**PUNJAB AND HARYANA HIGH COURT**

Dev Prakash Balmukand

Vs

Babu Ram Rewti Mal

(G Khosla, C.J. S Dulat and T Chand , J.)

07.04.1961

**JUDGMENT**

**Dulat, J.**

1. This is an appeal under Clause 10 of the Letters Patent against a judgment of Mahajan, J., setting aside the entire election to the Municipal Committee of Nuh on a petition under Article 226 of the Constitution. The appellant is a successful candidate at the election and the appeal is supported by the State, the contesting respondents being certain voters at whose instance the petition was allowed by the learned Single Judge. This appeal came up in the first instance before two of us but because of conflicting decisions in this Court on the main question involved in the case it was referred for decision to a larger Bench.

2. The election has been set aside on the view that the electoral roll on the basis of which the election was held had not been prepared according to the rules and it is this question with which we are in the main concerned. The electoral roll was first published on the 21st August, 1959. Objections were Invited and fourteen objections were actually filed of which ten were allowed and four rejected. The final roll was published on the 29th August, 1959, and the election, that is the poll, took place on the 17th October, 1959. The petition under Article 226 of the Constitution challenging the election was filed on the 5th November, 1959. It thus appears that although the electoral roll said to be defective was finally published on the 29th August, 1959, the Petition was not made till about two months later, and after the result of the election was know". I mention this fact because at one stage of the arguments it was urged that as the Petition challenging the election was delayed without any satisfactory explanation no relief should be granted to the petitioners-respondents under the extraordinary jurisdiction of this Court. It appeared to us however, even during arguments that this case should be settled on merits that much of the doubt arising out of conflicting decisions may be removed.

3. Prior to 13th August, 1959, the rules framed under the Punjab Municipal Act required that election to a Municipal Committee should be held on the basis of the electoral roll prepared for the election to the Punjab Legislative Assembly and the relevant part of the Punjab Legislative Assembly roll was under the relevant rule the roll for the Municipal election. Sometime in the beginning of August, 1959, however, Punjab Government decided to amend the rule although the amendment was actually made on the 13th August, and published on the 14th August. On the 4th August, 1959, a circular letter was addressed to the Deputy Commissioner and various Municipal Committees indicating that steps for the preparation of the electoral rolls should be taken in good time to be ready for thie elections by the 20th August, and it was indicated in the letter that Government contemplated an amendment of R. 8, which was the relevant rule. As I have said, the rule was actually amended on the 13th August, 1959, by adding a proviso that Government may, if so inclined, direct that the Punjab Legislative Assembly roll shall not be used for the Municipal election and a fresh roll in accordance with Rules 8-A to 8-K, which were added on the same day, shall be Prepared. The actual direction to this effect was issued on the 19th August, 1959, and, as I have mentioned, the roll was published on the 21st August and objections to it invited in accordance with the new rules. Before the amendment, R. 8 was in these words:-

> "The roll of each constituency of a Municipality shall be the electoral roll for the Punjab Legislative Assembly in relation to the said Constituency operative on the date fixed by the Deputy Commissioner for the submission of nomination papers under Rule 10."

The amendment made was in the form of a Proviso to this rule which ran:-

> "Provided that the State Government may direct that the electoral roll for the Assembly shall not be used in any election and that fresh roll shall be prepared in the manner specified in Rules 8-A to 8-K."

Then followed rules 8-A to 8-K. Rule 8-A said-

> "8-A. (1) When a direction is given by the State Government under the Proviso to R. 8, the Deputy Commissioner shall, under the superintendence ot the Director of Elections (Local Bodies), cause to be prepared a roll for each constituency of the Municipality in accordance with these rules."

Rule 8-B then laid down certain disqualifications, being in substance the same as those provided for in the case of the Assembly roll. Rule 8-C debarred the registration of a person in more than one constituency, and R. 8 D laid down the qualifications, again in substance the same as for the Assembly election. Rule 8-E provided for the publication of the preliminary roll. 8-F for the appointment of a Revising Authority; 8-G for lodging claims and objections; 8-H for notice of

claims and objections; 8-1 for disposal of claims and objections; and 8-J for final publication of the roll. Rule 8-K then provided for subsequent correction of errors or defects brought to the notice of the Deputy Commissioner. All these amendments came into force On the 13th August, 1959, and there is little doubt that with the publication of these amendments the next day, every Government official concerned with elections came to know that Municipal elections were going to be held in accordance with the new rules and, at the same time, came to know what the new rules were. The only step needed to bring the new rules into force was a direction by the State Government referred to in the proviso to R. 8. That direction was given on the 19th August, 1959.

4. Objection in this case is taken to the electoral roll published on the 21st August, and this on the ground that in law nothing towards its Preparation could have been done till the direction of the State Government was received and therefore, everything dole towards its Preparation before the receipt of such direction was illegal, and consequently the whole electoral roll remained illegal in spite of its publication and the hearing of objections and claims in respect of it and the final publication on the 29th August. The argument emphasises, and, if I may say so, over emphasises the word in Rule 8-A "when a direction is given by the State Government under the proviso to Rule 8", the contention being that the Deputy Commissioner could not have done anything at all towards the preparation of the roll earlier than the 19th of August, because no direction till then had been given. The further contention is that after the direction was received, there was no time for the preparation of the roll in accordance with the amended rules. These contentions pre-vailed before the learned Single Judge, and he said, while dealing with this matter -

> "The rolls that were Prepared on the 21st August, 1959, were Prgpared on the basis of Assembly electoral rolls wardwise and not according to Rules 8-A to 8-K. This would be clear from the fact that the letter of the State Government dated the 19th August, 1959, directing the authorities to Prepare rolls according to amended rules was received after the 21st of August 1959, and it was therefore not possible to prepare the rolls according to the directions contained in the letter. Therefore, the objection of the petitioner is sound and must prevail." Mr. Nehra points out in this connection that the impression of the learned Judge, that the letter containing the State Government's direction was received after the 21st August, rests on some misapprehension, as the President of the Municipal Committee had in this case filed an affidavit that an endorsement containing the direction dated the 19th August, 1959, had been received in the office of the Municipal Committee on the 21st August, 1959.

This affidavit was apparently not brought to the notice of Mahajan, J., and therefore not considered by him. One learned counsel even suggested That the affidavit was perhaps placed on

the file subsequent to the judgment of the learned -Judge, but, on referring to the original affidavit, we found that it had been filed earlier and was just overlooked. The affidavit leaves little doubt that on the 2lst August, 1959, at any rate, the direction had been received even in the office of the Municipal Committee, but, apart from the affidavit, the other facts leave no doubt that when the preliminary roll was Published on the 21st August, 1959, a notice for receiving claims and objections was also published, and it is obvious that no question of receiving claims and objections-could have arisen unless the direction of the State Government under the proviso to Rule 8 was known to have been issued, for, under the old rule, there was no occasion for inviting any claims and objections to the electoral roll. On the question of fact, therefore, that the electoral roll was published after the decision of the State Government under the proviso to R. 8 was known to have been made, there need be no doubt. The question, then, is whether the roll, published on 2lst August, can be said to have been not prepared in accordance with the new rules. merely because a good deal of Preparatory work had been done towards the compilation of the roll in anticipation of the direction of the State Government finally given on the 19th August. It is true that such preparatory work was done before and not after the said direction was given, but to say that for that reason the entire roll became illegal, seems to me a somewhat unreal way of considering a matter of this kind. It is clear that the officers concerned had been warned in the beginning of August that Rule 8 was going to be amended and they had been told to begin the preliminary work on the basis of the existing Assembly roll. By the 14th August, they had precise information, concerning the new rules that were going to be enforced. 0, therefore, those officers got the preparation of the roll under way in anticipation of the direction of the State Government, it seems hardly reasonable to contend that because of such activity the roll thus prepared became wholly illegal. The contention raised seems largely to ignore the substance of the matter which, according to the rules, lay in this that the roll published was to contain the names of the electors qualified according to the new rules and claims and objections were to be invited and disposed of according to the rules and a final roll was then to be published. The argument also ignores the fact that the election was actually held on the basis of the finalised roll and not the preliminary roll as published on the 21st of August. It is also to be remembered that even after the finalisation of the roll there was a provision in the rules for the correction of any further errors.

5. It was then said that the preliminary work merely consisted of re-arranging the Assembly roll with small alterations, and since the qualifying date in the Assembly roll was March, 1958, while the qualifying date for the Municipal electoral roll was to be August, 1959, there were bound to be errors in the roll, and such errors could not have been removed by lodging claims and objections. This particular argument, in the present case is merely theoretical as it is not said, and it does not appear, that any person qualified to vote according to the new qualifying date was

actually left out of the electoral roll. All that the Petition says is that certain persons, who were then dead, were included in the roll--a matter which can be of no importance as far as the election is concerned. It is also said that certain persons, who had left the town and gone away elsewhere, continued to be included in the roll, which again is a matter not very material to the election. No one actually claiming to be a voter seems to have been left out of the electoral roll, and none of the petitioners in this case has any grievance on such a ground.

6. It is perfectly true that, according to the State Government's direction, the Assembly roll was not to be used in any election, but all that really meant was that the Assembly roll was not to be the roll for the Municipal election as the unamended R. 8 had previously provided. It did not in any sense mean that the Assembly roll could not be used for any purpose whatever or for the Purpose of preparing the fresh roll according to the new rules, and, considering that the actual qualifications mentioned in the new rules were substantially the same as the qualifications for the Assembly roll, that roll was in fact a useful basis for Proceeding with the preparation of the new roll. The objection on the ground, therefore, that the Assembly roll was used as a basis has little substance so long as it is clear that the new rules were otherwise adhered to, and the draft roll was duly published and claims and objections invitee and properly disposed of, and the final roll, on which elections were held, then prepared and published.

7. A number of writ Petitions were filed in this Court challenging the election, to various Municipalities but the decisions have not been uniform. I must here confess the trouble probably started with a decision to which I was a Party. The case is reported as *Lajpat Rai v. Khilari Ram*[1], Dua, J., and myself in that Case had before us five writ petitions challenging the election to five Municipal Committees. Four of these petitions we dismissed on the view that the use of the existing Assembly roll as a ready data for the preparation of the new roll under the rules was not illegal or objectionable. The fifth writ petition (Civil Writ No. 1176 of 1959) concerning the Kaithal Municipality we, however, allowed. The letter containing the direction of the State Government in that case was received on the 22nd of August, 1959, while the preliminary roll had, as in the present case, been published on the 21st of August. We were Per suaded that the preliminary roll published on the 21st August, was not prepared in Pursuance of the direction of the State Government, and we thought that the ratio of the decision of the Supreme Court in *Chief Commr. of Ajmer v. Radhey Sham Dani*[2]*R* applied. On reconsidering the matter in the light of arguments presented in the present case, it appears to me that the observations of the Supreme Court were considered apart from their proper context. I say this because it is conceded now and the Supreme Court's judgment also shows this, that, apart from one broad Proposition, about which there can hardly be any Controversy, the Supreme Court said nothing which could be of much assistance in cases like the Present. The broad proposition mentioned by the Supreme

Court was that no election can be permitted to be held on the basis of an illegal electoral roll. In the Particular case before the Supreme Court the relevant rule's required that objections and claims against the roll should be heard, while, as a matter of fact, such claims and objections had never been even invited in that case. The electoral roll was therefore, found to be wholly illegal, The present case does not resemble that Case, and the whole controversy in the present case is whether the electoral roll can be called illegal because the preliminary roll, to which objections were invited, was partly prepared before the direction of the State Government for such preparation was received or because the existing Assembly roll was adopted, as its basis. For the decision of that question the Supreme Court case cannot be of much help, for the Supreme Court was concerned with interpreting a different set of rules.

8. To go back to the decision in Civil Writ No. 1176 of 1959 : (62 Pun LR 377) it appears that we did not take sufficient notice of the fact that the new rules, 8-A to 8-K, had been made on the 13th August and published in the official gazette on the 14th August, and we laid emphasis on the circumstances that in the return filed by the State Government it was not categorically affirmed that Rules 8-A to 8-K had been adhered to in all respects when the new roll was Prepared.

9. The next case came up before *Tek Chand and Shamsher Bahadur, JJ., in Jagat Ram v. Munshi*[3]*,* The preliminary roll was published on the 21st August, while it was said that the letter containing the State Government's direction dated the 19th August, could not have been received till the 22nd of August, and one contention raised therefore was that the roil Prepared prior to the receipt of the letter must be considered as null and void. The Division Bench found no merit in this contention and dismissed the petition on the view that there was nothing improper in the act of the Election officers prepaing the roll in anticipation of the direction as the rules to be applied were known prior to the actual direction. The learned Judges found that the case before them resembled those cases which Dua. J., and myself had dismissed and did not resemble the Kaithal Municipality's case, that is, Civil Writ 1176 ot 1959 : (62 Pun LR 377). This decision, as it happened, was not reported.

10. The next case. *Amir Chand v. Dhan Raj*[4]*,* then came up before Bishan Narain and Dua, JJ. The preliminary roll was published on the 21st of August, 1959, while the direction of the State Government was issued, as in other cases, oh the 19th of August. The Court found that the electoral roll, as published, had not been prepared "in pursuance of or in obedience to these directions", and it was held that the case was similar to the case in Civil Writ No, 1176 of 1959, and Dua, J., who wrote the main Judgment, followed the earlier decision and the petition was consequently allowed. This decision is reported as (1960) 62 Pun LR 679.

11. The fourth case is *Dharam Paul v. Kuldip Singh*[5], It again came up before Tek Chand and Shamsher Bahadur, JJ., and they, following their earlier decision, dismissed the petition on the view that the preliminary roll prepared mainly with the assistance of the Assembly roll was not illegal because the new rules had been kept in view.

12. The next case, *Ramesh Chand v. Puma Nand*[6], again came up before the same Bench (Tek Chand and Shamsher Bahadur, JJ.). The main judgment this time was written by Tek Chand, J. The preliminary roll was published on the 21st August, while the direction of the State Government was received on the 20th of August, and Tele Chand, J., took the view that it could not be Presumed that in the preparation of the roll the new rules Published on the 14th August, 1959, had been given effect to, and further he laid stress on the word 'when' used in E. 8-A in connection with the preparation of the roll and concluded that a proper and legal roll could have been prepared only after the State Government had given its direction, and the roll prepared in anticipation of it was therefore illegal. Shamsher Bahadur, J., who had written the main judgment in the earlier cases before the same Bench, did not wholly accept this line of reasoning, but he otherwise agreed on the facts that the case resembled Civil Writ No. 1176 of 1959 : (62 Pun LR 377), and he therefore concurred in the order setting aside the election.

13. The next three decisions brought to our notice are by three Judges of this Court sitting alone, and in two of these -- (1*) Kuidip Singh v. The State of Punjab*[7]*, Nitya Nand v. Khalil Ahmed*[8] -- the Petitions were allowed, while in the third, Rajinder Sen v. Punjab State, Civil Writ No. 1282 of 1959, Bishan Narain, J., dismissed the Petition on the same view as Dua J., and myself had adopted while dismissing the four petitions in Lajpat Rai's case 62 Pun LR 377. These are not all the decisions made in this Court, but they are fairly representative of the two views taken. It emerges from these decisions clearly that while some of the learned Judges thought that everything done towards the Preparation of the electoral roll prior to the receipt of the State Government's direction issued on the 19th August, 1959, was illegal, and because of that illegality everything that followed also remained illegal and any election held on the basis of an illegally prepared electoral roll was in law bad, other learned Judges thought that there was nothing illegal done if in anticipation of the State Government's direction a preliminary roll had begun to be prepared or had been prepared provided it was substantially in accordance with Rules 8-A to 8-K. Looking at the substance of the matter and the ultimate object to be achieved by the rules, it appears to me that the mere fact that the electoral roll was prepared in anticipation of the State Government's direction, which was of course issued before the preliminary roll was published, does not make the entire roll illegal. Nor does it seem to me proper to say that the roll thus prepared was j not in pursuance of the new Rules, 8-A to 8-K, merely because those rules came to have legal force: only when the State Government issued the necessary direction. The

fact is that the Preliminary roll was published after the State Government had issued the direction and since the rules, according to which the roll was to be prepared, were already known, no harm was done if the Election Authorities began the preparation earlier than the 19th of August.

14. Before us great emphasis was laid on the qualifying date as mentioned in the Explanation attached to rule 8-D of the rules. This says -

> "'Qualifying date' shall mean the date on which the preparation of rolls commences in the constituency concerned."

It was urged, therefore, that since the preparation of the roll could not legally commence till after the State Government had given its direction, the qualifying date must be either the 19th of August or a later date, and because the roll had begun to be prepared earlier, it must have been prepared with another qualifying date in view, possibly the 14th of August. In this manner, according to the argument some voters, who may have attained the qualifying age of 21 in between the 14th of August, and the 19th of August, must have been left out of the roll, and, if so, then the roll was defective. The contention is not supported by any averment of fact that any such thing actually happened, and the whole argument is based on the theoretical inevitability of such a thing having happened. The argument is, to my mind, very much in the air. It assumes a degree of precision in respect of an enquiry made in connection with the preparation of an electoral roll which, everybody knows, such an enquiry hardly ever possesses. The real safeguard for such a contingency is the provision in the rules that the Preliminary roll is to be openly published and claims and objections invited and duly heard, which was admittedly done. The apprehension, therefore, that a number of qualified voters, according to the new qualifying date, may have been left out of the electoral roll, is without real foundation.

15. An election is in its nature an expensive and time-consuming process, and, if it is to be disturbed after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely a technical breach of a technical rule. 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 such a conclusion. In the present case, the defect suggested is not, in my opinion, of substance, and, as far as I can see, the rules have been substantially complied with. I am, in the circumstances, not persuaded that the election to the Municipal Committee needs to be set aside. I would, therefore, allow this appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition and discharge the rule. In the circumstances, however, I would leave the parties to their own costs, G.D. Khosla, C.J.

16. I agree with my learned brother, Dulat, and wish to add a few words of my own not because I hope to improve upon the reasoning upon which his decision is based but because I feel that owing to the importance of the matter before us and the far-reaching consequences of our pronouncement I should give expression to my considered views about the scope of the High Court's interference in the matter of an election which Is already an accomplished fact.

17. There is (if I may take the liberty of using a somewhat strong term) lamentable tendency to drive academic objectivity away from the regions of practical politics. Justice and legal propriety should not, on any account, be sacrificed to expediency but where there is no allegation of any injustice of injury following a lapse from the strictly technical and literal compliance with rules, this Court should not take upon itself the odious and wholly unnecessary task of undoing something that has involved a great deal of expenses" and effort. The Petitioners have not anywhere averred that they were deprived of their right of voting in the elections because of any irregularity committed in the course of preparing the electoral rolls, nor was it stated in the Petition that any person not possessed of a voter's qualifications was wrongly included in the lists of voters and by exercising a non-existing right he helped to bring about a result other than would, in law, have followed.

18. I trust I shall not be charged with being outrageously presumptuous if I say that the time has come to remember and redeclare in unequivocal terms that the function of a Court of law is to decide actual cases and to right actual wrongs and not to exercise the mind by indulging in unrewarding academic casuistry or in pursuing the useless aim of jousting with windmills. If a Petitioner comes to Court and says that a certain authority has not observed, in letter, certain directions lawfully Issued, but makes no allegation of any injury caused to anyone, nor does he say that any untoward consequences have resulted from the failure to comply with those directions, the Court should and ought to say at once that since there is no injury, there is no available remedy. In the present case, there was ample opportunity provided to Point out errors and omissions in the electoral rolls published on the 21st of August, 1959. Objections and claims were actually filer! and disposed of. The final electoral rolls were then published and several weeks thereafter the elections were held. The results were declared and it was only then that the present Petition was filed. There was no attempt made to have any errors corrected after the final publication of the electoral rolls up to the declaration of the result of the elections, nor are any errors, except certain omissions, pointed out in the various Petitions which are now before us. The omission of names of persons who have died or have left their old residence, could have no effect on the ultimate result of the election, because a dead man cannot vote, nor is there any allegation that an absentee voted wrongly.

19. I may add a word or two regarding the various cases which have been decided by this Court.

In all, ten cases decided within the last twelve months were cited before us. I give below a list of these:-

(1) (1960) 62 Pun LR 377, decided on 10-2-1960 by Dulat and Dua, JJ. The Municipal Committee concerned was Kaithal, and the election was set aside;

(2) Civil Writ No. 1216 of 1959, decided on 7-3-1960 By Tek Chand and Shamsher Bahadur, JJ. The Municipal Committee concerned was Pundri, and the election was not set aside;

(3) (191 60) 62 Pun LR 679, decided on 16-3-1960 by Bishan Narain and Dua, JJ. The Municipal Committee concerned was Narwana, and the election was set aside;

(4) Civil Writ No. 1233 of 1959. decided on 7-4-1960 by Tek Chand and Shamsher Bahadur, JJ. The Municipal Committee concerned was Phagwara and the election was not set aside;

(5) Hardayal Singh v. State of Punjab, (1960) 62 Pun LR 742, decided on 12-5-1960 by Mahajan, J. The Municipal Committee concerned was Zira, and the election was set aside;

(6) Civil Writ No. 1244 of 1959, decided on 27-5-1960 by Tek Chand and Shamsher Bahadur, JJ. The Municipality concerned was Sangrur, and the election was set aside;

(7) Civil Writ No. 1191 of 1959, decided on 28-7-1960 by Gosain, J. The Municipal Committee concerned was Gobindgarh, and the election was set aside;

(8) Civil Writ No. 1218 of 1959 decided on 7-9-1960 : (AIR 1961 Punj 105) by Grover, J. The Municipal Committee concerned was Pataudi, and the election was set aside;

(9) Mahadev Prashad v. Punjab State, Civil Writ No. 1109 of 1959, decided on 20-10-1959 by Mehar Singh, J. The Municipality concerned was Rewari, and the election was set aside; and (10) Civil Writ No. 1282 of 1959, decided on 1-12-1960 by Bishan Narain, J. The Municipality concerned was Jullundur and the election was not set aside.

20. I have given the above decisions in their chronological order. It will be seen that in three of these ten cases the elections were not set aside. In the very first case a Division Bench of this Court set aside the election, and in doing so, the Hon'ble Judges appear to follow certain remarks of the Supreme Court in (S) AIR 1957 SC 304. Dulat. J., in the main judgment has already dealt with this matter, and I am referring to it only to emphasise the fact that the subsequent trend of decisions was a consequence of this judgment.

In the Pundri case (No. 2 above) the learned Judges referred to the Kaithal case, (1960) 62 Pun

LR 377 but distinguished it on facts. In the Phagwara case (No. 4 above) the same Bench followed their previous decision in the Pundri case. Of the other cases, the elections of Narwana (No. 3), Zira (No. 5), Sangrur (No. 6) & Pataudi (No. 8) were set aside on the basis of the decision made in the Kai thal case, (1960) 62 Pun LR 377. AH these cases re ferred to the decision of Dulat and Dua, JJ., in (1960) 62 Fun LR 377. Gosain, J., while dealing with the election of Gobindgarh (No. 7 above), re ferred to the decision of Tek Chand and Shamsher Bahadur, JJ., in the Sangrur case which, in turn, was based upon the Kaithal case, (1960) 62 Pun LR 377. It is interesting to note that the Pundri case had also been heard by the same Bench, and while in that case Tek Chand and Shamsher Baha dur, JJ., distinguished it from the Kaithal case, (1960) 62 Pun LR 377 when they came to consider the Sang rur elections, they distinguished the Pundri case and referred to follow the Kaithal case, (1960) 62 Pun LR 377. Meher Singh, J., made no reference to any of the decided cases while dealing with the Rewari case, and finally Bishan Narain, J., while dealing with the JuUundur case (No. 10 above), distinguished the Kaithal case (1960) 82 Pun LR

377.

21. Summing up, therefore, we find that of the ten cases cited before us the Kaithal case, (1960) 62 Pun LR 377 being the first one in time, was accepted as a precedent for all other cases except three in which the Judges sought to distinguish it on facts. If therefore, it is held, as we do hold, that the Kaithal case (1960) 62 Pun LR 377 was decided wrongly, then the authority of the other cases loses all weight, although these cases were heard and decided by other Judges.

22. On a proper assessment of the authorities, therefore, it is not correct to say that the weight of decisions is in favour of holding that the electoral rolls were invalid and that the elections held on their basis were liable to be struck down. In the present case I find that there has been a substantial compliance with the amended election rules notified by the Punjab Government on 13" 8-1959. All the essential requirements of these rules were, in my view, observed. Draft rules were prepared on the basis of the qualifications laid down. Lists of voters (the electoral rolls for the Legislative Assembly) prepared broadly on the basis of the qualifications laid down for municipal elections were already in existence and these were published on the 2Ist of August. There was, therefore, substantial compliance with the Publication of the draft lists. Opportunity was, in fact, given for hearing objections and claims and in all cases, which have come before us, numerous objections and claims were, in fact, heard and disposed of. I find that in the present case a reasonable opportunity was given for heaving objections. As to what is reasonable opportunity, will depend on the facts of each particular case and it will be rash to lay down any general standard in this respect. The fact that objections were heard and after the final publication of the voters' lists no complaint of any kind was made to anyone until the defeated candidates felt

that they had a grievance and either themselves came to this Court or persuaded some of their voters to do so. As far as this particular case is concerned, I am satisfied that there was a reasonable opportunity given as required by rules. Finally, we find that the final lists were published as required by rules. In the circumstances, I must hold that there was substantial compliance with the election rules as published in the notification of the 13th of August. It must be remembered that although orders in the present case to prepare the electoral rolls according to the new rules were not issued till the 19th of August, the draft lists were already ready and were published on the 21st of August. Government departments often do their preliminary spade work before orders to implement a plan are actually issued. This is so, because the lines upon which the plan is to be implerrented, are previously known to the officials concerned. In this case the preliminary Communication of the 4th of August, had altered the Deputy Commissioners that new voters' lists had to be prepared. On the 13th of August, the detailed rules were published, and in order to avoid unnecessary delay they may well have taken in hand the preliminary work of preparing the first draft of the voters list. As soon as orders were issued on the 19th, steps were taken to publish the lists. Thereafter objections were invited and dates were fixed for the disposal of those objections. There is no suggestion made before us that it was the intention of Government to deprive anyone of his legal rights or that anyone entitled to vote was debarred into doing, so by the hasty procedure followed by the Deputy Commissioners.

23. In the circumstances, I agree with my brother, Dulat, J., that this appeal must be allowed and the order of the learned Single Judge declaring the elections invalid set aside.

**Tek Chand, J.**

24. On the particular facts of this case I am satisfied that there was substantial compliance with the new Municipal Election Rules. In the absence of any proof, or, of any reasonable apprehension that the names of newly qualified persons had been excluded from the electoral rolls in consequence of non-compliance with Rules 8-A and 8-D, I concur with the conclusion that this appeal should be allowed and the parties left to bear their own costs.

Cases Referred.

1(1960) 62 Pun LR 377
2 AIR 1957 SC 304
3Civil Writ No, 1216 of 1959
4Civil Writ No. 1197 of 1959
5Civil Writ No. 1233 of 1959
6Civil Writ No. 1244 of 1959
7Civil Writ No. 1191 of 1959, and (2)
8Civil Writ No. 1218 of 1959 : (AIR 1961 Punj 105)