**(1964) 12 MP CK 0020**

**Madhya Pradesh High Court**

**Case No:** M.P. No. 75 of 1964

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| Balaram Hariram Kulambi | | APPELLANT |
| | Vs | |
| Girdharllal Tulsiram and others | | RESPONDENT |

**Date of Decision:** Dec. 24, 1964

**Acts Referred:**

- Madhya Pradesh Gram Panchayat Election and Co-option Rules, 1963 - Rule 11, 8

**Citation:** (1965) JLJ 676 : (1965) MPLJ 727

**Hon'ble Judges:** P.K. Tare, J; H.R. Krishnan, J

**Bench:** Division Bench

**Advocate:** J.D. Patel, for the Appellant; S.D. Sanghi and Balwantsingh, Govt. Advocate for State, for the Respondent

**Final Decision:** Allowed

**Judgement**

H.R. Krishnan, J.

This is an application by one of the voters enrolled in a panchayat constituency in the Dhar District, from an order of the Collector ostensibly under Rule 11 of the Madhya Pradesh Gram Panchayat Election and Co-option Rules, 1963. That order itself was in effect the setting aside of an earlier order by the authorized officer (who was the Block Development Officer in that district) acting under Rule 8 and exercising the powers of the Collector himself. The earlier order rejecting the claim of the opponents Nos. 1 and 2 to be entrolled as voters in that constituency was made on objection filed by the Petitioner. The Petitioner''s contention is two-fold; firstly, the order passed by the Collector or the authorized officer, as the case may be, under Rule 8 in disposal of claims and objections is final and is not subject either to an appeal before the Collector acting as such or any review before the Collector or the authorized officer. Thus it is contended that the Collector or as for that matter, the authorized officer was not competent to reconsider under Rule 11 what had been already decided under Rule 8 and had become final. Secondly, even

assuming that the Collector was competent to hear the same matter over again under Rule 11 when it had already been heard and disposed of under Rule 8, he should not have acted in the manner he did, that is, heard the representation of the opposite party and admitted further evidence by affidavits and disposed of the matter in their favour without inviting the Petitioner whose objection was on record to come and show cause why the earlier order should not be set aside and the opposite party entered as voters. The factual part of the controversy centered round the question whether the opposite party was ordinarily resident in the panchayat area or any adjoining town area; but we are not concerned with the facts in these proceedings.

The Madhya Pradesh Panchayat Act of 1962 is a long one; but we are concerned with Sections 5 and 6. The first section provides that for every Gram Sabha there should be a list of voters prepared in accordance with the provisions of the Act under the superintendence, direction and control of the Collector or such officer not below the rank of a Naib-Tahsildar as may be authorized by him in this behalf. It is also provided in Sub-section (2) of that section that the State Government should make rules consistent with the Act generally providing for the preparation, revision and correction of the list of voters from time to time and its publication. The general rule-making provisions are contained in Section 318 and this comes under heading (1) of Sub-section (2) of that section. Section 6 of the Act defines the qualification for registry in the list of voters in a Gram Sabha area; we are otherwise not concerned with that here because we are not going to investigate the factual part of the controversy.

Coming to the rules, which are called the Madhya Pradesh Gram Panchayat Election and Co-option Rules, the ones for our purpose are Rules 5 to 11 in Chapter III. Rule 5 is for the preparation of the list of voters. Rule 6 is for the publication expressly inviting claims and objections and fixing of dates for their hearing and disposal. Rule 7 lays down the manner in which the claims to be listed or the objections to the actual or proposed listing of anybody as a voter should be preferred. Rule 8 governs the disposal of such claims and objections by the Collector or the officer authorized by him in that behalf whose minimum status is already laid down in Section 5. Sub-rule (3) of Rule 8 says-

The decision of the Collector or authorized officer shall be final and each voters'' list shall be amended in accordance with such decision.

Though the word used here is "amended" this is the same as "revision" mentioned in Sections 5 and 318 (2) (i). Rule 9 concerns the inspection by the members of the public and issue to them of certified copies according to a prescribed tariff. Rule 10 uses the word "revision" and is to the effect that a list revised in accordance with Rule 8 (4) shall be in force until the next revision under the same rule.

Rule 11 starts on a new topic, namely, interim alteration or correction of the voters'' list from time to time on applications being made to the Collector or authorized officer. Sub-rules (2) to (7) set out the modus operandi of such correction and end by providing that the corrected list shall be the valid list for the time being; but for obvious reasons of convenience there will be no correction during a period of thirty days before any election.

The sheet-anchor of the Petitioner''s case is that the "Correction" under Rule 11 is something substantially different from the "revision" under Rule 8, and once a list has been revised in accordance with the latter rule it is final as far as the revision goes and cannot be altered whether by the Collector or by the authorized officer on a reconsideration of any of the claims and objections which have already been considered and disposed of. The correction under Rule 11, it is urged, is to meet fresh situations created by fresh happenings such as, for example, the death of any of the listed voters or the qualification of anybody not listed by attaining majority or removal of disqualification and the like. It might also be based upon change of residence; some listed voter who has left the constituency will have to be de-listed and a new arrival resident in the constituency for the qualifying period will have to be freshly listed. In other words, the correction is to keep the list up-to-date. What the Collector had done under the cover of correcting under Rule 11 is a review or reconsideration or an appeal from the order of the authorized officer made under Rule 8. Incidentally, it is urged that the Collector has done it without hearing the objector; but the main thesis is that he cannot in any event do the revision over again.

As against it, it is urged by the opposite party that Rule 11 is so wide that it does not exclude the cases already covered by an order under Rule 8.

The finality of such an order under Rule 8 is subject to the operations of Rule 11, it is seriously contended that even where the claim or objection has been considered and disposed of under Rule 8 whether by the Collector himself or by the authorized officer, it is still open to the claimant or objector to move the Collector again under Rule 11, and it is competent for the latter to reconsider the whole thing and vary the decision. As for the objection by the Petitioner that he was not heard though his objection was on record, the opposite party''s answer is that notice under Rule 11 is mandatory only when it is proposed to delist somebody from the list in which even that person should be noticed. But when it is a case of listing somebody who has not been listed or whose prayer for being listed has been objected, a notice to the objector is not necessary; but the object or could as soon as he knows of the decision under Rule 11 go up to the Collect or under the same rule and ask the matter to be reconsidered.

The scheme of the rules and their general purport which I have already outlined above shows that the position taken by the Petitioner is consistent with them and that taken by the opposite party does great violence to the scheme and can in fact

lead to the most absurd results. When there are to be consecutive rules bearing on the same subject and referable to different situation we would, to begin with, assume that they are mutually exclusive, unless there is something in the context which shows that they overlap. This is usually called the principle of harmonious interpretation; but there is nothing mysterious in the process. If the Legislature or the rule-making authority provides for one stage and one procedure for revision on claims and objections and another procedure for correction at all times, I would start by holding that the two portions are substantially different and do not overlap. Here the rules are clear enough. There are four stages, namely, preparation, publication with invitation of objections and claims, then disposal of those claims and objections which leads to the finalization of the list. Still there is a fourth stage after the finalization which is called correction. This correction should be on applications apprising the Collector or the authorized officer of "fresh happening", examples of which I have already given. If it was intended that the Collector or the authorized officer could go over the same ground as is covered during their inquiry under Rule 8, then the rule-making authority should have described it as an appeal revision, or review. But when "correction" is meant, it implies something different from claims and objections; somethings which have happened independently of these claims and objections and is subsequent to them. Another way of looking at it is that the interpretation put by the opposite party on Rule 11 converts it to a rule for appeal or revision which raises two patent difficulties. The first is that this makes nonsense of the clear principle laid down in Rule 8 that the list so amended or revised shall be "final". The rule does not even say that it shall be final subject to the corrections under the later rule. Another difficulty is that a person whose claim has been rejected or whose objection has not been sustained may immediately go up to the same authority or, at any rate, to one of them asking for a reconsideration of exactly the same problem under Rule 11. This in fact can be repeated ad infinitum which again reduces Rule 8 to an empty caricature.

Thus, all things considered we would hold that the revision under Rule 8 and the correction under Rule 11 are different operations justified by different circumstances; the former by the presentation of claims and objections according to the invitation made in the publication of the provisional list; the latter on applications apprising the Collector or the authorized officer of happenings after the finalization of the list under Rule 8.

The result of the discussion is that the Collector had no authority under Rule 11 of reviewing and substituting a new order for the one made by the authorized officer under Rule 8. It would have been different if the Collector had corrected the list in the light of any subsequent event; in that case the justification would have been factual and we could not have interfered because he would be the sole authority for deciding whether there had been subsequent development and whether they justified the correction. Here the material is just the same and the Collector cannot in the circumstances set aside the order under Rule 8 and substitute instead his own

order.

We would, therefore, allow the petition and set aside the Collector''s order under Rule 11 and maintain the earlier order by the authorized officer under Rule 8. The petition is allowed; but in the special circumstances of the case the parties shall bear their own costs.