

PUNJAB AND HARYANA HIGH COURT

Rooplal Mehta

Vs

Dhan Singh

Election Petition No. 15 of 1967

(S.B. Capoor, A.N. Grover and Harbans Singh, JJ.)

17.05.1967

ORDER

S.B. Capoor, J.

1. The question which has been referred to the Full Bench is "whether in the election petition made to the High Court under section 80 read with section 80-A of the Representation of the People Act No. 43 of 1951 (hereinafter referred to as the 1951 Act) as amended by the Representation of the People (Amendment) Act, 1966, some of the votes cast are open to challenge under section 100(1)(d)(iii) and (iv) of the Act on the ground that the persons so voting at the election were below the age of 21 years on the qualifying date". Section 100 contains the grounds for declaring election to be void and so far as relevant provides that if the High Court is of opinion * * * * * (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) * * * * *

(ii) * * * * *

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act;

then the High Court shall declare the election of the returned candidate to be void. The relevant provision of the Constitution of India is Article 326 and since most of the controversy hinges on the interpretation of this Article, it is necessary to reproduce it :-

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that

behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of nonresidence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

Mr. P.C. Jain, who appears on behalf of the petitioner in the election petition, in which the challenge to some of the votes cast at the impugned election to the Legislative Assembly, Haryana, was made on the ground of voters being below the age of 21, seeks to interpret the constitutional provision as containing a prohibition to any one less than 21 years of age on the qualifying date from voting in the election. According to his submission, it is a void vote within sub-clause (iii) above and is also in breach of the provisions of Article 326 of the Constitution. He supported his argument by reference to the Full Bench decision of the Kerala High Court *P. Kunhiraman v. V.R. Krishna Iyer*¹, Article 327 of the Constitution of India is with regard to the power of Parliament to make laws with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. Under Article 328, in so far as provision in that behalf is not made by Parliament, the Legislature of a State may also make provision in connection with matters relating to the elections to the House or either House of the Legislature of the State (but not the delimitation of the constituencies). In pursuance of the powers conferred by Articles 326 and 327 of the Constitution, the Parliament promulgated the Representation of the People Act No. 43 of 1950 (hereinafter referred to as the 1950 Act), which, as the long title would indicate, makes provision for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union Territories and matters connected therewith. The 1951 Act, according to the long title, provides for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. Part III of the 1950 Act contains the provisions for the preparation or electoral rolls for Assembly constituencies. Clause (b) of section 14 defines the qualifying date in relation to the preparation or revision of every electoral roll as the first day of January of the year in which it is so prepared or revised. Section 16 contains the disqualifications for registration in an electoral roll, which are as follows :-

"16(1). A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith

be struck off the electoral roll in which it is included, provided that the name of any person struck off the electoral roll of a constituency by reason of a dis-qualification under clause (c) of sub-section (1) shall forthwith be re-instated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal."

Under section 17 no person is to be registered in more than one constituency and under section 18 no person is to be registered more than once in any constituency. Then comes section 19 which lays down the conditions of registration and is as follows :-

"(19). *Conditions of registration.* - Subject to the foregoing provisions of this Part, every person who -

(a) is not less than twenty-one years of age on the qualifying date, and

(b) is ordinarily resident in a constituency shall be entitled to be registered in the electoral roll for that constituency."

Section 21 provides for the manner in which the electoral rolls are to be prepared and for their revision. Under section 22, the electoral registration officer for a constituency is empowered to correct entries in the electoral rolls of that constituency and under section 23 to include in the electoral rolls names which were wrongly omitted. However, after the last date for making nominations for an election in that constituency, there can be no amendment, transposition or deletion of any entry under section 22 nor any direction for the inclusion of a name in the electoral roll under section 23. Section 24 provides for appeals against the order of the electoral registration officer under section 22 or section 23. Under section 30, no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency.

In the 1951 Act by clause (e) of section 2, "elector" is defined as follows :-

"'elector' in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950)".

The right to vote is conferred by section 62 of this Act, which is important for our purpose and is reproduced below :-

"62(1). No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

Thus sub-section (1) of section 62 confers the right to vote on every person whose name is for the time being entered in the electoral roll of any constituency and sub-sections (2) to (5) are clearly in the nature of exceptions to the right conferred by sub-section (1). It is significant that there is nothing in section 62 to justify the view that the vote of a person whose name was on the electoral roll of the constituency and who as such was entitled to vote in the constituency shall be liable to challenge if at the hearing of the election petition it could be shown that he had not attained the age of 21 years on the qualifying date. Section 62 is on the face of it comprehensive in its scope and the disqualifications referred to in section 16 of the 1950 Act are mentioned in sub-section (2). On the basis of a bar to registration as given in section 17, there is prohibition in sub-section (3) that no person shall vote at a general election in more than one constituency of the same class, while the bar to registration as given in section 18 corresponds to the provision in sub-section (4). In each of the cases mentioned in sub-sections (2), (3) and (4) the vote of the person concerned shall be void and is, therefore, liable to challenge in examination under section 100(1)(d)(iii) of the 1951 Act as being the reception of a vote which is void. If the vote of a person, whose name is entered on the electoral roll but who was less than 21 years of age on the qualifying date, was also held to be void, there is no reason why a provision similar to sub-sections (2), (3) or (4) of section 62 could not have been added to that section as an exception to the right to vote given in sub-section (1) of section 62. If the Parliament had any such object in contemplation, one would expect that it would have added at the end of sub-section (2) some such words as "or who does not fulfil the conditions as to registration as given in section 19 of the Representation of the People Act, 1950." To my mind the scheme of the Act of 1950 is that if a person fulfils the conditions of registration as given in section 19 and is not disqualified for registration under section 16, and is also not shut out from registration by the provisions of sections 17 and 18, he has a right to have his name on the electoral rolls of the constituency. There are ample provisions in the succeeding sections of the Act of 1950 for making challenge to that entry to enable in proper cases correction of that entry either by the registration officer at his own motion or on an application made to him, viz., section 22, and from his decision appeal is also provided by section 24 but the final date for making the amendment transposition or deletion of entries in the electoral roll is the last date for making nomination for an election in that constituency. Thereafter, the person whose name has been entered in the electoral roll becomes

an elector in relation to that constituency as defined in clause (e) of section 2 the 1951 Act and by sub-section (1) of section 62 is conferred the right to vote in that constituency subject, however, to the exceptions in sub-sections (2) to (5) of that section. So far as, therefore, the two Acts, viz., the Act of 1950 and the Act of 1951, are concerned, the position appears to be that after the electoral rolls have been finalised the vote of a person, whose name is on the electoral roll cannot be challenged as being void on the ground that he was under 21 years of age on the qualifying date. If this position is not correct, it would logically be open for the petitioner in an election petition to challenge the election of the returned candidate also on the ground that the names of a number of persons, who were qualified for being entered as voters in the electoral rolls of that constituency, were either through inadvertence or deliberately omitted from the electoral rolls when finalised and if their names had been so entered, they would have swayed the balance against the returned candidate. Such a contention is on the face of it absurd and its acceptance would amount to rendering futile and indeed meaningless the elaborate provisions in the 1950 Act for registration of names on the electoral rolls, for their revision and for correction of entries in them. The entire process of the preparation of electoral rolls, which is a preliminary to the conduct of elections, would thereby become open for scrutiny in the election petition. That surely could not have been the intention of the Constitution makers or of Parliament and, as already observed, there is nothing in either 1950 Act or in 1951 Act to indicate that such was the intention of the Parliament. The learned counsel for the petitioner cannot, therefore, take advantage of section 100(1)(d)(iii) of 1951 Act. The alternative argument on behalf of the petitioner was based on Article 326 of the Constitution, which has already been reproduced. It is contended that Article when it states in the opening words that the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage confers a positive right to vote and not merely to be registered as a voter and in this connection the judgment of the Full Bench of the Kerala High Court *P. Kunhiraman v. V.R. Krishna Iyer* (supra), is relied upon. The principal judgment in that case was delivered by M.S. Menon, Acting C.J., with whom T.K. Joseph, J. agreed and the reasons, succinctly stated in the judgment of the learned Acting C.J., were elaborated in the judgment of the third learned Judge C.A., Vaidialingam, J. (now a Judge of the Supreme Court). The question for determination before the Full Bench also was whether in the case of a person whose name appears in the electoral roll and who has exercised his vote, the Election Tribunal can go into the question whether or not he had attained the age of twenty-one on the qualifying date, and, on the finding that he had not, exclude his vote from the count. The question was answered in the affirmative. The first reason advanced was that when Article 326 of the Constitution stated that the election shall be on the basis of adult suffrage, it was conferring a right not only to be registered as a voter at an election but to vote there and in the words of learned Acting C.J., "it will be a mockery of the Constitution to hold that what was given to the citizens of this country by the Constitution was the mere processual right of registration unaccompanied by the substantive right of voting." That is why it was concluded that the presence of minors in the electoral roll and their voting in consequence thereof would be violative of Article 326. The argument that section 62 of the 1951 Act did not prohibit for the vote of a person, who had not attained age of 21 years on the qualifying date, while it did specify that no person shall vote at the election if he was subject to any of the disqualifications referred to in section 16 of the 1950 Act, was met by the observation that the disqualifications dealt with by sub-section (1) of section 16 were only those types of disqualifications which cannot only exist on the date of registration but which can also arise for the first time thereafter. On the other hand if a person was 21 years of age on the qualifying date, he would not grow any younger by efflux of time. These two reasons were reiterated in the judgment of Vaidialingam, J.,

and as I understand that judgment two other reasons were also advanced in support of the view taken by the Full Bench :-

- (1) That the preparation and finalisation of the electoral rolls is as much a part of the process of election as the actual casting of the votes at the poll and hence it does not matter if Article 326 of the Constitution does not say in so many words that the persons, who shall be entitled to be registered as voters at any such election, are also entitled to vote at the election,
- (2) Even if there is any seeming conflict between section 62 of the 1951 Act and Article 326 of the Constitution, the latter must prevail.

In support of the position that the votes of the persons, who were registered as electors, were not liable to be challenged during the hearing of the election petition on the ground of their not having attained the age of 21 years on the qualifying date, an argument was addressed that sub-section (7) of section 36 of the 1950 Act made a certified copy of an entry in the electoral roll for the time being in force of a constituency as a conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it was proved that he was subject to a disqualification mentioned in section 16 of the 1950 Act. This argument was repelled by the learned Judge on the basis of certain observations contained in paragraphs 12, 13 and 15 in *Brijendralal Gupta and another v. Jawalaprasad and others*². The last argument need not be examined by us because it has not been advanced before us by the learned counsel or the respondents and for the very good reason that the presumption in sub-section (7) of section 36 is only for the purpose of scrutiny of nominations of the candidates, which is not a matter at all before us. I have given my anxious consideration to the other reasons put forward by the learned Judges of the Kerala Court in support of their view and with due respect I find myself unable to agree. So far as the opening words of Article 326 of the Constitution are concerned, they appear to me to be laying down a policy which is amplified by the succeeding words of that Article. Adult is defined in the Shorter Oxford English Dictionary (1947 reprint) as meaning grown-up, having reached the age of maturity and does not necessarily have reference to a person who is not less than 21 years of age. For instance, a person who had attained the age of 18 years may, according to differing social and climatic conditions, be regarded as an adult, and it would not, therefore, be correct to say that the opening words by themselves lead to the conclusion that the right to vote is conferred on every person who has attained the age of 21 years on the qualifying date. The operative part of the Article beginning from the words "that is to say" makes it clear that the persons, who specify, these conditions, are entitled to be registered as voters at the election. The concluding words are "shall be entitled to be registered as a voter at any such election" and not "shall be entitled to be registered as a voter and to vote at any such election". It seems to me that the further, question as to, the manner in which the vote actually cast at the poll by any person, who is registered as a voter is to be challenged is left by the Constitution as a matter for legislation by the Parliament under Article 327 and in the absence of any legislation of the Parliament by the legislation of the State under Article 328. If that is so, the omission to make a provision in section 62 of the 1951 Act to any supposed invalidity of a vote on account of lack of qualification as specified in clause (a) - or for the matter of that in clause (b) - of section 19 of the 1950 Act, must be given its full significance for the reasons already given above by me. I am unable to see how the fact, that the disqualifications dealt with by sub-section (1) of section 16

can exist on the date of registration as well as arise thereafter, would at all affect the argument. The next argument, which was reiterated by the learned counsel for the petitioner, was based on the submission that the preparation and finalisation of the electoral roll were as much part of the election process as voting at the poll itself. Reliance in this connection has been placed on certain observations in the judgment of the Supreme Court *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem istrict and others*,³ ; which are to the following effects :-

"It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature."

The question before their Lordships of the Supreme Court was whether the jurisdiction of the High Court to interfere with the order of the Returning Officer rejecting a nomination paper was barred under Article 329(b) of the Constitution. The High Court had held that it had no such jurisdiction and that view was affirmed by the Supreme Court. The argument advanced on behalf of the appellant, that the word "election" used in Article 329(b) meant only the result of polling and the final selection of a candidate was repelled. A passage from page 237 of Halsbury's Laws of England (Volume 12, second edition) was quoted, which is to the following effect :-

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question, when the election begins must be carefully distinguished from that as to when 'the conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

I do not find that anything has been said in this judgment to justify the conclusion that the preparation of electoral rolls is a part of the actual process of election and as a matter of fact in a subsequent judgment of the Supreme Court *Hari Vishnu Kamath v. Ahmad Ishaque and others*⁴ , the learned Judges while approving N. P. Ponnuswami's case (supra) observed that the word "election" in Article 329(b) was used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate. These observations support the view that there is a distinct between what may be called the preparation for holding the election, an essential part of which is preparation of electoral rolls, and the process of election itself, which commences with the issue of the notification calling upon the constituency to elect a candidate. Accordingly the fact that Article 326 of the Constitution while mentioning the qualifications for being entitled to be registered as a votes does not also add that the person so qualified shall have a right to vote, cannot be considered without significance. I am, therefore, of the view that there is nothing in Article 326

of the Constitution which would enable the High Court while hearing election petitions to declare the election of a returned candidate to be void on the ground that certain persons who had voted in the election had not attained age of 21 years on the qualifying date. Accordingly, section 100(1)(d)(iv) of the 1951 Act also would be of no help to the position taken up on behalf of the petitioner. The view taken above finds support from the judgment of a Full Bench of the Allahabad High Court in *Ghulam Mohi-ud-Din v. Election Tribunal for town area Sakit and another*⁵. The point for decision before the Full Bench was whether the Election Tribunal hearing an election petition challenging the election of the Chairman of the Town Area Committee can look into the contention that the names of certain persons do not find place in the electoral rolls prepared for certain wards in the Town Area on the grounds that some of them were minors and that some did not reside within the wards concerned. This question was answered in the negative by the majority of the learned Judges constituting Full Bench, Raghubar Dayal, J., (as he then was) and M. L. Chaturvedi, J. and the order of the Election Tribunal holding that the electoral rolls were not final and conclusive for the purpose of election petition was quashed by writ of *certiorari*. The learned Judges considered the various relevant provisions of the U.P. Town Areas Act, 1914, and other U.P. statutes and the rules made thereunder as well as the provisions of the Representation of the People Act, 1951, which have been reproduced in the judgment. The statute provided that the impugned election was on the basis of adult suffrage and on the basis of the Assembly electoral rolls relating to the area comprise in the particular ward. The disqualifications for registration in the electoral rolls were also the same as in section 16 of the 1950 Act. Section 6-F of the Town Areas Act provided that every person who is for the time being entered in the electoral roll of any ward, shall be entitled to vote in that ward. Chaturvedi, J., observed as follows :-

"To my mind, it is no straining of language to say that the vote of such a person would be a lawful vote. It is true that section 6-A of the Town Areas Act lays down that the election of the members shall be on the basis of adult suffrage, and section 19 of the Representation of the People Act lays down that the minimum age for entry in the electoral roll is 21 years. But that is a matter which has been left for the authority preparing the electoral roll to decide finally.

The mere entry thus means that a person has fulfilled the necessary qualifications or conditions of enrollment and it is not open to objection at any subsequent stage, after the electoral roll has become final, that the person so entered really did not fulfil the conditions. His name being there, it must be taken that he fulfills the conditions."

The same was the view of Raghubar Dayal, J., at page 360. He observed that section 16 did not mention that a person, who had not attained the age of 21 years or did not reside in the constituency was disqualified for registration in an electoral roll of that constituency. Reference was then made by him to sections 17, 18 and 19 of the Act of 1950 and it was concluded that while a person's non-residence for the prescribed period or not attaining the age of 21 years was not a disqualification for registration but it amounted to his not being qualified to be registered. It was further observed that the disqualifications mentioned in section 16 were not identical with the absence of qualifications. Section 6-F of the U.P. Town Area Act, 1914 was in terms identical with section 62 of the 1951 Act and the conclusion was that these provisions, determine the right of a person to vote. The right to vote was not on account of his having attained a certain age or

on account of his residing in a certain constituency for the prescribed period, but was conferred by sub-section (1) of section 6-F of the Act and was simply based on the existence of his name in the electoral roll of any ward. If his name was entered in the electoral roll, his vote was prima facie a lawful vote. However, it could become unlawful for various reasons, that is, if it was made invalid by any of the provisions of sub-sections (2) to (5) of section 6-F (corresponding to sub-sections, (2) to (5) of section 62 of 1951 Act) or if it had been obtained by corrupt practices. If I may say so with respect to the reasons given in support of the view held by the Full Bench in the judgment of the two, learned Judges are equally valid so far as the point under consideration by us is concerned, Unfortunately the judgment of the Allahabad Full Bench does not appear to have been brought to the notice of the Kerala High Court in *P. Kunhiraman v. V.R. Krishna Iyer* (supra). Certain other cases were cited at the Bar by either side *Jujhar Singh v. Bhairon Lal and others*⁶, on behalf of the petitioner and *Ramdayal Ayodhyaprasad Gupta v. R.K. Patil and others*⁷, and *Mubarak Mazdoor v. Lal Bahadur*⁸, on behalf of the respondent but I do not consider it necessary to discuss them as they are not as weighty as the Full Bench judgments of the Kerala and Allahabad Courts and do not contain any reasoning which has not been considered above. In the end it is necessary to note an argument which was advanced on behalf of the respondent on the basis of section 30 of the 1950 Act. It was pointed out that the High Court while hearing an election petition is undoubtedly a Civil Court and section 87 of the 1951 Act provides that every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code, 1908, to the trial of suits. Hence by virtue of section 30 of the 1950 Act, the jurisdiction of the High Court to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency would be barred. Mr. Sibal supported this argument by reference to *B.M. Ramaswamy v. B.M. Krishnamurthy and others*⁹. This argument is on the face of it plausible but considering that by section 100 of the 1951 Act the High Court is given the jurisdiction to declare the election of a returned candidate to be void on the grounds stated in section 100(1)(d)(iii) and (iv), it would be necessary to harmonise the provisions of this section with those of section 30. It seems that when by the Representation of the People (Amendment) Act, 1966, High Court was given the jurisdiction under section 100, the consequential amendment was by inadvertence not made in section 30 so as to exclude the High Court hearing election petition from the bar to the jurisdiction of civil courts to the extent that the High Court had jurisdiction under sections 100 and 101 of the 1951 Act, and it must be held that there has been implied modification of section 30 of the 1950 Act. I would, therefore, hold for the reasons already given that the question posed in the opening part of this judgment and on which the opinion of the Full Bench has been invited must be answered in the negative.

A.N. Grover, J.

I agree.

Harbans Singh, J.

I also agree.

Cases Referred.

¹AIR 1962 Ker 190 (F.B)

²AIR 1960 SC 1049

3AIR 1952 SC 64 at p. 68
4AIR 1955 SC 233 at p. 238
5AIR 1959 All 357
67 E.L.R. 457
7 20 E.L.R. 13
8 20 E.L.R. 177
9AIR 1963 SC 458