

Ramji Prasad Singh

Vs

Ram Bilas Jha and Others

Civil Appeal No. 1147 of 1974

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

24.09.1976

JUDGMENT

CHANDRACHUD, J. –

1. This is an appeal under Section 116A of the Representation of the People Act, 1951 from the judgment of the Patna High Court dated May 9, 1974 in Election Petition 42 of 1972.
2. On March 29, 1972 the Election Commission issued a notification calling upon the Muzaffarpur Local Authorities constituency to elect one member to the Bihar Legislative Council. That constituency consists of the municipalities of Muzaffarpur, Sitamarhi, Hajipur and Lalganj and the Notified Area Committees of Mahnar and Dumra. We are concerned in this appeal with the Notified Area Committee of Dumra only. According to the programme notified by the Election Commission, the last date for filing nominations was April 5, 1972. The poll was held on April 30 and the result of the election was declared on May 1, 1972. Respondent 1 Ram Bilas Jha, an independent candidate, secured the highest number of votes, namely 61 whereas his nearest rival respondent 5, Mahanth Raghunath Das, a Congress (R) candidate, secured 36 votes. Respondent 1 was accordingly declared elected.
3. The appellant Ramji Prasad Singh was a voter for the election being a member or commissioner of the Sitamarhi Municipality. On June 14, 1972 he filed an election petition in the Patna High Court challenging the election of respondent 1 on various grounds. Before us, appellant restricted his challenge to the following two grounds :
 - (1) Forty voters of the Dumra Notified Area Committee were illegally prevented from exercising their franchise, which materially affected the result of the election; and
 - (2) Respondent 1 attempted to bribe two voters, Sri Narain Prasad and Ram Swarath Raut, thereby rendering his election void under Section 100(1)(b) read with Section 123(1)(A)(b) of the Act 1951.

The High Court having rejected these contentions the election petitioner has filed this appeal.

4. It is necessary to state certain important facts for a proper appreciation of the question involved in the first of the two points mentioned above. By notification 2708/LSG dated May 5, 1971 the Government of Bihar had nominated 40 persons to be members or commissioners of the Dumra Notified Area Committee. All of them were duly enrolled as voters in the electoral roll of the

Muzaffarpur Local Authorities constituency. On April 4, 1972 the State Government issued a notification, no. 2934, cancelling the notification dated May 5, 1971. By another notification, no. 2935, of even date, viz., April 4, 1972 the State Government nominated 40 other persons named therein as members of the Dumra Notified Area Committee.

5. Immediately after the issuance of the two notifications of April 4, 1972 some of the sitting members of the Dumra N.A. Committee, who ceased to be members by reason of these notifications, filed Writ Petition 150 of 1972 in the Patna High Court challenging the validity of the notifications. A rule was issued in that writ petition on April 14, 1972 and by an interim order, the operation of notification no. 2934 by which the notification of May 5, 1971 was cancelled, was stayed till the disposal of the writ petition.

6. After the High Court issued the stay order, a petition was moved before Shri A. K. Bose, the District Magistrate of Muzaffarpur, asking that the names of 40 members which were removed from the electoral roll pursuant to the notification issued by the State Government should be reincorporated therein. Shri Bose who was functioning ex officio as the District Election Officer, Electoral Registration Officer and the Returning Officer for the purposes of the particular election sent a teleprinter message (Ex. 7) on April 21, 1972 to the Chief Electoral Officer, Patna, stating that since the last date for filing nominations was long since past, the names of the old members which were already removed from the electoral roll could not be reincorporated therein but that it would be in contempt of the High Court if elections were to be held on the basis of the amended roll, as the High Court had stayed the operation of the notification issued by the Government on April 4, 1972 cancelling the notification of May 5, 1971. "In this anomalous situation", Shri Bose asked the Chief Electoral Officer to seek the instructions of the Election Commission of India. By his telex message (Ex. 8), the Chief Electoral Officer sought the directions of the Election Commission which opined that since the old members could not vote as their names were not on the electoral roll and since the new members also could not vote because of the stay order issued by the High Court, the polling station at the Dumra Notified Area Committee office should be withdrawn and cancelled. Pursuant to this directive, there was no polling booth where the members of the Dumra Committee could cast their votes. Consequently, neither the old 40 members whose names were removed from the electoral roll nor the new 40 members whose names were included therein could cast their votes in the election held on April 30. It is on this background that the election petitioner raised the point that the new 40 members were illegally prevented from exercising their franchise and that such prevention had materially affected the result of the election as those members would have voted for respondent 5, the Congress (R) candidate.

7. It may, we think, be accepted that the 40 newly enrolled members, had they been permitted to cast their votes, would have mostly voted for respondent 5. Thirty-four out of the 40 were examined as witnesses and they protested their loyalty to respondent 5. Out of the these 34 witnesses, 27 are members of Congress (R) and though defections cannot be totally ruled out, there is no reason to discard their evidence that they were pledged to support respondent 5 who was their party candidate. It may be assumed that members of the of the party would not have disobeyed the mandate issued by a the Provincial and District Congress Committees through circular letters, Exs. 3 and 3/a, that they must vote for the party candidate, respondent 5. The remaining 7 out of the 34 may be taken at their word that they would have voted for respondent 5 since they thought that he was the most eligible candidate amongst the contestants. There is also evidence showing that the newly enrolled members had gone to the polling station to cast their votes but had to return without exercising their franchise as there was no booth where they could cast their votes.

8. The question which then remains to be considered is whether the newly enrolled members of the Dumra Committee were prevented illegally from casting their votes in the poll of April 30. The power to make appointments to Notified Area Committees is derived by the State Government under Section 389 of the Bihar and Orissa Municipal Act, 7 of 1922. That section provides by clause (c) that the State Government may by notification appoint a committee or make rules for the appointment or election of a committee for carrying out the purposes of the Municipal Act in the notified area. The notifications of May 5, 1971 and April 4, 1972 nominating 40 persons as members or commissioners of the Dumra Notified Area Committee were issued by the Government of Bihar in exercise of the power conferred by Section 389(c). The State Government did have the power to issue the second notification as much as the first and their jurisdiction in that behalf has not been questioned.

9. An interesting question however arises by reason of the provisions contained in the Representation of the People Act, 43 of 1950. Section 15 of that Act provides that for every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of the Act under the superintendence, direction and control of the Election Commission. Section 16 prescribes disqualifications for registration in an electoral roll. Section 21 deal with the preparation and revision of the electoral roll. Section 22 prescribes a procedure for correction of entries in electoral rolls and Section 24 provides for an appeal from any order passed under Section 22. Section 23(3) which has an important bearing on the point raised on behalf of the election petitioner reads thus :

23. (3) 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.

10. As mentioned above the State Government issued two notifications on April 4, 1972, one by which the earlier notification of May 5, 1971 was cancelled and the other making fresh appointments of 40 members to the Dumra Notified Area Committee. As a result of these notifications (Exs. 10A and 10 respectively), it became necessary for the Electoral Registration Officer to delete from the electoral roll the names of 40 persons who were appointed under the notification of May 5, 1971 and to include in their place the names of the 40 new members who were appointed to the committee under the notification (Ex. 10) of April 4, 1972. But these corrections or amendments could not, by reason of Section 23(3), be made after April 5, 1972 which was the last date for making nominations to the election. No direction also could have been given for the inclusion of these names in the electoral roll, after the last date for making nominations. The point, thus, for consideration is whether the amendment to the electoral roll was made in the instant case by incorporating the names of the 40 new members therein on or before April 5 or whether the roll was amended after the expiry of that date. If the roll was amended after April 5, the inclusion of the new names would be clearly in breach of the mandate contained in Section 23(3) of the Act of 1950 and therefore beyond the jurisdiction of the Electoral Registration Officer. The best evidence on this question would of course be of Shri Bose himself who, being the District Magistrate of Muzaffarpur, was functioning ex officio as the Electoral Registration Officer.

11. Ex. 1 is the electoral roll for 1972 on the basis of which the biennial election to the Bihar Legislative Assembly from the Muzaffarpur Local Authorities constituency was held in this case.

The names of the 40 members of the Dumra Notified Area Committee who were appointed under Notification 2935 (Ex. 10) dated April 4, 1972 are included in that roll at serial nos. 31 to 70. These names, according to the learned Counsel of the election petitioner, were entered in the roll soon after the Electoral Registration Officer received the two notifications (Exs. 10 and 10A) which was at about 8.15 a.m. on April 5. On the other hand, learned Counsel for respondent 1 says that in the very nature of things the names could not have been entered in the electoral roll before the expiry of the crucial date, April 5. At best, according to him, the names might have been entered in the roll on the 6th.

12. It seems to us impossible to accept the contention of the election petitioner that the names of the new members were entered in the electoral roll immediately after Shri Bose, the Electoral Registration Officer, received the notifications Exs. 10 and 10A dated April 4. It is true that Shri Bose received these notifications through a special messenger on the 5th at about 8.15 a.m. But he says in his evidence that immediately after receiving the notifications, he endorsed them to the Assistant District Electoral Officer and then to the Deputy Collector in charge of the General Section for necessary action. He has further stated that he could not have taken any action for including the names of the new members in the electoral roll on the strength of the notifications because, in so far as he knew, an amendment in the electoral roll could not be made unless a list of members for inclusion in the electoral roll was received by him from the Chairman of the local body concerned. That unquestionably is the true legal position because under Section 27(2)(d) of the Representation of the People Act, 1950 it is the duty of the Chief Executive Officer of every local authority (by whatever designative he may be known) to inform the Electoral Registration Officer immediately about every change in the membership of the local authority, in order to enable the Electoral Registration Officer to maintain the electoral roll corrected up-to-date. The section further provides that on receipt of such information, the Electoral Registration Officer shall strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of the particular local authority. Shri Bose, therefore, could not have included the new names in the electoral roll merely on the strength of the government notifications which he received on the morning of the 5th. For doing so, he had to await an official communication from the Chief Executive Officer of the Dumra Notified Area Committee.

13. At the relevant time Shri Durga Prasad, the Sub-Divisional Officer of Sitamarhi, district Muzaffarpur, was functioning ex officio as the Chairman of the Dumra Notified Area Committee and was therefore the "chief executive officer" of that local authority, within the meaning of Section 27(2)(d) of the Act of 1950. Just as Shri Bose had received the two government notifications on the 5th, so had Shri Durga Prasad. On receiving the notifications he convened an 'emergent meeting' of the newly nominated members of the Dumra Committee which, as shown by the proceedings Ex. E, was held in the committee's office at 8 p.m. on the 5th. Shri Durga Prasad had stated in his evidence that after the meeting was over he sent a letter (No. 62) to Shri Bose stating that the old list of members should be treated as cancelled and the names of members mentioned in the new list should be included in the electoral roll. Shri Bose has stated in his evidence that he received that letter (Ex. A/3) at 11-30 p.m. through a special messenger and in token thereof made an appropriate endorsement on it. That endorsement is Ex. J which shows that the letter was received at 11-30 p.m. on April 5. Shri Bose also made another endorsement (Ex. K) on that letter saying that in the new list of members sent along with the letter Ex. A/3, the addresses of members at serial nos. 8, 16 and 29 to 37 were not noted. Shri Bose has testified to these endorsements in his own evidence.

14. Column 5 of the electoral roll requires the specification of the authority on the basis of which the names of voters are incorporated in the electoral roll. In regard to the names of the 40 new

members with which we are concerned in this appeal, the authorisation for including their names in the roll is stated as letter no. 62 dated April 5, 1972 of the Chairman of the Dumra Notified Area Committee. That letter, as stated above, was received by the Electoral Registration Officer at 11-30 p.m. on the 5th.

15. The fact of the receipt of Shri Durga Prasad's letter by Shri Bose at 11-30 p.m. on the 5th and the entry in column 5 of the electoral roll that the new names were incorporated therein on the authority of that letter make it impossible to accept the halfhearted claim of Shri Bose that he had passed orders for inclusion of the new names on the 5th itself. Time was running fast and only half an hour was left for the last date to expire for making amendments in the electoral roll. The endorsement, Ex. K, made by Shri Bose on letter no. 62, Ex. A/3, shows that he treated the list of members as incomplete in necessary particulars since the addresses of certain members were not mentioned in the list. Shri Bose did not make any endorsement on the letter, which he would in the normal course of business do, directing that the names of the new members contained in the list accompanying the letter should be incorporated in the roll. In fact the letter was "diarised" by Shri Bose's office on the 6th. Even on the 6th, when an endorsement was made on the letter regarding its diarisation in the relevant office file, the letter did not bear any direction of the Electoral Registration Officer that the new names should be included in the electoral roll. The fact of the matter seems to be that the notifications of April 4 came too late for being acted upon before the deadline, which was the 5th. The red tape moved slowly, the due date expired and then everyone awoke to the necessity of curing the infirmity by hurrying with the implementation of the notifications. But it was too late and the law had already put its seal on the electoral roll as it existed on April 5. It could not be touched thereafter, until the completion of the election.

16. The entry at serial no. 33 in the letter, Ex. M, on which the appellant relies to show that orders were issued on the 5th itself for inclusion of new names in the electoral roll is ambiguous and relates, in all probability, to the superseded list of May 5, 1971. The Assistant District Election Officer who is the author of the letter was not examined in the case and Shri Bose to whom the letter was addressed has admitted very fairly that he is "doubtful about serial no. 33" in Ex. M.

17. Coupled with these facts is the evidence of witnesses from the Government Printing Press showing that the notification, Ex. 10, by which the appointment of new members was made was printed and published on April 7, 1972. Evidently, there was inadequate response to the urgency of the processual matters governing the electoral process.

18. We must, however, make it clear in fairness to Shri Durga Prasad and Shri Bose, that neither of them is to be blamed for noninclusion of the names in the electoral roll within the appointed time. They acted with the promptitude possible in the circumstances and the mishap occurred mainly because of the last-minute decision of the Government to cancel the previous notification and to issue a new one in its place. The new notification, Ex. 10, was lacking in essential particulars and in transposing some of the not-so-easily identifiable names of new members to the electoral roll, whether it was done on the 6th, 7th or later, the electoral officers did the best of a bad bargain.

19. We see no substance in the argument that since the new names have found their way into the electoral roll, the entries are conclusive of the right of those members to vote at the election and accordingly, the court has no power or jurisdiction to go behind the entries and inquire into their validity. In support of this argument the appellant's Counsel relies principally on Section 62(1) of the Representation of the People Act, 1951 which provides that :

No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

This sub-section may be split up into two parts so as to make its meaning and intendment clear. It provides, in the first place, that a person who is not entered in an electoral roll of a constituency shall not be entitled to vote in that constituency. Secondly it provides that, except as expressly provided by the Act, every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. It is implicit in these provisions that the name of the person who claims to be entitled to vote in a constituency must have been entered in the electoral roll of that particular constituency in accordance with law. Section 23(3) of the Representation of the People Act, 1950 provides that no amendment, transposition or deletion of any entry shall be made and no direction for the inclusion of a name in the electoral roll of a constituency shall be given after the last date for making nominations for an election in that constituency and before the completion of the election. If the name of a person is entered in the electoral roll in violation of the mandate contained in this section, he can have no right to vote by reason merely of the entitlement conferred by Section 62(1) of the Act of 1951. Putting it briefly, the words "for the time being entered in the electoral roll" in Section 62(1) of the Act of 1951 must be taken to mean "for the time being entered in the electoral roll in accordance with law".

20. Learned Counsel for the appellant invited our attention to a decision of this Court in *Kabul Singh v. Kundan Singh* [(1970) 1 SCR 845 : (1969) 2 SCC 452] which says that in view of Section 30 of the Act of 1950, entries found in the electoral roll are final and that no civil court has jurisdiction to entertain or adjudicate upon any question as to whether any person is or is not entitled to be registered in an electoral roll for a constituency or 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 the Act for the revision of any such roll. In *B. M. Ramaswamy v. B. M. Krishnamurthy* [(1963) 3 SCR 479 : AIR 1963 SC 458] also this Court had come to the conclusion that the finality of the electoral roll cannot be challenged in a proceeding in which the validity of the election is questioned. These decisions cannot assist the appellant for two reasons. Firstly, the question which arises for consideration before us is not whether any one or more of the 40 members whose names are included in Ex. 10 are entitled to be registered in the electoral roll. The question is, assuming that they are so entitled, were their names entered in the roll within the time limited by law ? Secondly, the legality of the action taken by the Electoral Registration Officer in entering the new names in the roll after the expiry of the last date for making nominations, was in issue before the High Court in the election petition itself filed by the appellant, under Section 81 of the Act of 1951. Section 30(b) of the Act of 1950 cannot affect the jurisdiction of the High Court, while dealing with an election petition, to set aside an election on the grounds mentioned in Section 100(1) of the Act of 1951, one of which is that the result of the election was materially affected by the improper reception, refusal or rejection of any vote. There is a clear distinction between a challenge to the right of a voter to be registered in an electoral roll and the jurisdiction of an authority appointed under the Act to enter a name in the electoral roll. That jurisdiction has perforce to be exercised consistently with the provisions of the law governing the election and in case there is failure to do so, the action of the officer would be open to challenge on the ground of want of jurisdiction. If, as here, the electoral roll is amended after the time-limit set down in Section 23(3) of the Act of 1950, the amendment would be without jurisdiction conferring no right to vote on the persons whose names are thus included in the roll. As held by this Court in *Baidyanath Panjiar v. Sitaram Mahto* [(1970) 1 SCR 839 : (1969) 3 SCC 447], the provision contained in Section 23(3) is mandatory not merely because of the language employed in that sub-section but more so in view of

the purpose behind the particular provision. The sub-section does not deal with any mode or procedure in the matter of registering voters. It interdicts the concerned officer from interfering with the electoral process under the prescribed circumstances. Therefore, when there is a breach of Section 23(3), the question is not of an irregular exercise of power but of the lack of power itself.

21. It is thus clear that the Election Commission of India was within its rights in withdrawing the polling booth at the Dumra Committee office in order that the new members may not vote at the election. The reasons which weighed with the Election Commission were evidently different but its ultimate decision can seek its jurisdiction in what we have stated above. It is unfortunate that the existing 40 members of the committee also were prevented from voting but they did not complain of the deprivation of their franchise, probably because they thought that their names, in any case, were deleted from the roll on the 5th itself.

22. It is a sad reflection that the sitting members of the Dumra Committee should have been dismembered on the eve of the elections, apparently without rhyme or reasons. The State Government undoubtedly possesses the power under Section 389(c) of the Bihar and Orissa Municipal Act, 1922, to make appointments to the Notified Area Committees but that power, it ought to be remembered, must be exercised for carrying out the purposes of that Act, not for defeating them. The issuance of the two notifications on the penultimate day, the feverish activity following in their wake and the unseemly haste and hurry with which the enrollment of new members was attempted to be rushed through on the eventful evening of April 5, lend great weight to the contention of respondent 1's counsel that the cancellation of the old members and their replacement by the new ones was motivated by considerations foreign to the good governance of the Area Committee. We feel greatly uneasy that local machinations should have eventually led in this case to a denial of the valuable right of franchise to the whole body of 40 members who constituted the Area Committee. Such occurrences, we hope, will not happen once too often. If they do, the power of the State Governments to make appointments to Area Committees will itself become suspect, sapping thereby the faith of the people in the working of what are believed to be the nurseries of democracies.

23. That leaves the second of the two contentions to be considered, namely, that respondent 1's election is vitiated because he attempted to bribe the voters Sri Narain Prasad and Ram Swarath Raut. Having considered the evidence of these two witnesses who are respectively PWs 11 and 71 and the evidence of the appellant himself, it seems to us impossible to accept the allegation of bribery. The two witnesses, PWs 11 and 71, are members of a local authority and it is unlikely that an attempt would be made to bribe them. In the absence of any evidence of unimpeachable nature and particularly in the absence of any contemporaneous complaint in regard to the allegation of bribery, it would be unsafe to accept the bare word of the appellant and his witnesses on such a serious charge. The charge of bribery is quasi-criminal in nature and in a series of cases this Court has held that such a charge must be proved not by a mere preponderance of probabilities but beyond a reasonable doubt. That proof is lacking here. Besides, the High Court has considered the evidence on the question of bribery fully and carefully and we do not see any reason for departing from our established practice that, except for substantial reasons, this Court will not embark upon a detailed assessment of oral evidence.

24. In the result, the appeal fails and is dismissed with costs in favour of respondent 1.

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