Bar Council of Delhi and Others

Vs

Surjeet Singh and Others

Civil Appeals Nos. 2224, 2225 and 2226 of 1979

(N. L. Untwali, V. D. Tulzapurkar, A. P. Sen JJ)

01.05.1980

JUDGMENT

UNTWALIA, J. –

1. These three appeals by the Bar Council of Delhi and the Bar Council of India are from the common judgment of the Delhi High Court allowing three writ petitions filed by the first respondent in each appeal and others seeking the setting aside of the election of the Bar Council of Delhi held in the year 1978. As the points involved in them are identical they are all being disposed of by this common judgment. We shall proceed to state the facts from the records of Civil Appeal 2224 of 1979 in which respondent 1 is Shri Surjeet Singh Bhangul. He was a voter as also a candidate for the election wherein he lost. In the writ petition giving rise to Civil Appeal 2225 of 1979 there were three petitioners - two were candidates but Shri D. R. Thakur was an advocate whose name was not included in the electoral roll although his name occurs in the State roll of advocates. Shri A. S. Randhawa, respondent 1 in Civil Appeal 2226 of 1979 was a person whose name occurred both in the State roll of advocates as also in the electoral roll. But he was not a candidate.

2. Surjeet Singh was an advocate who was a member of the Delhi Bar Council before the impugned election. A proviso was added to Rule 3(j) of the Bar Council of Delhi Election Rules, 1968, in the year 1978. In accordance with that proviso a copy of the declaration form was sent on June 14, 1978 to the advocates whose names found place in the State roll of advocates asking them to return the declaration form duly filled up and signed within the specified period. A publication to this effect was also made in some newspapers viz. Hindustan Times, Indian Express, Statesman etc. The last extended date for the submission of the declaration forms was September 16, 1978 excluding the names of about 2,000 advocates who had failed to submit such declaration forms. On the basis of the electoral roll so prepared, according to the programme of election, the election of members to the Bar Council of Delhi was held on November 17, 1978. The total number of advocates on the advocates roll was 5,000 and odd out of which the names of about 3,000 and add only were included in the electoral roll in accordance with the proviso to Rule 3(j) of the Election Rules of the Bar Council of Delhi. The results of the election were declared on November 19, 1978. The names of the 15 persons who were declared elected were published in the Gazette on November 22, 1978. Thereafter, on January 24, 1979 the writ petition was filed in the High Court challenging the whole election by attacking the validity of the proviso to Rule 3(j).

3. Apart from the successful candidates the writ petitions were mainly and vigorously contested by the two Bar Councils, namely, the Bar Council of Delhi and the Bar Council of India. The latter seems to have taken keen interest in the matter of contesting the writ petitions because the impugned proviso to Rule 3 (j) was introduced in the Election Rules with the approval of the Bar Council of

India in accordance with the requirement of sub-section (3) of Section 15 of the Advocates Act, 1961. The High Court has taken the view :

> (1) Lastly, the irresistible conclusion, therefore, is that so far as the qualifications to be possessed by and the conditions to be satisfied by an advocate before being brought on the Electoral Roll are concerned only the Bar Council of India has the competence to make the rules under Section 3(4) and Section 49(1) (a) and the State Bar Council has no power at all to make a rule on this subject.
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> (2) The plea of estoppel raised against Surjeet Singh was rejected.
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> (3) Rank injustice has been done to be petitioner because more that 2,000 advocates were wrongfully disqualified from being brought on the Electoral Roll. This has materially affected the result of the election.
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> (4) For the reasons stated above, we hold that Rule 3(j) of the Bar Council of Delhi Election Rules, 1968, is in excess of the rules-making power of the Bar Council of Delhi. Since the action taken by the Bar Council of Delhi to disqualify more than 2,000 advocates because of their non-compliance with the proviso to Rule 3(j) has resulted in great prejudice to the petitioner who can justly claim that the bringing on the Electoral Roll of more than 2000 advocates would have made a considerable difference to his own election and to the election as a whole, we are constrained to set aside the election to the Bar Council of Delhi held on November 17, 1978.

4. M/s. V. M. Tarkunde, A. K. Sen and G. L. Sanghi appearing for the appellants, broadly speaking, made the following submissions :

> (1) That the impugned proviso of Delhi Bar Council Election Rules was valid as it was within the competence of the Delhi Bar Council to add such a proviso in the Rules under its rule-making power with the approval of the Bar Council of India. In any event the approval had the effect of making it a rule made by the Bar Council of India.
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> (2) The electoral roll prepared by the Bar Council of Delhi could not be challenged in a writ petition. The preparation of the electoral roll is final and any wrong exclusion or inclusions of name from or in the electoral roll is beyond the pale of challenge in a writ petition.
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> (3) That is was not shown that the result of the election has been materially affected due to the non-inclusion of the names of about 2,000 advocates from the electoral roll. There was neither any pleading to this effect nor was any material placed before the High Court in support of this assertion.
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> (4) That Surjeet Singh and others like him who had taken part in the election and were defeated were estopped from challenging the election as they could not approbate and reprobate at the same time. They were guilty of laches also as they could have challenged in the High Court the validity of the impugned proviso before the election was actually held.
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> (5) That there is a specific remedy provided in the Delhi Bar Council Election Rules

> for challenging any election to the Bar Council and hence in view of the adequate remedy being available the election could not be challenged by a writ petition.

5. M/s. P. R. Mridul and F. S. Nariman appearing for the contesting respondents combated all the submissions made on behalf of the appellants and supported the judgment of the High Court.

6. We find no substance in any of the points urged on behalf of the appellants. We are, by and large, in agreement with the decision of the High Court on each and every point. We proceed to briefly state our reasons for the same.

7. Section 24 of the Advocates Act provides for persons who may be admitted as advocates on a State roll. Clause (a) of sub-section (1) says that the persons must fulfil such other conditions as may be specified in the rules made by the State Bar Council under Chapter III of the Act which concerns the admission and enrolment of advocates. Under the rules so framed a person desirous of being enrolled as an advocate has to apply in the prescribed form furnishing all the details of his applicant declares - "I declare that upon admission I propose to practise within the State of Delhi." At the end of the application form certain undertakings are given by the applicant. Clause (c) of the undertaking runs thus :

> I hereby declare and undertake that -
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> # * * *##
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> (iv) I intend to practise ordinarily and regularly within the jurisdiction of the Bar Council of Delhi.
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> (v) I shall inform the Bar Council of any charges of address of my residence or place of practice for the proper maintenance of the roll and voters' list.

According to the case of the Delhi Bar Council many advocates after having been enrolled and put on the State roll of advocates of Delhi break the said undertaking. They do not ordinarily and regularly practise within the jurisdiction of the Bar Council of Delhi nor do they inform any change of address for the proper maintenance of the roll and the voters' list. It is a pertinent matter no doubt. It is the duty of the Bar Council to obtain information as to whether any person put on the roll of State advocates ceased ordinarily and regularly to practise within the jurisdiction of the Bar Council of Delhi; if so, to take steps for removal of his name from the State rolls. That would automatically, as we shall presently show, debar the person concerned to be put on the electoral roll. But no provision in the Advocates act or any rule was brought to our notice enabling the Delhi Bar Council to remove the name of a person from the State roll if he has broken the undertaking aforesaid. Section 26-A of the Advocates Act merely says - "A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect." In para 2 of the affidavit of Shri D. Gupta, Advocate it is stated :

> It is the experience of this Council that most of the advocates who are elevated to the Bench or those who join subordinate judiciary or family or other business or employment, seldom care to notify this Council to get their licence revoked or suspended, nor do the advocates shifting their place of practice from Delhi to elsewhere, care to notify this Council in that respect, although the undertakings at internal page 8 of the enrolment form of this Council oblige them to do so.

It may be so but the lacunae in this regard have got to be removed by amending the Advocates Act or by properly framing the rules in respect. We are definitely of the opinion that so long the existing rules framed by the Bar Council of India remained in vogue all persons whose names are on the State roll are entitled proprio vigore to be put on electoral roll. Rule 1 occurring in Chapter I of Part III of the Bar Council of India Rules says :

> Every advocate whose name is on the electoral roll of the State Council shall be entitled to vote at an election.

Rule 2 provides :

> Subject to the provisions of Rule 3, the name of every advocate entered in the State Roll shall be entered in the Electoral Roll of the State Council.

Exceptions to Rule 2 are to be found embodied in Rule 3 which runs thus :

> The name of an advocate appearing in the State roll shall not be entered in the electoral roll, if on information obtained by the State Council -
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> (a) his name has at any time been removed;
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> (b) he has been suspended from practice, provided that this disqualification shall operate only for a period of five years from the date of the expiry of the period of suspension;
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> (c) he is an undischarged insolvent;
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> (d) he has been found guilty of an election offence in regard to an election to the State Council by an Election Tribunal, provided however that such disqualification shall not operate beyond the election next following after such finding has been made;
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> (e) he is convicted by a competent court for an offence involving moral turpitude, provided that this disqualification shall cease to have effect after a period of two years has elapsed since his release;
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> (f) he is in full-time service or is in such part-time business or other vocation not permitted in the case of practising advocates by the rules either of the State Council concerned or of the Council;
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> (g) he has intimated voluntary suspension of practice and has not given intimation of resumption of practice.

None of the clauses in Rule 3 covers a clause of the kind found in the proviso to Rule 3(j) of the Delhi Bar Council Election Rules. Rule 3 of Delhi Bar Council Election Rules is headed 'Interpretation'. Clause (j) of the said Rules says :

> 'Electoral Roll' means and includes the roll containing the names of the advocates prepared in accordance with the rules of the Bar Council of India in Part III, Chapter I.

The impugned proviso added to clause (j) in the year 1978 runs thus :

> Provided that the electoral roll shall not include the name of such advocate who fails to file in the office of the Bar Council, on or before such date (not being earlier than 30 days of the date of notification) as may be notified by the Bar Council in such manner as may be considered proper by it from time to time, or within 45 days of the putting up of the preliminary electoral roll under Rule 4(1) of Chapter I of Part III of the Bar Council of India Rules, a declaration containing the name, address and number of the Advocate on the State Roll and to the effect that :-
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> (a) He is an advocate ordinarily practising in the Union Territory of Delhi and that his principal place of practice is within Union Territory of Delhi;
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> (b) He is not an undischarged insolvent;
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> (c) He has never been convicted by any court for an offence involving moral turpitude;
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> or
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> A period of two years has elapsed since his release after being convicted of an offence involving moral turpitude;
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> (In case of conviction particulars of such conviction should be given.)
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> (d) He is not in full-time service or business or in any such part-time business or other vocation as is not permitted in the case of practising advocates by the rules of the Bar Council; and
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> (e) He has not been suspended from practice;
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> and on the failure to file the declaration or on filing of incomplete and on the declaration in any respect, it shall be presumed that the name of such advocate is not to be entered on the Electoral Roll in accordance with Rule 3 of Chapter I of Part III of the Bar Council of India Rules.

In these appeals we are not concerned with the propriety or legality of asking such a declaration from a person belonging to the noble profession. We shall proceed on the assumption that such an information could be asked for from a person concerned whose name is on the State roll of advocate. On the furnishing of such information the name of the advocate concerned could not be included in the Electoral roll only if on the basis of that information one or more clauses of Rule 3 of the Bar Council of India Rules to be found in Part III, Chapter I could come into play, not otherwise. In these appeals we are not concerned with any such case. The controversy here centres round the fact that under the impugned proviso mere failure to file the required declaration disqualified the advocate concerned from being put on the electoral roll thus depriving him of his right to vote or to stand as a candidate. The crux of the matter in these appeals is as to whether such a proviso was valid or ultra vires.

8. In order to determine the point at issue we shall now read some relevant provisions of the Advocates Act. Section 3 provides for the constitution of the State Bar Council, sub-section (4) of

which says :

> An advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

On a plain reading of this sub-section it is manifest that under the Act the qualifications and conditions entitling an advocate to vote at an election or for being chosen as a member of the State Bar Council have to be prescribed by the Bar Council of India. The State Bar Council has no such power. The power of the State Bar Council is merely to prepare and revise from time to time the electoral roll subject to the rules made by the Bar Council of India concerning the qualifications and conditions aforesaid. This interpretation of Section 3(4) of the Act finds ample support from the very specific provision contained in Section 49(1)(a) providing for the general power of the Bar Council of India in these terms :

> 49. (1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe -
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> (a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;
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> Great reliance was placed on behalf of the appellants on the concurrent power of the State Bar Council and the Bar Council of India engrafted in Section 15 of the Advocates Act. It is true that the power to make rules conferred by Section 15 is both for the Bar Council of India as also for the Bar Council of State. But no provision of Section 15 can override the specific provision made in Section 3(4) and Section 49(1)(a) of the Act. Sub-section (1) of Section 15 says - "A Bar Council may make rules to carry out the purposes of this Chapter" which means Chapter II including Section 3. But the power to prescribe qualifications and conditions entitling an advocate to vote at an election being that of the Bar Council of India Section 15(1) cannot be interpreted to confer power on the State Bar Council to make rules regarding the qualifications and conditions aforesaid. The relevant words of sub-section (2)(a) of Section 15 are the following :
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> In particular, and without prejudice to the generality of the foregoing power, such rules may provide for :-
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> (a) ..... the preparation and revision of electoral rolls and the manner in which the results of election shall be published.

The State Bar Council can frame rules for the preparation and revision of electoral rolls under Section 15(2)(a). That would be in conformity with the latter part of sub-section (4) of Section 3 also. But in the garb of making a rule for the preparation and revision of the electoral rolls it cannot prescribe disqualifications, qualifications or conditions subject to which an advocate whose name

occurs in the State roll can find place in the electoral roll resulting in his deprivation of his right to vote at the election. In the instant case under the impugned proviso failure on the part of an advocate to submit the required declaration within the specified time entitles the State Bar Council to exclude his name from the electoral roll. Such a thing was squarely covered by the exclusive power conferred on the Bar Council of India under Sections 3(4) and 49(1)(a) of the Advocates Act. The State Bar Council had no such power.

8-A. Sub-section (3) of Section 15 says :

> No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

Introduction of the impugned proviso in Rule 3(j) of the Delhi Bar Council Election Rules was approved by Resolution 18 of 1978 passed by the Bar Council of India. Any rule made by the State Bar Council cannot have effect unless it is approved by the Bar Council of India. But the approval of the Bar Council of India can make the rule made by the State Bar Council valid and effective only if the rule made is within the competence of the State Bar Council, otherwise not. Mere approval by the Bar Council of India to a rule ultra vires the State Bar council cannot make the rule valid. Nor has it the effect of a rule made by the Bar Council of India. Making a rule by the Bar Council of India and giving approval to a rule made by the State Bar Council are two distinct and different things. One cannot take the place of the other.

9. We, therefore, hold that the impugned proviso to Rule 3 (j) of the Delhi Bar Council Election Rules is ultra vires and invalid and the electoral roll prepared by the Delhi Bar Council on the basis of the same resulting in the exclusion of the names of about 2,000 advocates from the said roll was not valid in law. We are further of the opinion that the whole election was invalid on that account and it could be challenged as such in a writ petition. It was not a case of challenging the preparation of the electoral roll on the factual basis of wrong exclusion of a few names. For the said purpose Rule 4 occurring in Chapter I of the Bar council of India Rules could come into play. But here, because of the invalidity of the Rules itself, the preparation of the electoral roll was completely vitiated a mater which cannot be put within the narrow limit of the said rule.

10. The illegal preparation of the electoral roll by the Delhi Bar Council on the basis of the invalid proviso to Rule 3 (j) goes to the very root of the matter and no election held on the basis of such an infirmity can be upheld. There is no question of the result being materially affected in such a case.

11. The contesting respondents could not be defeated in their writ petitions on the ground of estoppel or the principle that one cannot approbate and reprobate or that they were guilty of laches. In the first instance some of the contesting respondents were merely voters. Even Shri Surjeet Singh in his writ petition claimed to be both a candidate and a voter. As a voter he could challenge the election even assuming that as a candidate after being unsuccessful he was estopped from doing so. But to be precise, we are of the opinion that merely because he took part in the election by standing as a candidate or by exercise of his right of franchise he cannot be estopped from challenging the whole election when the election was glaringly illegal and void on the basis of the obnoxious proviso. There is no question of approbation and reprobation at the same time in such a case. A voter could come to the High Court even earlier before the election was held. But merely because he came to challenge the election after it was held it cannot be said that he was guilty of any laches and must be non-suited only on that account.

12. There is no substance in the last submission made on behalf of the appellants. The manner of resolving disputes as to the validity of election is provided for in Rule 34 of the Delhi Bar Council Election Rules. This is not an appropriate and adequate alternative remedy to defeat the writ petitioner on that account. Firstly, no clause of Rule 34 covers the challenging of the election on the ground it has been done in this case. Secondly, the Election Tribunal will not be competent to declare any provision of the Election Rules ultra vires and invalid. Our attention was specifically drawn to clause (8) of Rule 34 which says :

> No petition shall lie on the ground that any nomination paper was wrongly rejected or the name of any voter was wrongly included in or omitted from the electoral roll or any error or irregularity which is not of a substantial character.

As we have said above, it is not a case where the name of any voter was wrongly omitted from the electoral roll but it is a case where the preparations of the whole electoral roll was null and void because of the invalidity of the impugned proviso.

13. We now proceed to refer to some relevant decisions of the High Courts and of this Court cited at the Bar in support of some of the points discussed above.

14. Mudholkar, J., delivering the leading and the majority judgment of a Full Bench of the Nagpur High Court in Kanglu Baula Kotwal v. Chief Executive Officer (AIR 1955 Nag 49 : ILR 1954 Nag 875 (FB)) rejected the plea of estoppel to challenge the election at page 58, para 25 in these terms :

> As regards the petitioners who were also candidates at the elections but were defeated, the learned council said that those who took their chances at the elections and failed should not now be allowed to challenge elections of their opponents on the ground that the electoral rolls were defective. The plea is in substance one of estoppel. There can be no question of any estoppel, because it cannot be said that the position of the other side has in any way altered by reason of something done or not done by the petitioners.

We are of the view that neither the principle of estoppel nor the principle of approbation and reprobation can be pressed into service in this case.

15. In Chief Commr., Ajmer v. Radhey Shyam Dani (1957 SCR 68 : AIR 1957 SC 304 : 12 ELR 443) the respondent before the Supreme Court had filed a writ petition in the Court of Chief Commissioner of Ajmer challenging the validity of the notification directing the holding of the election of the Ajmer Municipality and the electoral roll. This challenge was made before the election was held. Since the electoral roll prepared was found to be invalid as it was prepared in accordance with some invalid rules, a Constitution Bench of this Court upheld the decision of the Chief Commissioner. At page 75, Bhagwati, J., speaking for the court said :

> It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation

> cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and insofar as the rules which were thus framed omitted these provisions they were defective.

Finally at pages 76 and 77 it was said :

> If Rules 7 and 9 above referred to were intended to form a complete code for the finalisation of the electoral roll of the municipality they did not serve the intended purpose and were either inconsistent with the provisions of Section 30, sub-section (2), of the Regulation or were defective insofar as they failed to provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the municipality. If that was the true position the electoral roll of the municipality which has been authenticated and published by the Chief Commissioner on August 8, 1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on September 9, 1955, or at any time thereafter.

In the instant case the electoral roll was prepared on the basis of a rule which has been found to be void and ultra vires. That being so, even though the contesting respondents came to challenge the election after it was held, they could do so because of the gravity of the infraction of the law in the preparation of the electoral roll. Dani case (1957 SCR 68 : AIR 1957 SC 304 : 12 ELR 443) was followed by the Patna High Court in two decisions, Parmeshwar Mahaseth v. State of Bihar (AIR 1958 Pat 149 : 1957 BL JR 672) and Umakant Singh v. Binda Choudhary (AIR 1965 Pat 459 : 1965 BLJR 344). After quoting a passage at page 153 from Dani case (1957 SCR 68 : AIR 1957 SC 304 : 12 ELR 443) Kanhaiya Singh, J., said in Parmeshwar Mahaseth case (AIR 1958 Pat 149 : 1957 BL JR 672) at the same page in paragraph 14 thus :

> It was urged by the learned Government Advocate that the election cannot be disputed except by an election petition, as laid down in Rule 62 of the Election Rules. He submitted that petitioner 9 had already filed an election petition after the presentation of this writ application. This contention is not valid. What is challenged here is not the election of a particular candidate, but the validity of the entire election, because of the violation of the essential provisions of the Election Rules and the Act. I think, Rule 62 provides for a case where a person challenges the election of a particular candidate. I would overrule the objection.

In Umakant case (AIR 1965 Pat 459 : 1965 BLJR 344). the court quoted that passage from Dani case (1957 SCR 68 : AIR 1957 SC 304 : 12 ELR 443) at page 461 and finally expressed the view in paragraph 12 at page 462 in these terms :

> Mr. Shankar Kumar appearing for respondents 6 and 7 submitted that the election ought to have been challenged by following the machinery provided in Rule 148 of the Rules, and this Court, in exercise of its power under Article 226 of the Constitution, should not interfere with the election when a special machinery was provided for challenging it. I am unable to accept this argument. It is the well settled view of the court that if the entire election is challenged as having been held under statutes or statutory rules which are invalid or by committing illegalities which make

> the entire election void, it can be quashed by grant of a writ in the nature of certiorari.

16. A Full Bench of the Punjab High Court in Dev Prakash Balmukand v. Babu Ram Rewti Mal (AIR 1961 Pun 429 : 63 Pun LR 485 (FB)) had occasion to consider this question and in that connection at page 434 Dulat, J., said in paragraph 15 :

> Everybody, of course, agrees that, if the very foundation of the election, namely, the electoral roll is illegal, no election on its basis can proceed or be allowed to stand, but that does not mean that any kind of defect in the roll, however technical in the nature, will suffice to reach such a conclusion.

It would thus be seen that it depends upon the nature and the intensity of the error committed in the preparation of the electoral roll and its effect on the whole election for deciding the question as to whether a writ petition would be maintainable or not. In Ramgulam Shri Baijnath Prasad v. Collector, Distt. Guna (AIR 1975 MP 145 : 1975 Jab 364 : 1975 MP LJ 697) Oza, J., delivering the judgment of the Division Bench stated in para 17 at page 152 thus :

> It was also contended that the petition was not filed immediately, but has been filed after the elections were over. As regards the question of estoppel we had already considered it and found that the petition under Article 226 cannot be disposed on the question of estoppel. As regards delay, it is sufficient to state that it could not be said that the petition was unduly delayed. Apart from it, it is also clear that an election held on the basis of rolls which have not been prepared in accordance with law, the petition cannot be dismissed merely on ground of delay.

The Madhya Pradesh High Court has taken a similar view in the case of Bhupendra Kumar Jain v. Y. S. Dharmadhikari (AIR 1976 MP 110 : 1976 MPLJ 223) wherein it was held that the entire election could be challenged on the basis of the certain types of illegalities committed in holding it.

17. Shri Bhoop Singh, an advocate and a member of the Bar Association at Chandigarh was a candidate to the Bar Council of Punjab & Haryana. After being unsuccessful he challenged the election by filing a writ petition in the High Court. The Full Bench of the Punjab & Haryana High Court in Bhoop Singh v. Bar Council of Punjab & Haryana (AIR 1977 P&H 40 : ILR (1977) 1 Pun 106) dismissed the writ petition on the particular facts of that case. Yet the view expressed at page 43 in para 9 was :

> I am extremely doubtful whether the nature of the relief which the petitioner claims here, namely the setting aside of the whole of the election and the ordering of a repoll could be claimed by way of an election petition under Rule 34(1). No provision in the said rule was brought to our notice which in express terms empowers or warrants the setting aside of the whole of the election (in contradistinction to the election of individual candidates) or to direct a repoll. In any case it is well settled that the existence of an alternative remedy is not an absolute legal bar to the issuance of a writ.

18. Reliance was placed for the appellants upon the decision of this Court in K. K. Shrivastava v. Bhupendra Kumar Jain (AIR 1977 SC 1703 : (1977) 2 SCC 494) that because of Rule 34(8) of the Delhi Bar Council Election Rules the writ petitions ought to have been held to be not maintainable.

It would be noticed from the facts of that case that an election petition had already been filed. About four months later a writ petition had already been filed. About four months later a writ petition was also filed to challenge the election. At page 1704, column 1, Krishna Iyer, J., speaking for the court said : (SCC p. 496, para 3)

One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms.

But he added : (SCC p. 496, para 3)

While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the court should still refuse to entertain a writ petition ....

Finally the view expressed in K. K. Shrivastava case (AIR 1977 SC 1703 : (1977) 2 SCC 494) that because of Rule 34(8) of is : (SCC p. 496, para 3)

There is no foundation whatever for thinking that where the challenge is to an "entire election" then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as misexercise.

We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But is the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available. In the present case we have pointed out above that the Election Tribunal would have found itself incompetent to declare the proviso to Rule 3(j) of the Delhi Bar Council Rules ultra vires and that being so the alternative remedy provided in Rule 34(8) was no remedy at all.

19. Appellants heavily relied upon an unreported decision of the Calcutta High Court in Suryya Kumar Ray v. Bar Council of India (Matter No. 304 of 1976, decided on December 17, 1976). The challenge to the election to the Bar Council of West Bengal was almost on grounds which are similar to those in the present case. The Calcutta High Court upheld the validity of the rule and the election held on the basis of electoral roll prepared in accordance with that rule and dissented from the view of the Gujarat High Court in Harish Sambhu Prasad v. Bar Council of India (Special Civil Applications Nos. 542 and 551 of 1969). The learned Judge said with reference to the decision of the Gujarat High Court thus :

> It appears to me that this decision will not be of much assistance to the petitioner in the instant case inasmuch the electoral rules which are before me have been duly approved by the Bar Council of India itself. Such approval confers upon there rules the authority and sanction of the Bar Council of India and may be deemed to be the rules framed by the Bar Council of India.

The enunciation of the law as made above, in our opinion, is not correct. We have held to the contrary.

20. For the reasons stated above, we dismiss all the appeals but make no order as to costs in any of them.

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