

MADHYA PRADESH HIGH COURT

Ramgulam

Vs.

Collector, Guna

Miscellaneous Petn. No. 22 of 1971

(G.L. Oza and K.K. Dube, JJ.)

04.10.1974

JUDGMENT

Oza, J.

1. This petition under Article 226 of the Constitution has been filed by the petitioner against an order passed by the Naib Tahsildar dated 16-9-70; who corrected the electoral roll for ward No. 2, Chanderi Municipal Council, and allowed the inclusion of the name of respondent No. 3. The petitioner has also challenged the election of respondent No. 3 from ward No. 2 of the Chanderi Municipality as according to the petitioner the inclusion of the name of respondent No. 3 in the voters' list was beyond the powers of the Naib Tahsildar and, therefore, respondent No. 3 was not a voter in the voters' list of Chanderi Municipality for the election held on 26-10-70. Consequently, he could not stand as a candidate for the election held on 26-10-70.

2. According to the petitioner, Collector Guna under Rule 8 of the M. P. Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councilors) Rules, 1962, issued a notice to the effect that the electoral roll for general election of Municipal Council Chanderi was prepared and it was duly published on 13-7-70. Whatever claims and objections were preferred to the Tahsildar Pargana Mungaoli, were duly decided and no appeals were preferred against the orders of Tahsildar before the Sub-divisional Officer, Ashoknagar. Therefore, under Rule 8, the Collector caused publication of the final electoral rolls, and these electoral rolls became final from the date of their publication, i.e. 31-8-70 for the Municipal Council Chanderi for the elections of the Municipal Councilors, which were held on 26-10-70. Under Rule 8 of the Rules, clerical errors in the electoral rolls could be corrected at any time up to date of election by Revenue Officer not below the rank of Naib

Tahsildar, as may be appointed by the Collector in this behalf and, therefore, the Collector, Guna appointed non-petitioner No. 2 to exercise powers under Rule 8.

3. According to the petitioner, in the voters' list of the assembly of 1966 in respect of Chanderi ward No. 2 at serial No. 177 name of non-petitioner No. 3 was entered and at serial No. 179 name of the brother of non-petitioner No. 3 was entered. But according to the petitioner when the list was finally published as mentioned above, the name of non-petitioner No. 3 was not included, but the name of his brother Gopal Narain was included at serial No. 121. Non-petitioner No. 3 Govind Narain applied to the non-petitioner No. 2, Naib Tahsildar Chanderi that his name is entered at serial No. 121, but he is described as Gopal Narain son of Ramprasad aged 28 years and he, therefore, submitted that this name be removed and his name be included in the voters' list. According to the petitioner, the Naib *Tahsildar* purporting to act under Rule 8 allowed the application of non-petitioner No. 3 and ordered his name to be entered in place of Gopal Narain and it was on the basis of this inclusion of his name in the voters' list that non-petitioner No. 3 contested the elections and ultimately succeeded from ward No. 2 defeating the petitioner.

4. It was contended on behalf of the petitioner that under Rule 8 only clerical errors could be corrected and what was done by the Naib Tahsildar, in the present case, was not a correction of the clerical error, but was a case of substitution of one name by the other and it was therefore, contended that this could not be done. Consequently, the name of respondent No. 3 could not be included in the voters' list of ward No. 2 for the elections held in 1970. But as respondent No. 3 was not included in the voters' list, in view of Section 34 of the M. P. Municipalities Act, he could not be a candidate at the election. Consequently, his nomination paper could not be accepted and it was, therefore, contended that as the nomination of respondent No. 3 itself could not be accepted, the petitioner was the only candidate from this ward and, therefore, seeks a direction that he be declared elected to the Municipal Council, Chanderi.

5. Learned counsel for the respondents contended that the rules under which the electoral rolls were revised and published were framed under Section 29 and it was also contended that under Rule 8 clerical errors could be corrected and according to the learned counsel what the Naib Tahsildar ordered in this case was a correction of the clerical error because according to him Gopal Narain had gone away from Chanderi and, therefore, his name could not be included in the voters' list, but by

clerical error in place of the name of non-petitioner No. 3 Govind Narain, Gopal Narain was written in the voters' list. Consequently, this was nothing more than a clerical error. In the alternative, it was contended by the learned counsel that Section 31 (2) of the M. P. Municipalities Act confers powers on the authority appointed under sub-section (2) of Section 29 for correction of the entries in the voters' list and as the Naib Tahsildar was the authority appointed under Section 29 (2) he had the authority to correct any error which fell within the ambit of Section 31 (2) (a). It was also contended by the learned counsel for the non-petitioner that having contested the elections against non-petitioner No. 3 and having lost, the petitioner cannot now come forward and challenge the inclusion of his name in the voters' list. It was also contended that as the petitioner did not raise any objection to the nomination of respondent No. 3, on that ground also, he cannot be permitted to challenge the election of respondent No. 3. It was also contended on behalf of non-petitioner No. 3 that after the election the only remedy available to the petitioner is by way of an election petition and as no election petition has been preferred this petition cannot be entertained. It was also contended that Section 22 (1) (d) (iii) lays down that an election cannot be challenged on the ground of non-compliance with the rules framed under Section 29. Consequently, the intention of the legislature was that election cannot be challenged for any non-compliance of rules framed under Section 29 and, therefore, on that ground the petition also could not be entertained. Learned counsel for the petitioner contended that as Section 22 clearly lays down that an election by way of an election petition cannot be challenged on the ground of any irregularity in preparing electoral rolls under the rules framed under Section 29, consequently, the petitioner had no other alternative remedy. As regards the question about acquiescence of the petitioner, learned counsel contended that at the time of nomination, for the first time it came to the notice of the petitioner that name of respondent No. 3 was included in the voters' list and it was subsequently discovered as to how the name has been inserted. Consequently, the petitioner had no option but to file a writ petition only after the election of the Municipal Council. He also contended that on this ground an objection about acquiescence cannot be raised. He placed reliance on a decision reported in AIR 1955 Nagpur 49 (FB). He also contended that Section 22 no doubt provides that an election could not be challenged in an election petition on the basis of an irregularity in following the rules framed under Section 29, but on that ground the remedy under Article 226 cannot be refused. He placed reliance on a decision of a Division Bench of this Court in *Hafiz Mohammad Anwar Khan v. State of M. P.*,¹

6. As regards facts, there is no controversy. Admittedly, in the final voters' list published, the name of non-petitioner No. 3 was not included, but the name of his brother Gopal Narain only was included, it is not in dispute that the Naib Tahsildar purporting to act under Rule 2 of the rules framed under Section 29 corrected the entry by incorporating the name of respondent No. 3 in place of his brother. The only dispute is about the powers of the Naib Tahsildar in ordering the correction. It is also not in dispute that respondent No. 3 Govind Narain, and his brother, Gopal Narain, are two different persons. There is no dispute about the existence of the different individuals with two different names. It is also not in dispute that after the inclusion of respondent No. 3 under the orders of the Naib Tahsildar after the publication of the final list of voters for ward No. 2 of the Chanderi Municipal Council respondent No. 3 filed his nomination paper as a candidate. It is also not in dispute that at the elections held for the Chanderi Municipal Council from this ward there were only two contestants, petitioner and respondent No. 3 and petitioner was defeated and respondent No. 3 was declared elected.

7. The scheme of the Municipal Act appears to be that before the elections of the Municipal Council are notified, the electoral roll of the Legislative Assembly pertaining to the area included in a particular ward is taken as the basis and that is notified as the initial electoral roll and objections and claims are invited. After a specific period, it is noticed for bringing in the claims and objections. The list is finalized after determining the questions involved as to the claims and objections that may be raised. Section 29 of the Municipalities Act provides for procedure to be followed before the elections to the Municipal Council are held. Sub-clause (2) of Section 29 of the Act runs as follows : -

"(2) The State Government shall make rules consistent with this Act -

(i) providing for the preparation and the revision of the electoral rolls, from time to time, and the appointment of the authority there for;

(ii) fixing the date after which no application for enrolment in any such roll under preparation or revision shall be received ;

(iii) determining the manner and the period in which and the authority to whom any objection to such roll in regard to the name entered therein or omitted there from may be made and the authority by whom such objections may be heard and decided and the judicial authority to whom the appeals of such entries and omissions shall lie ;

- (iv) prescribing the date for the publication of the Municipal electoral roll ;
- (v) the nomination of candidates and objections to such nominations ;
- (vi) the date and time of elections, the mode of recording votes, the management of contested elections and the procedure in case of equality of votes ;
- (vii) the holding of election to fill casual vacancies ;
- (viii) the custody and disposal of papers relating to elections ;
- (ix) for investigations of allegations regarding the corrupt practices ; and
- (x) Regulating and conducting generally such elections.

8. The State Government exercising powers under this sub-clause have framed rules. Rule 4 of these Rules provides for preparation of the roll and inquiry into claims and objections. It runs as follows : -

"4. Publication of roll and inquiry into claims and objections. - (1) As soon as the electoral roll has been prepared the Collector shall, give public notice in each ward that the roll has been prepared and a copy thereof is available for inspection at the Municipal Office and at such other places as he may determine during office hours.

(1-a) public notice under sub-rule (1) shall be given by affixing a copy of the notice in Form I on the notice board of the Municipal office and at prominent places in the wards of the Municipality and it shall also be announced in each ward by beat of drum.

(2) To the copies of the rolls notice shall be affixed intimating that any person whose name is not on the roll or whose correct description is not given on the roll and who claims to have it inserted therein and any person whose name is on the roll and who objects to the inclusion of the name of any person in the roll, may prefer a claim or an objection in the manner specified below and within a period of 20 days from the date of the publication of the notice to the officer specified in sub-rule (4).

(3) Copies of the roll may be made available at a price fixed by the Collector but in no case the price of the roll shall be more than double the cost of preparation thereof :

Provided that two copies of the roll may be supplied free of cost to every political party for which a symbol has been exclusively reserved in the State by the Election Commission.

(4) Any claim or objection under sub-rule (2) shall be in writing and shall be delivered in person or through an agent or sent by registered post together with one spare copy in the case of a claim and two spare copies in the case of an objection so as to reach the Sub-divisional Officer or the Deputy Collector, appointed by the Collector, in writing, in the case of class I Municipality at the District Headquarters or at the Headquarters of the State Government, and to the Tahsildar in all other cases, within the period specified in sub-rule (2). If an objection is to the entry or entries of the names of more than one person, two spare copies in respect of each person shall accompany the objection. The claims or objection shall be signed and verified by the claimant or objector in the manner provided for the signing and verification of pleadings in the Civil Procedure Code, 1908.

(5) Such claim or objection shall specify the grounds on which the right of any person to be entered in the roll is asserted or denied, the evidence which the petitioner intends to bring, the name and address of the claimant or objector his number, if any, in the roll and, in the case of an objection, the name, address and number in the roll of the person to whose entry objection is taken.

(5-a) Every claim shall be in Form I-A, signed by the person desiring his name to be included in the roll, and countersigned by another person whose name is already included in the roll in which the claimant desires his name to be included.

(5-b) Every objection to the inclusion of a name in the roll shall be in Form I-B, preferred only by a person, whose name is already included in that roll, and countersigned by another person whose name is already included in the roll in which the name objected to appears.

(5-c) Every objection to a particular or particulars in an entry in the roll shall be in Form I-C, and preferred only by the person to whom that entry relates.

(6) A claim or objection not lodged in the manner and within the period herein prescribed or by person not entitled to lodge the same shall be rejected.

(7) (a) On receipt of a claim or objection lodged in the manner herein prescribed, and by a person entitled to lodge such claim or objection, the Sub-divisional Officer, Deputy Collector or the Tahsildar as the case may be, shall register it in (Form I-D) and shall fix a date and place for hearing the same, and shall give notice in Form II, of such date and place to the claimant or objector. Where objection is taken to the entry of the name of any person in the roll, a copy of the objection with a notice in Form II of the date and place of hearing

shall be sent to such person. A copy of the claim or objection stating the date and place fixed for the hearing shall be placed on the notice board of the office of Sub-divisional Officer, Deputy Collector or Tahsildar, as the case may be. The notice issued under this sub-rule shall require the parties concerned to produce on the date fixed for hearing any evidence, oral or documentary, on which they rely.

(b) Where any copy of notice is to be sent under clause (a) such copy of notice shall be delivered or sent by registered post to a claimant or objector to the address given in the claim or objection and to a person objected to, to the address given in the roll. A copy of notice so delivered or sent shall be deemed to have been duly served.

(c) After hearing the evidence, if any, adduced on behalf of the parties and after such further enquiry as he may deem necessary, the Sub-divisional Officer, Deputy Collector or the Tahsildar, as the case may be, shall record an order on the claim or objection in the column specially provided for the purpose in the register of claims and objections prescribed in clause (a). Claims and objections shall ordinarily be decided within 40 days of the publication of the roll.

(d) The record of the proceedings shall consist of all the claims or objections, a note of the date and place of hearing and of the attendance of parties and witnesses and an order stating as briefly as possible, the decision and the grounds there for.

(e) Appearance by counsel shall not be permitted.

(f) Inquiry into every claim or objection under this rule shall be held summarily."

9. Rule 5 provides for appeals against the orders passed on claims and objections and Rule 6 provides for revision. Rule 8 provides for publication of the final roll and correction of the clerical errors. Rule 8 (1) runs as follows : -

Correction and final publication of rolls. - The Collector shall cause the rolls to be corrected in accordance with such orders, if any, as may have been passed or received under rules 4, 5, 6, and 7 and on or before the date fixed by him in this behalf, which shall not be less than six weeks before the date fixed for the elections, he shall publish the rolls as amended in manuscript in the manner prescribed for the publication of the original rolls. Rolls not amended need not be published but public notice shall be given of the fact that they have not been

amended. Clerical errors in the rolls may at any time up to the date of election be corrected by such Revenue Officer not below the rank of Naib Tahsildar as may be appointed by the Collector in this behalf." and it is a part of the Rule which is the main question of controversy in this petition "clerical errors in the rolls may at any time up to the date of election, be corrected by such Revenue Officer not below the rank of Naib Tahsildar as may be appointed by the Collector in this behalf". It is also not in dispute that the Naib Tahsildar Chanderi was appointed by Collector, Guna, exercising powers under Section 29 for purposes of Rule 8 and the Naib Tahsildar ordered inclusion of the name of respondent No. 3 while exercising jurisdiction under this part of Rule 8.

10. It was contended before us by learned counsel for the respondents that the inclusion of the name of respondent No. 3 in place of Gopal Narain was nothing more than correction of clerical error. In the book entitled "Words and Phrases" by Johan B. Saunders (Vol. 1) 1969, clerical error has been explained as under :

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"In the New Oxford Dictionary, one meaning attributed to the word 'clerical' is 'Of or pertaining to a clerk or penman' ; esp. in "clerical error an error made in writing anything out". According to Webster one meaning of the word 'clerical' is 'of or relating to a clerk or copyist' and an example given is 'clerical error, an error made in copying or writing'. Probably no one would deny that a clerical error may produce a significant, and even profound, effect as for example, in a case in which a writer or typist inadvertently omits the small word 'not'. But the characteristic of a clerical error is not that it is in itself trivial or unimportant, but that it arises in the mechanical process of writing or transcribing."

Apparently, therefore, where Gopal Narain son of Ram Prasad was written in the voters' list it could not be said that Govind Narain could be written as Gopal Narain by error in the process of writing or in the mechanical process of printing or typing. As it is clear that the two names stand for two different individuals being brothers, it cannot be said to be any error of writing or description. But clearly it is a question of deletion of the name of Gopal Narain and insertion of the name of respondent No. 3 Govind Narain in the electoral roll for ward No. 2 of Chanderi Municipal Council. Consequently, in our opinion, this could not be done by the Naib Tahsildar while exercising powers under Rule 8 of the Rules framed under Section 29 of the Municipalities Act.

11. It was pointed out by the learned counsel for the respondent that under Section 31 also powers are conferred on an authority appointed under Section 29 (2) for correction of the electoral roll and that power according to the learned counsel, could not be controlled or restricted by the Rules framed by the Government under Section 29. Section 31 (2) of the Municipalities Act provides as under : -

"S. 31 (2) Disqualifications of voters :

(1) A person shall be disqualified for registration in the electoral roll if he is disqualified for registration in the Assembly roll.

(2) If the authority appointed under clause (i) of sub-section (2) of Section 29, on application made to it or on its own motion, is satisfied after such enquiry as it thinks fit that any entry in the electoral roll of the Municipality : -

(a) is erroneous or defective in any particular; or

(b) should be transposed to another place in the roll; or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the ward or is otherwise not entitled to be registered in that roll; it shall, subject to such general or special directions; if any, as may be given by the Collector in this behalf, amend, transpose or delete the entry;

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the ward or that he is otherwise not entitled to be registered in the electoral roll of that ward, the said authority shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

Explanation. - The expression "ordinarily resident" shall have the meaning assigned to it in Section 20 of the Representation of the People Act, 1950 (43 of 1950)."

12. Reliance was placed on sub-clause (a) which reads "is erroneous or defective in any particular". By reading the three sub-clauses (a), (b) and (c) it is clear that the power conferred under Section 31 is only power to correct an entry, or to transpose the name of a voter from one place to another, or to delete the name of the voter, if he is dead, or has ceased to be the ordinary resident of the ward. It is significant that none of the provisions of Section 31 (2) permits an authority appointed under Section 29 (2)

to add the name of person in the electoral roll, which was initially not included. Apparently, no claim for inclusion has been specifically provided for under Section 31 (2). It is also significant that the language used in sub-clause (a) is about any entry which is erroneous or defective in any particular. "Particular" therefore, refers to particulars, which are mentioned in any entry in the electoral roll viz. serial no., address, name, father's name and age. Therefore, it is clear under this sub-clause, if there is no doubt about the identity of the person, whose name is included in the voters' list and there is some error in one of the particulars which are mentioned in the entry, it could be corrected under this sub-clause of Section 31. It cannot be doubted that substitution of the name of Govind Narain in place of Gopal Narain could not be said to be a correction of any particular in the entry.

13. Consequently, it cannot be doubted that the correction by which respondent No. 3's name was included in the electoral roll for ward No. 2 was neither justified under Rule 8, nor under Section 31 (2). Apparently, therefore, the order of the Naib Tahsildar directing inclusion of respondent No. 3's name in the electoral roll for ward No. 2 of Chanderi Municipal Council in place of Gopal Narain is beyond his powers under Rule 8 framed under Section 29 or under Section 31, sub-clause 2 (a) of the M. P. Municipalities Act.

14. Learned counsel for the respondent raised an objection about the acquiescence on the ground that the petitioner having not raised any objection to the nomination and having contested the election against respondent No. 3 cannot be permitted to challenge this inclusion of the name of respondent No. 2. In AIR 1955 Nagpur 49 (FB) it was observed : -

"Those who took their chance at elections and failed should not now be allowed to challenge the elections of their opponents on the ground that electoral rolls were defective, the plea is in substance one of estoppel. There can be no question of estoppel because it cannot be said that the position of the other side has in any way altered by reasons of some thing done or not done by the petitioners."

These observations are complete answer to the question raised by the learned counsel for non-petitioner No. 3 as regards estoppel or acquiescence.

15. An objection about alternative remedy by way of election petition was raised by

the learned counsel for respondent No. 3. Section 22 (1) (d) (iii) provides as under : -

"by the non-compliance with the provisions of this Act or of any rules or orders made there under save the rules framed under Section 29 in so far as they relate to preparation and revision of list of voters; he shall declare the election or election of the returned candidate to be void."

It is clear from this provision that on this ground an election petition cannot be entertained. Consequently, this objection raised by the learned counsel for the respondent is of no consequence as there is no alternative remedy available to the petitioner by way of an election petition.

16. It was also contended by the learned counsel for the respondent that as Section 22 (1) (d) (iii) specifically provides that an election cannot be set aside on the basis of non-compliance with the Rules framed under Section 29 and, therefore, it appears that the legislature intended that on this ground election could not be interfered with. He, therefore, contended that on such ground election should not be interfered with even in petition under Article 226 of the Constitution. In 1967 Jab LJ 559 a Division Bench of this Court placing reliance on AIR 1957 Supreme Court 304 held as under : -

"12. It is, however, urged that even though the rolls were imperfect in the sense that they were not prepared, authenticated or published by the competent authority as required by Rules 4 (1) and 8 (1), the election already held on the basis of those rolls should not be set aside. In the first place, the provisions of the Act do not contemplate that any election or selection could be called in question except by an election petition. Section 22 of the Act specifically excludes non-compliance with the provisions of Section 29 and the rules made there under in relation to preparation and revision of the list of voters as a ground for declaring any election or selection to be void. Secondly, the remedy under Article 226 is extraordinary and the relief is discretionary. The petitioner could, but did not, move this Court before the election was held. They are, therefore, guilty of laches and it is contended that, at their instance, the election should not be set aside. We are unable to accept these contentions because the defect here, unlike those in the cases relied upon in support of these contentions, is of substance and goes to the root of the matter. In *Mahadeo v. Bisan* ² the rolls were found to be erroneous in respect of the names of some electors. In *Brahamdeo Prasad Singh v. Narsingh Prasad* ³ certain irregularities

had crept in when the rolls were being revised. In *Dev Prakash v. Babu Ram* ⁴ rolls were prepared substantially according to the rules upto the stage of preliminary publication though in anticipation of those rules being brought into force or the Government's direction in the matter. In *Ram Chandra v. State of Assam* ⁵ only the period prescribed by a rule for filing claims and objections was cut down but no prejudice was shown to have been thereby caused and another remedy under the Act was also available. In *Kantilal v. The Village Panchayat of Shivrajpur* ⁶ an election of Panchas was challenged *inter alia* on the ground that names of 125 persons were wrongly included in the rolls. In *Sudarshan v. District Collector* ⁷ amendments in Assembly rolls were, as permitted by the relevant Act, adopted in the municipal electoral rolls two days prior to the date of poll and the only other relevant objection was that the names of not all persons qualified to vote were entered in the rolls. It will be readily seen that, in all these cases, the defects in the rolls, which were prepared, authenticated and published by the competent authority, were of a minor character which did not affect the jurisdiction of the authority concerned or render his act non est. In the Punjab Full Bench case AIR 1961 Punjab 429 (FB) (supra), it was recognized that if the electoral rolls were illegal, no election held on the basis of such rolls could be allowed to stand. The relevant observations are : -

"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 its nature, will suffice to reach a conclusion."

There are similar observations in the Assam and the Andhra Pradesh cases. The leading authority on this point is *Chief Commissioner, Ajmer v. Radhey Shyam Dani*, ⁸ where their Lordships stated :

"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 election 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."

This was followed in *Parmeshwar Mahaseth v. The State*⁹ and the election held on the basis of rolls not prepared in accordance with the provisions of the relevant Act was pronounced to be invalid. In *A. R. Karmakar v. Basirhat Municipality*¹⁰ the electoral rolls, which had not been prepared in accordance with law and which were not such rolls as were contemplated by the relevant Act and the rules made there under were quashed. Earlier, in *Kanglu Baula v. Chief Executive Officer*¹¹ this Court set aside an election to the Janpada Sabha on the ground that there were no rolls as required by law because neither fresh rolls were prepared nor the old ones were revised. In the case before us, the rolls were not authenticated or published by the appointed authority and the ones, which were authenticated and published by some one else, by usurpation of authority, cannot in the eye of law be regarded as valid rolls which can sustain an election held on their basis." Consequently, this contention raised by the learned counsel cannot be accepted as it is clear that a remedy under Article 226 is extraordinary and no election can be allowed to be maintained on the basis of electoral roll, which is not prepared in accordance with law.

17. 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 the ground of delay. It is observed in 1967 Jab LJ 559 (supra) : -

"It is no doubt true that the petitioner could have moved this Court earlier for appropriate relief even before the election was held, but the relief now claimed is in the nature of a writ of quo warranto questioning the right of the respondents 6 to 13 to hold their offices. There is in such a case no question of delay or estoppel. On the other hand, as we have already indicated no election on the basis of the rolls such as those in this case can be allowed to stand."

18. In the light of the discussion above, therefore, in our opinion the petition deserves to succeed. The petition is, therefore, allowed and the order passed by the Naib Tahsildar dated 16-9-70 is quashed. It is also ordered that as the election for ward No. 2 of Chanderi Municipal Council was invalid on the basis of electoral roll not prepared in accordance with law, the election also is set aside. The petitioner has sought the relief of getting himself elected from ward No. 2, but, in our opinion, that relief cannot be granted. The petitioner shall be entitled to costs of this petition. Counsel's fee Rs. 150/- if certified. The security amount deposited by the petitioner shall be refunded to him.

Petition allowed.

Cases Referred.

1. 1967 Jab LJ 559
2. (AIR 1953 Nag 166)
3. ((1959) ILR 38 Pat (1135))
4. (AIR 1961 Pun 429 (FB))
5. (AIR 1963 Ass 168)
6. ((1963) 4 Guj LR 929)
7. (AIR 1964 And Pra 421)
8. AIR 1957 SC 304
9. (AIR 1958 Pat 149)
10. (AIR 1959 Cal 548)
11. (AIR 1955 Nag 49 (FB))