefore, also prayed during the course of the hearing

of the arguments that as after the withdrawal of Dashrath's candidature he was the sole validly nominated candidate, a direction be issued to the

Returning Officer for declaring him duly elected unopposed.

So far as the Petitioner's grievance with regard to deletion of his name from the voters list is concerned, that must be accepted, and the order

passed by the Sub-Divisional Officer on 20th November 1964 deleting his name from the voters list must be quashed for the reasons given by us in

our order passed today disposing of the case of Nemchand Gulabchand Vs. Block Development Officer, (Returning Officer) and Others, (MP

No. 615 of 1964 decided on the 9th February 1965.). In that case, it has been held that the word "election" as used in Sub-rule (6) of Section 11

embraces the whole process by which a person is duly elected as a Panch and the expression "the date fixed for a general election or a bye-

election"" means the date on which the election commences; and that the election commences from the date on which nomination papers are to be

filed. On this view, the objections lodged by Respondents Nos. 3 to 7 and Rahimkhan after 10th October 1964 for deleting the applicant's name

from the voters list being all made within one month before 10th November 1964 could not at all be entertained. The Sub-Divisional Officer's

determination on 10th November 1964 that the objection-applications were ""within time"" was erroneous and the order that he made on 20th

November 1964 excluding the name of the Petitioner from the voters list was without jurisdiction.

In regard to the applicant's objection that the Returning Officer should have acted upon Dashrath's application for withdrawal of his candidature,

the answer made by the Respondents Nos. 1, 2, 9 and 10 in their return is that the aforesaid application bearing the signature of Dashrath was

actually presented by the applicant himself and not by Dashrath in person or by his proposer or election agent authorised in that behalf as required

by Rule 28 (2); that on 21st November 1964 Dashrath actually filed another application before the Returning Officer stating that his signature on

the application for withdrawal of his candidature had been obtained by the applicant by exerting pressure; and that it was in these circumstances

that the Returning Officer did not give effect to the application dated 20th November 1964 about the withdrawal of Dashrath's candidature. The

dispute between the parties as to the facts and circumstances in which the application for withdrawal of his candidature was made by Dashrath

cannot be determined in these proceedings under Articles 226 and 227 of the Constitution. As the Petitioner's nomination paper was found by the

Returning Officer to be otherwise valid and rejected solely on the ground that his name had been deleted from the voters list by an order passed by

the Sub-Divisional Officer on 20th November 1964, and as the order of the Sub-Divisional Officer was clearly without jurisdiction, it must be held

that the Petitioner was a validly nominated candidate for election. The Returning Officer obviously accepted as valid the nomination paper of

Dashrath when he declared him as duly elected unopposed. The position, therefore, is that there were two validly nominated candidates, namely,

the Petitioner and the Respondent No. 8 Dashrath. That being so, the Returning Officer should have proceeded to take poll on the date fixed for it.

As no poll was taken, the Collector must be directed to appoint a fresh date for taking the poll. If in the election the Petitioner is not successful,

then he is at liberty to call in question the election of Dashrath by filing an election petition on the ground urged before us that Dashrath had already

withdrawn his candidature, and on such other grounds as may be open to him.

For these reasons, this application is allowed and the order dated 20th November 1964 of the Sub-Divisional Officer, Hatta, excluding the

Petitioner's name from the voters list is quashed. The order of the Returning Officer declaring Dashrath as duly elected unopposed is also quashed.

The Collector, Damoh, is directed to appoint a date for taking the poll in Ward No. 1 of Gram Sabha Chheola Dube for which the Petitioner and

Dashrath were duly nominated candidates for election. In the circumstances of the case, we leave the parties to bear their own costs. The

outstanding amount of security deposit shall be refunded to the Petitioner.