

# NAGPUR HIGH COURT

Kanglu Baula Kotwal

Vs

Chief Executive Officer

Misc. Petns. Nos.346 and 350 of 1953, and 20, 116 and 148 of 1954

(Sinha, C.J., Mudholkar and Choudhuri, JJ.)

04.10.1954

## JUDGMENT

### **Sinha, C.J.**

1. I have had the advantage of considering the opinion prepared by my Brother Mudholkar, J. After considering the matter fully I agree with the order proposed by my learned Brother, but as I do not agree with all the conclusions and the reasons for those conclusions, I should state only my grounds of disagreement on such of his conclusions with which I do not agree.

2. It is now well settled that the right to a franchise is not an absolute one. It has got to be taken in accordance with the statute creating that right. If a right to a franchise has been conferred by statute it must be taken with all the limitations imposed by the statute on the exercise of that franchise. The right to be a voter and to be elected to a Janapada Sabha has been created by the C.P. and Berar Local Government Act (38 of 1948). It came into force on 11-6-1948. Though section 6 contemplated a Janapada Sabha to consist of elected councillors, Sub-Section (5) of that section authorized the Provincial Government (now the State Government) to appoint councillors to constitute the first Sabhas. Such councillors were appointed by the, Government in July 1948 except in certain cases. Section 12 of the Act contemplates that the normal life of a Sabha shall be five years from the date of its first meeting and that the term of every councillor constituting the Sabha shall be co-terminus with it. But the proviso to that section before its amendment by Act 8 of 1953 contemplated that such a nominated Sabha brought into existence for the first time before the elections were held continue up to such time as the Provincial Government might by notification determine. Such period has been extended from time to time between the years 1949 to 1953 until the amending Act aforesaid definitely fixed the period up to 31-3-1954, though the State Government could by notification appoint an earlier date. As the term of the nominated Sabhas got extended from time to time, electoral rolls prepared in the years 1950, 1951, and 1952 became stale in view of the provisions of section 7(1) read with rule 1(1) framed under that section. Rule 1(1) provides that the Chief Executive Officer shall start the preparation of an electoral roll for each electoral division in the rural circle six months before the date on which the term of the Sabha was to expire, unless the Provincial Government directed otherwise. I am in agreement with my learned Brother that the Provincial Government's power to

direct otherwise related only to the time when the preparation of the electoral roll was to start and that it did not authorize the Provincial Government, or the State Government now, altogether to countermand it. The learned Additional Government Pleader had argued that the expression 'six months before the date on which the term of the Sabha is due to expire' meant the original date when the nominated Sabha's term was to expire and not the dates with reference to the extended terms of the Sabhas under the proviso to section 12 referred to above. His contention was that 'due to expire' was not synonymous with 'has actually expired'. But the expression 'due to expire' has reference to a date which has yet to come, and therefore when the State Government fixed the dateline 31-3-1954 beyond which the extension could not go, that would be the date on which the term of a Sabha is to expire or such earlier date as the State Government may have by notification appointed - but which actually they have not done. In my opinion, therefore, there is no validity in the argument that the term of the Sabhas should be deemed to have been due to expire at the end of the first year from their constitution by nomination. It follows, therefore, that under Section 7(1) read with rule 1(1) made under that section, the preparation of an electoral roll should have been with reference to the date 31-3-1954. In view of the fact that by virtue of the very substantial amendments made in the Act by the Amending Act of 1953 (8 of 1953), as a result of which every Sabha has been divided into a rural circle and an urban circle and the constituency of the urban circle has been materially changed it became necessary to prepare the electoral rolls with reference to the new electoral divisions brought into existence by the Amending Act.

3. So far, there is no difficulty. But I do not agree with my learned brother in his conclusion that the effect of rules made under Section 7(1) is to provide that for every general election a fresh electoral roll has to be prepared and that a revision of the rolls was meant only for the purpose of a by-election to a Sabha. It has not been argued before us that the rules framed under Section 7(1) of the Act as to the time and manner of the preparation of the electoral roll are ultra vires of the rule-making power. We have therefore to proceed on the basis that the rules so framed have been validly made. The only question therefore is what is the true construction of those rules.

4. For the first general elections to the Sabhas after the expiry of the extended term of the appointed Sabhas as aforesaid, the rules provide that the preparation of an electoral roll for each electoral division in the rural circle shall be undertaken. Such roll has to contain the names of all persons who appear to be entitled to vote in the electoral divisions concerned, along with other descriptions so as to properly identify the voter. Three months before the date of the election the Chief Executive Officer is required to publish the electoral roll in the electoral division to which it pertains and to cause a proclamation to be made that the electoral roll had been so published and could be inspected at such places as may be named in the proclamation. Provision is also made that any person whose name has been omitted from the roll may claim to be included and any person whose name appears on the roll may object that the name of any person shown on the electoral roll should not have been so included. If such a claim or objection is made in writing and delivered to the Chief Executive Officer within 14 days of the publication of the roll and the grounds on which such claim or objection is based and the evidence in support of those grounds are specified, the Chief Executive Officer shall notify in the prescribed manner the date and place fixed for hearing the matter, calling upon the parties concerned to produce such evidence as they may think proper in support of the claim or objection lodged before him. After hearing such evidence as may be adduced by the parties and after making such further enquiry as he may deem necessary the Chief Executive Officer is required to determine the controversy, and his

orders shall be final. After such orders by the Chief Executive Officer on the claim or objection as aforesaid, the draft electoral roll has to be corrected if necessary in accordance with such orders, and the corrected electoral roll has to be published in the same manner as the draft electoral roll. Rule 6-A makes provision for any person whose name has been omitted from the finally published electoral roll and who claims to be entitled to be registered in that roll to have his name included in the roll if he makes an application accompanied by a fee of Rs. 15 at least 7 days before the date fixed for the receipt of nomination paper. If the Chief Executive Officer is satisfied after making such enquiry as he thinks fit and proper that the application was well founded he shall cause his name to be included in the roll. This provision has been made for a qualified voter to be included in the electoral roll if there has been any mistake by omission of his name from that roll. An electoral roll thus finally published and after the necessary corrections have been made in accordance with rule 6-A shall come into force from the date of republication and shall continue in force for a period of five years 'after which period the roll shall be revised', subject to the proviso 'that the Provincial Government may, by order direct the revision of the roll, in whole or in part, at any time before the expiration of the said period'. Sub-rule (2) of Rule 7 further provides that the procedure prescribed for the 'preparation' of the roll shall also apply to each subsequent 'revision' of the roll.

5. The rules thus make a distinction between the preparation of an electoral roll and the subsequent revision of the same, the former applying to the process meant for the first general election and the second to all subsequent general elections, because the maximum term of a Janapada Sabha is five years. Hence, in my opinion, with all respect to the views of my learned Brother, it is not correct to say that 'revision' of an electoral roll has reference only to a by-election and 'preparation' of a roll has reference to a general election. The rules contemplate that once the electoral roll has been prepared on a clean slate, so to speak, after the lapse of every five years, unless otherwise directed by the Provincial Government, it shall be revised, that is to say, account shall be taken of the events that have happened during the term of the five years preceding the revision; in other words, names of dead persons shall be struck out and the names put in of those persons who had attained the age of 21 on the 1st January of the year in which the electoral roll of a rural circle is prepared in terms of Section 7(2) of the Local Government Act. That the reference to a revised electoral roll is not confined to a by-election is also confirmed by the provisions of sub-rule (3) of Rule 7, which is in these terms: "If an electoral division is called upon to elect a councillor after an electoral roll has ceased to have force and before the republication of the revised electoral roll, the old roll shall, for the purposes of that election, continue to operate as the electoral roll for that electoral division."

6. Ordinarily, the term of an elected Sabha is five years. Under the rules aforesaid an electoral roll prepared for the first time on the basis of which the first general elections may be or have been held will hold good for five years, and therefore when the second or any subsequent general elections have to be held such electoral roll has to be revised for the purpose of such general elections. But circumstances may supervene and a general election may have to be held even before the lapse of five years in respect of a particular Sabha; for example, under Section 104 of the Act power has been reserved to the State Government to supersede a Sabha for reasons stated in that section. Upon such a supersession the councillors and members of the standing committees or other committees appointed by the Sabha vacate their seats, and their injunctions have to be performed by an Administrator appointed by the State Government. During such a supersession the State Government may declare by a notification its intention to reconstitute a

Sabha by virtue of the provisions of section 105 of the Act. Upon such a notification the Administrator has to take all necessary action for election and selection of councillors. The councillors thus elected and selected constitute the new 'Sabha'. Taking a hypothetical case, if a 'Sabha' is superseded only after it has functioned for a year and remains under supersession for another year and in the third year the State Government issues a notification under Section 105 for reconstituting the 'Sabha', will it be necessary to prepare a fresh electoral roll because a general election has to be held? In my opinion, the answer is in the negative. The electoral roll already prepared is still in force under Rule 7; nor will it be necessary to 'revise' the roll unless the State Government directs such a 'revision' in whole or in part.

7. It would thus appear that the expressions 'preparation of an electoral roll' and 'revision of an electoral roll' have no particular reference to a general election or to a by-election. Both these processes come under Section 7(1) of the Act, and the Rules framed under the Act make a distinction between these two processes only with reference to the time at which the process is to start. In other words, where there is no electoral roll already in existence and an election of a 'Janapada Sabha' has to be held preparation of the electoral roll has to be undertaken. If, on the other hand, an electoral roll has already been prepared for the first general election, it holds good for five years, and thereafter it has to be 'revised' on the eve of a general election to make it up to date, as already indicated.

8. Under the rules framed by the Government an electoral roll once prepared or subsequently revised holds good for five years. But it was suggested in the course of the arguments that the law contemplated creating a franchise in favour of every person who had attained the age of 21 years and that therefore at every election for a 'Janapada Sabha' fresh rolls should be prepared so as not to disfranchise persons who had attained the age of 21 years since after the preparation of the last electoral roll.

This argument can be taken to its logical conclusion to show that no electoral roll can be up to date in that sense. Hence, the legislature in S 7(2) has provided that it is not every person who has attained the age of 21 years who is entitled to be a voter. Under that sub-section the age of 21 years has reference to the 1st day of January of the year in which the electoral roll of a rural circle is prepared. The legislature, therefore, contemplated that between two general elections the normal period would be five years, but in certain exceptional cases it may be a shorter period. The rules therefore provide for the preparation or revision of an electoral roll once every five years, unless otherwise directed by the State Government. Almost every month, if not every day, persons may be attaining the age of 21 years, but that does not 'ipso facto' make that person entitled to be a voter. The age of 21 years is the minimum prescribed as a qualification to be a voter; but that does not mean that every one who has attained that age must necessarily be on the electoral roll. Hence, ideally speaking, only that electoral roll can be said to be up to date which provides for a revision of the roll every month or every year. But the rule-making authority, taking into consideration the labour and expense involved in preparing or revising an electoral roll, has laid it down that such a roll shall be prepared once every five years. That being so, persons attaining the age of 21 years after the 1st of January of the year in which an electoral roll has been prepared have ordinarily to wait for about five years in order to be enrolled as voters. But that does not mean that they have been disfranchised; that only means that they had not qualified for enrolment as voters with reference to a particular date. The rules framed by the Government under its rule making power thus contemplate preparation or revision of an electoral roll only periodically, that is to say, once in five years, overlooking special cases when such a revision may be ordered even earlier. Hence, it cannot be said that if a person has to wait for

about five years after attaining the age of 21 he has been denied the franchise under Section 7(2) of the Act.

9. I should also say something about the order of this Court in Miscs. Petn. No.382 of 1953, D/-8-1-1954, to which I was a party. I entirely agree with my learned Brother that the order of this Court in that case was never meant to be a precedent. The application in that case was dismissed without notice to the other side, because in the circumstances of that case the Bench dealing with the matter did not feel called upon to exercise its special powers under Article 226 of the Constitution. Ordinarily, an order passed without notice to the respondents means that the matter is being summarily dismissed in view of all the circumstances of the case. If the Court had felt the need for laying down a precedent it would certainly have issued notice to the respondents and after hearing the matter in all its bearings and aspects come to a decision, which may have been used as a precedent. An order passed summarily rejecting a case is not therefore intended to serve as a precedent which should be binding on the Court in other cases; and the Bench dealing with - '*Mathuraprasad v. Chief Executive Officer, Janapada Sabha, Bemetara*', the judgment in which has been almost reproduced in the opinion of my learned Brother, was, with all respect, perfectly justified in not treating the order in the earlier case referred to above as a precedent binding upon the Bench. Our observations, therefore, in the earlier case were not by any means intended to be an authoritative decision and as such binding upon another Bench as a precedent.

**Choudhuri, J.**

10. I agree with the order proposed and the reasoning adopted by my learned Brother Mudholkar, J.

**Mudholkar, J.**

11. This order will also govern Misc. Petns. Nos.350 of 1953, 20 of 1954, 116 of 1954 and 148 of 1954

12. The main argument advanced in these petitions is on two points which are similar to those urged in AIR 1955 NUC 148 (Nag) (B). The first point is that the elections of such of the respondents as were candidates for election to certain Janapada Sabhas are vitiated because those elections were held on the basis of electoral rolls which were prepared for different constituencies. The second point is that they were vitiated because they were held on the basis of electoral rolls which had been rendered obsolete as they were not prepared within six months of the date on which the term of the Sabha was due to expire.

13. In order to appreciate the points it is necessary to refer briefly to the relevant provisions of the C.P. and Berar Local Government Act, 1948, under which the elections have recently been held all over the State of Madhya Pradesh, excepting places where they were stayed by the order of this Court. It is further necessary to refer to the course of events which occurred after the passing of the aforesaid Act.

14. The Local Government Act received the assent of the Governor of the C.P. and Berar on 30-5-1948. It came into force on 11-6-1948. On 1-7-1948, the first Janapadas came into being. They were constituted under Section 6(5), of the Act which runs as follows:

"Notwithstanding anything to the contrary contained in sub-sections (1), (2) and (3) the councillors of a Sabha constituted for the first time shall be appointed by the Provincial Government from amongst persons residing in the Janapada area and not disqualified for being a councillor under section 10".

In the proviso to Section 12 (1), of the Act, as it was originally passed, the term of Janapada Sabha constituted under sub-sec.5, of Section 6, was to be for such period as the Provincial Government may by notification appoint. Under this provision the term of the first Janapada Sabha constituted was to be for a period of one year only, but the term was extended by the Government from time to time in exercise of their powers under the aforesaid provision. By Act 8 of 1953, however, the proviso was amended and the words "up to the 31st day of March 1954 or such earlier date" were substituted for the words "for such period" occurring therein. No earlier date was fixed by the State Government and therefore the term of every Janapada Sabha expired on 31-3-1954.

15. Section 182 of the Act confers upon the Provincial Government (now the State Government) the power to make rules with regard to various matters including the time and manner of the preparation of the electoral roll of a Sabha. The qualifications and disqualifications of voters were dealt with in section 7 of the Act which ran thus:

"7(1) A person shall not be entitled to vote at an election for the election of councillors unless he is enrolled in the Janapada electoral roll prepared under the rules made by the Provincial Government under Section 182.

(2) Every person who has attained the age of 21 years on the 1st day of January of the year in which the electoral roll for the Janapada has been prepared and who resides within the limits of any circle in the Janapada shall be qualified to be a voter for the purpose of electing councillors of a Sabha;

Provided that no person shall vote to elect a representative in more electoral divisions than one in the same circle.

X X X".

This section was, however, repealed and substituted on 29-5-1953 by the following provision:

"(1) The Chief Executive Officer of every Sabha shall cause to be prepared a separate electoral roll, one for the rural circle and another for the urban circle, in accordance with the rules made by the State Government under section 182.

(2) Every person who is not less than 21 years of age on the 1st day of January of the year in which the electoral roll of the rural circle is prepared and who resides within the limits of the rural circle of the Janapada shall be entitled to be enrolled in the electoral roll of such circle, and be qualified to be a voter for the purpose of electing a councillor from an electoral division of such circle.

Provided that no person shall vote to elect a representative in more electoral divisions than one in the same circle.

(2-a) Every person who is a member of a municipal committee or a Notified Area Committee comprised in an urban circle and who resides in such circle shall be entitled to be enrolled as a voter in the electoral roll thereof and be qualified to be a voter for the purpose of electing councilors from that circle".

The duty to prepare electoral rolls was not expressly cast on the Chief Executive Officer by the section as it stood before its amendment but only by Rule 1 (1), of the Rules framed under Section 182 (2), (IV). By virtue of amendment of Section 7, the duty is cast on the Chief Executive Officer by the Act itself to prepare the electoral rolls in accordance with the rules made by the State Government under Section 182.

16. By sub-rule (1) of Rule 1, of the aforesaid Rules the Chief Executive Officer of the Sabha is required to start the preparation of an electoral roll for each electoral division in the rural circle six months before the date on which the term of the Sabha is due to expire. The first rolls for the electoral divisions were prepared in June 1951. They were with reference to 1-1-1951, as the qualifying date. Eventually they were corrected with reference to 1-1-1952 as the qualifying date and published in the manner laid down in the Rules.

17. Subsequent to the publication of the rolls, several provisions of the Local Government Act were substantially amended. Section 3 (1) of the Act provides that the State shall be divided for the purposes of Local government into administrative areas to be known as Janapadas. Sub-sec. (2) of Section 3, provides that a Janapada shall be divided into circles, being an urban circle or a rural circle. Sub-sec. (6), as it stood originally, provided that the State Government shall by a notification constitute Janapadas, urban and rural circles and electoral divisions. This provision has been deleted and in its stead the following has been substituted: "The State Government shall, by a notification, constitute:

- (i) Janapadas,
- (ii) rural circles in each Janapada, and
- (iii) electoral divisions in a rural circle".

The following directions were enumerated in sub-sec. (7) of section 3 of the Act as originally framed while constituting an electoral division. They are:

"In the constitution of an electoral division, the following directions shall, so far as is reasonably practicable, be observed:

- (a) the divisions shall be arranged with a view to the population of each division being approximately equal due regard being had to area, to a proper representation of the population of both the rural and urban circles;
- (b) in an urban circle every division shall consist of one or more wards as may be prescribed into which a municipal or notified area is divided for the purpose of municipal election; and
- (c) in a rural circle every division shall consist of one or more villages and shall not intersect, so far as may be, the administrative division for the time being for revenue and land record purposes".

This sub-section was amended in 1953. Sub clause (b) was omitted, and the following have been substituted for the directions (a) and (c):

"(a) the divisions shall be arranged with a view to the population of each division being approximately equal, due regard being had also to the area; and (c) a division may consist of a village or a group of villages including parts of villages where such parts lie outside municipal areas and shall not intersect, so far as may be, the administrative division for the time being for revenue and land record purposes."

18. The Amending Act of 1953 enacted Section 3A and 3B which conferred express power on the State Government to alter the limits of a Janapada. It will be useful to reproduce these provisions :

"3-A (1). The State Government may, by notification, signify its intention:

- (a) to alter the limits of a Janapada by including within it any local area in the vicinity of the same or by excluding from a Janapada any local area comprised therein; or
- (b) to amalgamate two or more Janapadas and constitute one Janapada in their place; or
- (c) split up a Janapada and to constitute two or more Janapadas in its place.

(2) Every such notification shall define the limits of the local area which is intended to be included in or excluded from a Janapada, or of the area of the Janapada intended to be amalgamated into one, or of the area of each of the Janapada intended to be constituted after splitting up an existing Janapada, as the case may be.

3B(1). Any inhabitant of the Janapada or the Janapadas concerned may, if he objects to anything therein contained, submit his objection in writing to the State Government within sixty days from the date of the publication of the notification, and the State Government shall take his objection into consideration.

(2) When sixty days from the date of the publication of the notification have expired and the State Government has considered and passed orders on such objections as may have been submitted to it, the State Government may, by notification,:

- (a) include the local area or any specified part thereof in the Janapada, or exclude it therefrom; or
- (b) constitute a new Janapada in the place of the Janapadas amalgamated; or
- (c) split up an existing Janapada and constitute two or more Janapadas in its place, as the case may be."

The effect of the alteration of the limits is given in Section 3C of the Act. That provision reads thus:

'3C(1) Where a notification under section 3B has been issued altering the limits of a Janapada, the following consequences shall ensue, namely:

- (a) the Sabha existing on the date immediately preceding the date on which the said alteration takes effect shall be deemed to be the Sabha constituted under the Act for the altered area and, subject to the provisions of clauses (b) and (c), the councillors holding

office on the date the alteration takes effect shall be deemed to be the councillors of the Sabha so deemed to be constituted and their term of office shall be for the unexpired term of such Sabha;

(b) where as a result of the alteration any area is excluded from one Janapada and included in another Janapada, the State Government shall determine to which Sabha the councillors representing such area shall belong, regard being had to the following principles, namely:

(i) where the area concerned forms one or more whole electoral divisions, the councillor representing every such division shall be assigned to the Sabha in which such area is included;

(ii) where the area concerned forms one or an electoral division, the councillor representing such division shall be assigned to the Sabha to which the majority of the voters of that division belong as a result of the alteration;

(c) where under clause (b) a councillor of the Sabha of a Janapada is assigned to the Sabha of another Janapada, he shall cease to be a councillor of, and shall be deemed to have vacated any office held by him in the first mentioned Sabha:

x x x"

19. The effect of amalgamation of a Janapada is given in Section 3D and the effect of splitting up of a Janapada in Section 3E. We are not concerned in these cases with either of these matters. These provisions need not, therefore, be reproduced in this order.

20. In exercise of the powers conferred by Section 3A, the boundaries of a number of Janapadas in different districts of Madhya Pradesh, including Durg, Hoshangabad and Bilaspur, were altered. By notifications published in the official Gazette the State Government have in the case of most of the Janapadas to which the present petitions relate taken away some villages from their limits and transferred them to other Janapadas. Similarly, they have incorporated into them villages from other Janapadas. Further, the number of electoral divisions in some Janapada areas has altered as also the composition of several electoral divisions. The result of these alterations is, according to the petitioners, that the rolls originally prepared have become obsolete and therefore no elections could be properly held on their basis. It is pointed out that by holding elections on the basis of those electoral rolls a large number of voters have been deprived of the right to vote at the elections as their names could not find place in the electoral rolls either because the villages in which they resided were not within the limits of a particular Janapada when the rolls were prepared or because they had not attained the age of 21 on 1-1-1952 though they had attained that age on 1-1-1953. For these reasons the petitioners contend that the elections must be regarded as void.

21. On behalf of the respondents a preliminary objection has been raised to the effect that the proper remedy for the petitioners was by way of an election petition and that this Court ought not to grant them any writ, direction or order under Article 226 of the Constitution.

22. I will assume for the purposes of these cases that it is open to the petitioners to file an election petition though I doubt whether in view of the rules made under Section 182(2) (xi) it is possible

for the petitioners to obtain the relief they now seek in the election petition. In support of the argument that a remedy by way of a writ is excluded reference was made by - *Shri Hazarnavis to Reg v. Miles*<sup>2'</sup>, '*Commr. for Local Govt. Lands and Settlement v. Abdulhusein*<sup>3'</sup>, and '*Ryots of Garabandho v. Zemindar of Parlakimedi*<sup>4'</sup>, These cases merely lay down that issue of a writ of mandamus or 'certiorari' is in the discretion of the Court and where another remedy is open, the Courts should not, ordinarily, interfere but not that they cannot interfere. Again, it cannot be disputed that the powers of this Court under Article 226 are untrammelled by a law made by the Legislature and even though section 22 of the Local Government Act says that elections can be challenged only by way of an election petition before a Tribunal created by the Act, the jurisdiction of this Court which is derived from the Constitution can in no way be affected. The proposition is so obvious that no authority is needed to support it. But as a different view has been expressed in some cases, it would be well to refer to the decision of the Supreme Court in - '*Raj Krushna v. Binod*<sup>5'</sup>, which arose out of a case under the Representation of the People Act, 1951.

23. No doubt, this Court has held in several cases that where another remedy which is equally convenient is open to a person it would not ordinarily interfere. But neither this Court nor the Supreme Court has held that the existence of another remedy is, in every case, a bar to the exercise of the powers of a High Court under Article 226. On the other hand, the view is well settled that there is no such bar and that the Court can interfere if the circumstances of the case demand interference. In the present cases there are substantial grounds for interference. In the first place, the point which has been raised is of a fundamental character and affects a large number of election disputes. In such a case it would avoid conflict of decisions and consequent uncertainty of law or the legal position if an authoritative decision is given by the highest tribunal in this State. Secondly, these very questions were argued before this Court at least on two previous occasions on which two different views were taken and it is necessary for this Court to express itself again and say finally which of the two views is correct. Finally, I may point out that though the respondents had raised a preliminary objection as to the tenability of the petitions we heard counsel on the merits of the petitions for several days. The time spent on this case will have been wholly wasted if we were to say now, in all solemnity, that another remedy being open to the petitioners we would not interfere though we are in fact satisfied that their grievance is correct.

24. Before leaving this point it is necessary to refer to certain points urged by Shri Hazarnavis. He said that the right given to the voters is only to claim damages against the persons who deny them the right to exercise their franchise or to file an election petition and that therefore they could not come to this Court under Article 226 of the Constitution. Apart from the fact that some candidates were also petitioners in this Court, it is sufficient to say that the right of a voter is not limited to claim any damages and that this Court has, as already pointed out, ample powers to act under Article 226 of the Constitution even though election petitions were tenable.

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

was no way open to the petitioners at an earlier stage to challenge the electoral roll.

26. Then the learned counsel said that the Deputy Commissioner and the supervising officers have not been made parties and so the petition is defective. I do not think that there was any necessity for making these persons parties to the petition because no relief was claimed against them.

27. The objections of the respondents on the fundamental question are that what was done by the Chief Executive Officers in all these cases was according to law, that no prejudice has resulted to the petitioners and that therefore there was no occasion for this Court to grant any writ to them.

28. In order to ascertain whether what was done was according to law, I must first consider whether there was any duty cast on the Chief Executive Officers to prepare fresh electoral rolls after the constituencies were regrouped. Sub-sec. (1) of section 7 as amended by the Act of 1953, which I have reproduced earlier, clearly shows that a duty has now been cast upon the Chief Executive Officer of a Sabha to prepare a separate electoral roll, one for the rural circle and another for the urban circle. Before the amendment, the law required that there should be only one electoral roll for a Janapada area. Such a roll had actually been prepared. After the amendment, two electoral rolls had to be prepared for each Janapada area, one for the rural circle and another for the urban circle. Such rolls could only be prepared after following the procedure laid down in the rules made by the State Government under Section 182(2) (iv) of the Local Government Act. Despite the amendment no such rolls have yet been prepared.

29. The first rule reads thus:

"1(1) The Chief Executive Officer of a Sabha shall 'unless otherwise directed by the Provincial Government,' start the preparation of an electoral roll for each electoral division in the rural circle six months before the date on which the term of the Sabha is due to expire. (underlining (here in ' ') is mine).

(2) Every such roll shall contain the names of all persons who appear to be entitled to vote in the electoral division for which the roll is under preparation."

Reliance is however placed on behalf of the respondents on the words "unless otherwise directed by the Provincial Government" occurring in sub-rule (1) of Rule 1. It is said that there was a specific direction by the State Government not to prepare a fresh roll and that the omission of the Chief Executive Officer to prepare a fresh electoral roll did not amount to the contravention of Rule 1.

30. In support of a similar argument advanced in AIR 1955 NUC 148 (Nag), reliance was placed on behalf of the State on two memoranda issued by the State Government on 28-1-1953 and 21-9-1953 respectively. That argument was not specifically repeated here but even so I think it desirable to recapitulate what was said in that case. The first memorandum was dated 28-1-1953. It is clear from its contents that it referred to the elections which were to be held in May 1953 but which were eventually postponed. It may be mentioned that the Amending Act which introduced Section 3A to 3I was enacted long after this memorandum was issued. The other memorandum on which reliance was placed was dated 21-9-1953. The subject to which it relates is 'Change of limits of the Janapada Sabhas and Election Programme.' It is clear from this memorandum that

the final resolution of the Government regarding the change of limits of the Janapada areas and rural circles had yet to be published and the date of the election had also to be fixed. No doubt it is stated in this memorandum that the electoral rolls which had been published in the year 1953 would continue in force and that it was not necessary to prepare fresh rolls. That however was premature because on that date it was not possible to say which electoral divisions (for which the old rolls had been prepared) would continue to exist and what villages would be comprised in a particular electoral division.

31. A further argument of the learned Additional Government Advocate on this point was that electoral rolls for a Janapada area can be prepared only once, that the rules 1-5 applied only to such rolls, that is the rolls prepared for the first time, and that once such rolls have been prepared the only thing that the Chief Executive Officer is empowered to do is to revise the rolls under Rule 7. This argument is also without substance. I have already given my reasons for the view that sub-rule (1) of Rule 1 casts a duty on the Chief Executive Officer to start the preparation of an electoral roll for each electoral division in the rural area six months before the date on which the term of the Sabha is due to expire. This means that for every general election a fresh electoral roll has to be prepared.

32. It is however said that Rule 7(1) clearly shows that after a roll is prepared under Rule 1 and finally published under Rule 6 it can only be revised and that too after five years. No doubt, sub-rule (1) of Rule 7 says that an electoral roll republished under Rule 6 will continue in force for a period of five years from the date of its republication. This provision however must be read subject to the provisions of Rule 1(1), otherwise those provisions would be defeated. It cannot be assumed that the State Government in framing Rule 7(1) intended to defeat not only the rule made by it but also the provision of the statute. Thus interpreted, the electoral roll republished under Rule 6 will continue in force for five years unless in the meantime the term of the Sabha is due to expire in which case a fresh electoral roll should be prepared within six months of the date on which the term of the Sabha is due to expire.

33. It is no doubt true that sub-rule (1) of Rule 7 provides that after the expiry of five years the rolls shall be revised. It is argued on the basis of this that that is the only thing which can be done on the expiry of five years and that no fresh rolls need be prepared even after the expiry of five years. In my opinion, to construe the rule in that way would again be rendering the provisions of sub-rule (1) of Rule 1 nugatory. The only way in which Rule 7 (1) can be reconciled with Rule 1(1) is by saying that the operation of the rule could be limited to cases and circumstances which fall outside sub-rule (1) of Rule 1. I may also point out as was pointed out in AIR 1955 NUC 148 Nag, that the object of enacting this sub-rule was to make a provision for the revision of the rolls for the purpose of a by-election to the Sabha.

34. Even if it is held that effectiveness for five years is given to an electoral roll by Rule 7(1), the roll there contemplated is one prepared under Rule 1(1) and republished under Rule 6. Where the original roll has been augmented without following the procedure laid down by the law no question of effectiveness at all arises.

35. The roll prepared under the Act must be a roll prepared for a particular division. If the division has been altered how can the roll prepared for the original division be regarded as the roll for the altered division? It must be remembered that there cannot be an electoral roll apart

from an electoral division, that is to say, the roll must appertain to an electoral division. Therefore, the moment a division is formed an obligation arises under Rule 1 to have a roll prepared. Where the Chief Executive Officer adds the name of some voters in the roll or removes some names from the roll there is in fact a revision of the electoral roll. Where such revision is in contravention of Rule 7 it is wholly void. It follows, therefore, that elections held on the basis of the rolls so revised are also void.

36. On this point Shri Hazarnavis argued that the requirements of Rule 1(1) framed under Section 182 (2) (iv) are not rigid, that it is not obligatory on the Chief Executive Officer to prepare a fresh electoral roll six months before the expiry of the term of a Janapada and that the elections held on the basis of the rolls prepared more than six months before the expiry of the term of a Janapada are not rendered invalid. A duty to prepare, an electoral roll has been cast on the Chief Executive Officer by Section 7(1) of the Act. The time for the preparation of such a roll is prescribed by sub-rule (1) of Rule 1. The language of the sub-rule clearly indicates that the duty had to be undertaken within six months from the date on which the term of the Sabha was due to expire. The provision does not seem to give any discretion to the Chief Executive Officer and consequently I cannot accept the argument that the provision is not a rigid one.

37. The other arguments advanced before us were similar to those advanced in AIR 1955 NUC 148 Nag, and since I was a party to the judgment I take the liberty of quoting freely from what was said in that case:

"We would also like to point out that the words 'unless otherwise directed by the Provincial Govt. (State Govt.)' occurring in Sub-Rule (1) of Rule 1 qualify the words 'start the preparation of an electoral roll for each electoral division in the Janapada area six months before the date on which the term of the Sabha is due to expire.' That is to say, the State Government can direct the Chief Executive Officer to prepare electoral rolls at any time before the date on which the term of a Sabha is due to expire but they cannot direct him 'not' to prepare a roll at all. As we read sub-rule (1) of Rule 1, there is no power in the State Government to dispense with the preparation of a fresh electoral roll for holding a general election for a Janapada Sabha whose term is due to expire. The duty to prepare an electoral roll has been imposed on the Chief Executive Officer by sub-sec. (1) of Section 7 of the Act. The time and manner in which it is to be discharged can alone be the subject of the rules made by the State Government. Whether to prepare a roll or not prior to holding a general election is not a matter which is permitted by sub-sec. (1) of section 7 to be determined in accordance with the rules made by the State Government. The same conclusion is reached if one were to look at clause (iv) of sub-sec. (2) of Section 182 of the Act under which Rule 1 and several other rules have been made. That clause enables the State Government to make rules only 'as to the time and manner of the preparation of the electoral roll of a Sabha under Section 7, Sub-Section (1)'. If any rule framed by them was in excess of this power, it would contravene this provision as also sub-sec. (1) of Section 7. The principle of law is to interpret, as far as possible, every rule as being in consonance with the parent provision of the Act and the rule making power conferred by the Act. Where such a course is not possible it will be the duty of the Court to hold the rule to be 'ultra vires.' But if the rule is ambiguous and open to two constructions, one of

which is in consonance with the parent provisions in the Act and the rule-making power, then it is the duty of the Court to so construe the rule as being in consonance with the provisions of the Act and the rule-making power. It is in that way that we construe the rule. Moreover, prior to the amendment of Section 7 there was one common roll for the rural and urban circles comprised in a Janapada area. After the amendment, separate rolls are required to be prepared for each electoral division of a rural circle and for each urban circle. This requirement being statutory had to be complied with in the manner laid down in the statute that is by preparing fresh rolls under Rule 1 and not by splitting up existing rolls into rolls for rural circles and rolls for urban circles.

Apart from that the electoral roll contemplated by sub-sec. (1) of section 7 as well as by Rule 1 must refer to the entire constituency. Where the limits of a constituency have changed it would necessarily follow that there must be a revision of the electoral roll even though neither Rule 1 nor sub-sec.1 of section 7 expressly requires this to be done. It must however be inferred from these provisions that such a revision is essential.

Again, Section 7(2) in express terms confers a right on every person residing in a rural circle who has attained the age of 21 years on the 1st of January in the year in which the electoral roll for the circle is prepared to have himself enrolled in that roll. True, under Rule 7 a roll once prepared is good for five years but that provision only relates to by-elections and does not exempt the Chief Executive Officer from complying with the provisions of Rule 1 which requires him to prepare fresh rolls six months prior to the date on which the term of a Janapada is due to expire.

The right conferred by Rule 7 (2) cannot be defeated or taken away by any action or inaction on the part of the Chief Executive Officer, the State Government or any other authority. The Government have undoubtedly been given a power to alter the limits of the Janapada area and electoral divisions but no power has been conferred upon them to take away the franchise of the persons who are entitled to vote during the elections. The condition precedent to the exercise of the franchise by a person is the inclusion of his name in the electoral roll. Where a roll is antiquated, a person, even though he may have reached the age of 21 on the date of the election, may be debarred from voting. It is in order to avoid a virtual disfranchisement of voters who have become qualified to be enrolled after the electoral roll is prepared that the rule contemplates the preparation of a fresh electoral roll six months prior to the date on which the term of a Sabha is due to expire.

On behalf of the respondents it is said that there is provision in Rule 6A (which was added to the rules made under clause (iv) of Section 182(2) of the Act after the amendment of the parent Act in the year 1953) which enables a person to have his name included in an electoral roll if he is entitled to be registered therein. That rule reads thus:

'(6-A) Any person whose name is not included in the electoral roll of an electoral division for the time being in force and who is entitled to be registered therein may, at any time after the roll is finally published and seven days before the date fixed for receipt of nomination apply to the Chief Executive Officer, for an amendment of the roll by the

inclusion of his name therein, and if the Chief Executive Officer is satisfied, after such enquiry as he thinks fit, that the applicant is entitled to be registered therein, he shall cause the amendment of the electoral roll by inclusion therein of an entry relating to the applicant;

Provided that an application under this rule shall not be entertained unless it is accompanied by a fee of Rs. 15 which shall in no case be refunded.'

In the first place, this rule postulates the existence of an electoral roll properly made under Rule 6. Then again it does not contain any provision for deletion of a name from a roll. Further, in so far as it requires every person to pay Rs. 15/- as a condition for the inclusion of his name in the electoral roll it is an onerous provision. For all these reasons it cannot be regarded as an alternative mode for carrying out the provisions of section 7(1) and Rule 1.

Then again where the name of a person is already included in an electoral roll of a particular division, he cannot properly be asked to have resort to Rule 6-A of the Act and to have his name transferred to another electoral division because the village in which he lives has been subsequently included in that division. It stands to reason that where the composition of a constituency undergoes a modification the preparation of a fresh electoral roll becomes essential even though under Rule 7(1) a roll once prepared is to hold good for five years. That rule, where it applies, must relate to the roll in respect of the constituency as it existed on the date of the publication under Rule 3. If the roll prepared was with respect to a constituency having a particular composition, it cannot be regarded as the electoral roll for a constituency bearing the same name but having a different composition.

It was then urged on behalf of the respondents that after the alteration of the limits of a Janapada area or an electoral division, the names of the voters were transferred from one area to another and that every person whose name was already on an electoral roll could exercise his franchise even though not necessarily in the same electoral division, or in the same Janapada area, and could elect a councillor. The learned counsel for the respondents was however unable to point out any provision in the Act or rules under which the Chief Executive Officer could transfer voters from one roll to another. Indeed, such transfer is a contravention of Rule 7 on which reliance is placed by them. By making the transfers the Chief Executive Officer brought into existence new electoral roll without complying with the provisions in this regard. The rolls were not even published after the alterations were made as required by Rule 3 nor the procedure laid down in Rules 4 to 6 followed. No elections can, therefore, properly be held on the basis of such rolls. The only course open in such a case would be to prepare fresh rolls and publish them in the manner laid down in the rules. Thus the admission of the counsel that there had been a transfer of the voters from one roll to another is a further circumstance which would invalidate the elections in AIR 1955 NUC 148 (Nag), and entitle the petitioners in the other petitions to a writ of mandamus against the respective Chief Executive Officers, for the preparation of fresh electoral rolls and to hold elections on the basis of such rolls.

Prior to the amendment of the law in the year 1953, voters in an urban area, who were residents of that area, could directly elect their representative to the Janapada Sabhas. Consequent on the amendment of the law, a representative of an urban area is elected indirectly by the members of the municipal committee or a Notified Area Committee. Under the old law the requirement of a candidate for election as a councillor was that he shall be a resident within the Janapada area and shall be enrolled as a voter on the electoral roll for any electoral division in such area. Therefore, a person residing in an urban area could stand for an election from any division in a rural area and 'vice versa'. Now, however, this is not permissible. The amended section 8 requires that a candidate for election as a councillor from a rural circle shall be a resident of such rural circle and a candidate for election as a councillor from an urban circle shall be a resident of such urban circle. Where the right to vote is materially affected by a change in the law the need to prepare fresh electoral rolls becomes all the greater".

38. The learned Additional Government Advocate then referred to Sections 3C, 3D and 3E of the Act and contended that these provisions clearly indicated that the rolls which were prepared before the alteration of the limits of a Janapada or before the amalgamation of or splitting up of a Janapada, will hold good for the new Janapada. He said that this inference is clear, in particular from the provisions of section 3C. I have reproduced Section 3C earlier and now I would proceed to examine this provision in detail.

39. Section 3C (1) (a) provides that the Sabha existing on the date of the alteration of the limits shall be deemed to be the Sabha constituted under the Act for the altered area. Further according to this provision, the councillors holding office on the date of the alteration shall be deemed to be the councillors of the new Sabha subject to the provisions of Clauses (b) and (c) of sub-sec. (1). Clause (b) says that where on the alteration of the limits of a Janapada certain area is excluded therefrom and included in another Janapada, the State Government shall determine to which Sabha the councillors representing such area shall belong. In determining this, the State Government is required to determine two principles. The first is that where the area concerned forms one or more whole electoral divisions, the councillor representing every such division shall be assigned to the Sabha in which that area is included. The other principle is that where the area concerned forms a part of an electoral division, the councillor representing such division shall be assigned to the Sabha to which the majority of the voters of that division belong as a result of the alteration. Clause (c) provides that where a councillor of the Sabha of a Janapada is assigned under clause (b) to the Sabha of another Janapada, he shall cease to be a councillor of the Sabha of which he was originally a member.

40. No doubt, Section 3C provides for the transfer of a councillor from one Janapada to another where as a consequence of the alteration of the limits of a Janapada the electoral division which the councillor represented was transferred wholly or substantially to another Janapada. There is however not a word in Section 3C for the transfer of the voters from the roll of one constituency to that of another constituency, or for the transfer or the electoral roll of a division from one Janapada area to another Janapada area. Sections 3D and 3E are not relevant in this case for there is nothing in either of these provisions permitting transfer of voters from one roll to another or permitting transfer of the electoral roll of a division from one Janapada area to another. Thus, the

provisions on which the learned Additional Government Advocate has relied instead of helping him lend support to the contention of the petitioners that wherever there is an alteration of the boundaries preparation of fresh rolls becomes obligatory.

41. I may further point out that the provisions of Sections 3C, 3D and 3E as also the subsequent provisions, 3F to 3I are consequential provisions and apply to a Janapada effected or coming into being as a result of the action of the State Government under Section 3B. Thus, in so far as a councillor is concerned what the consequential provision, Section 3C (1) (b) (ii), provides is that he shall be assigned to the Sabha to which the majority of the voters of that division belong as a result of the alteration. It does not mean that where a fresh election is to be held subsequent to the alteration of the boundaries that election has to be held on the basis of the electoral roll for the constituency which has ceased to exist or which has been altered by a deletion or amalgamation of another area. This provision thus does not assist the respondents.

42. It is argued on behalf of the State Government that because the Government can transfer areas from one Janapada to another and a councillor from one Janapada to another it can also transfer the names from one electoral roll to another. There is no doubt that the Government has been given power to transfer areas from one Janapada to another and one of the consequences of such transfer is that the councillor would under certain circumstances be transferred from one Janapada to another. There is, however, as I have already pointed out, no provision for the transfer of the names of the voters from one electoral roll to another. I am afraid such a consequence cannot be inferred as suggested by the learned Additional Government Advocate.

43. Another argument advanced by him was that all things done before the alteration of the limits were preserved by Section 3A to 3I, and therefore the old rolls must also be deemed to be preserved. For one thing, every thing that was done before the alteration of the limits of a Janapada is not preserved. In fact, Sections 3C, 3D, 3E and 3F clearly indicate the contrary. There is thus no room for the presumption that the old rolls were intended to be preserved even where the limits of a Janapada area were altered and in consequence the limits of the constituency were also altered.

44. The argument of the learned Additional Government Advocate that as a consequence of the alteration of the limits of a Janapada there was automatic transfer of voters from one electoral roll to another cannot be countenanced. Moreover, there is no express provision in that regard in the Act.

45. I will now refer to the decision in Misc. Petn. No.382 of 1953, D/-8-1-1954 (Nag) (A) which contains certain observations which are not followed by this Court in AIR 1955 NUC 148 (Nag) (B). Concerning this case the Court observed:

"The petitioner in that case was the candidate for election to a Janapada Sabha in the Raipur district. His grievance was that he could not stand for the Bindranwagarh Janapada because consequent on the splitting up of the old Mahasamund Janapada area into two areas and that he could only stand for election for the Mahasamund Janapada Sabha. One of the arguments advanced on his behalf was that after the old Mahasamund Janapada area was split into two Janapadas separate electoral rolls were not prepared for each of

those two Janapadas".

Dealing with the contention, the learned Chief Justice and Hidayatullah, J., observed:

"In our opinion, there is no rule which requires that where electoral rolls are ready and the Janpad area is split into two parts there must be fresh electoral rolls prepared before the elections can be held".

However, the grounds on which the petition was rejected are set out thus in paragraph 10 of the order:

"Since the petitioner has already filed his nomination paper for election, he must be deemed to have taken a chance at the forth-coming elections. It is too late now to enter into the subtleties of the arguments and to hold up the forthcoming election indefinitely. If there was no remedy other than this, we would have considered the petition; but, as already pointed out, the petitioner has a remedy by way of an election petition; and in the circumstances, regard being had to the delay already involved and that the main arguments do not appeal to us, we see no justification for issuing a notice and staying the election".

It will thus be seen that the petition was not dismissed on the ground that fresh electoral rolls were not required to be prepared but on the grounds of delay and the existence of an alternative remedy. Since the other observations of the learned Judges quoted earlier were not the foundation of their decision, they must be regarded as 'obiter dicta'. Such 'dicta' cannot be regarded as a precedent binding in subsequent cases. This Court was thus justified in not following them while deciding AIR 1955 NUC 148 (Nag) .

46. The rule for determining the 'ratio decidendi' of a case is stated thus by Professor John Chipman Gray at page 261 in the Nature and Sources of the Law (2nd Edn. 1921) and quoted at page 193 of Jurisprudence in Action:

"It must be observed that at the Common Law not every opinion expressed by a Judge forms a Judicial Precedent. In order that an opinion may have the weight of a precedent, two things must concur: it must be, in the first place, an opinion given by a judge, and, in the second place, it must be an opinion the formation of which is necessary for the decision of a particular case; in other words, it must not be 'obiter dictum',".

Allen in his Law in the Making has set out at page 227 certain well-recognized principles of interpretation which have been accepted by the Courts in England. Of the five principles set out by him, the second is as follows: "Any judgment of any Court is authoritative only as to that part of it, called the 'ratio decidendi', which is considered to have been necessary to the decision of the actual issue between the litigants. It is for the Court, of whatever degree, which is called upon to consider the precedent, to determine what the true 'ratio decidendi', was. In the course of the argument and decision of a case, many incidental considerations arise which are (or should be)

all part of the logical process, but which necessarily have different degrees of relevance to the central issue. Judicial opinions upon such matters, whether they be merely casual, or wholly gratuitous, or (as is far more usual) of what may be called collateral relevance, are known as 'obiter dicta', or simply 'dicta', and it is extremely difficult to establish any standard of their relative weight". The learned author then referred to the attempt of Vaughan, C.J., to assess the true nature and value of such 'dicta' and after stating that much depends on the source of the 'dictum', the circumstances in which it was expressed, and the degree of deliberation which accompanied it, quoted the following from the judgment of Lord Sterndale M.R. in - '*Slack v. Leeds Industrial Cooperative Society Ltd*<sup>6</sup>.',

"Dicta are of different kinds and of varying degrees of weight: Sometimes they may be called almost casual expressions of opinion upon a point which has not been raised in the case, and is not really present to the judge's mind. Such dicta, though entitled to the respect due to the speaker, may fairly be disregarded by judges before whom the point has been raised and argued in a way to bring it under much fuller consideration. Some dicta, however, are of a different kind; they are, although not necessary for the decision of the case, deliberate expressions of opinion given after consideration upon a point clearly brought and argued before the Court. It is open, no doubt, to other judges to give decisions contrary to such dicta, but much greater weight attaches to them than to the former class".

Thus, upon the view expressed by the two learned authors and Lord Sterndale, it would be clear that every expression of opinion in a judgment is not a binding authority or a precedent in a subsequent case and that it is open to the judge dealing with such a case to distinguish for himself between what was and what was not essential to the prior decision. In Misc. Petn. No.382 of 1953, (Nag) (A) the learned Judges clearly came to the conclusion that the petition had to be dismissed on preliminary grounds. The question relating to the failure of the Chief Executive Officer to prepare fresh electoral rolls was argued before them and they therefore expressed their opinion on that question also. While the opinion which they expressed on that question is certainly entitled to respect, it cannot, clearly be treated as a binding precedent because it was not made the foundation of their decision. Reading the order of the learned Judges it would appear that the view taken by them on the question of the omission to prepare fresh electoral rolls was not expressed by them as an additional ground for dismissing the petition. Indeed, it would appear that the petition was dismissed by them on the preliminary grounds set out by them in paragraph 10 of their order and not on merits.

47. It is also pertinent to mention that Misc. Petn. No.382 of 1953 (Nag), was dismissed summarily. No doubt, the petitioner's counsel did address an argument before the Court, but it must be borne in mind that argument addressed at motion hearing is rarely full, particularly when the question is intricate or is an unusual one. Indeed, as would appear from the order in question, much of what was argued in AIR 1955 NUC 148 (Nag), and before us in support of the contention that the omission to prepare fresh electoral rolls vitiated the elections, does not seem to have at all been urged in that case. It must therefore be said that the decision on the point was given by the learned Judges 'per incuriam'. When a decision is given by a Court 'per incuriam', it is not binding on a subsequent Court; - '*Young v. Bristol Aeroplane Co. Ltd*<sup>7</sup>.', and the opinion of

Denning L.J. in - '*Gower v. Gower*', 1950-1 *All England Reporter* 804 . On this ground also I would hold that this Court was not bound to follow the decision in Misc. Petn. No.382 of 1953 (Nag) on the particular point while deciding AIR 1955 NUC 148 (Nag) .

48. Even if the dictum of the learned Judges is to be regarded as binding I would point out that though there is no express rule requiring electoral rolls to be prepared after a Janapada was split into two parts, reading amended Section 7(1) along with the other provisions of the Act, there seems to be little doubt that wherever a new Janapada area is constituted or a new electoral unit is constituted, it is necessary to prepare a fresh electoral roll.

49. The effect of the decision of the point on the various petitions must now be considered. Miscellaneous Petition No.346 of 1953: In this case the petitioners, who are a voter and a candidate respectively, contend that the election to the Godhi constituency of the Durg Janapada Sabha is void, that therefore the election of the respondent No.2 Kampta Prasad be set aside and that a fresh election be ordered to be held according to law. I am also of the opinion that each of them has sufficient interest to maintain the petition.

50. The election was sought to be declared void on various grounds which are set out in the petition filed in this Court on 21-11-1953. On 6-4-1954, the petitioners made an application to this Court praying that they should be permitted to adduce an additional ground for the grant of the relief claimed by them in the petition. The ground is that though the Chief Executive Officer, Durg, was bound under Section 7 (1) of the Act read with the Rules framed thereunder to prepare fresh electoral rolls and publish them after the Durg Janapada Sabha was reconstituted, he failed to prepare such rolls and consequently the election held for the Godhi constituency was void. In my opinion, the petitioners should be allowed to urge this ground because it is of a fundamental character.

51. Upon the view I have taken on the point, the petition must be allowed with costs, the election of the respondent No.2 set aside and a fresh election ordered to be held after due preparation and publication of the electoral rolls for the Godhi constituency.  
Miscellaneous Petition No.116 of 1954:

52. The petitioner is a voter in the electoral division Kotmi of Sakti Janapada Sabha and also a candidate for the Janapada election from Dhurkot electoral division. According to the petitioner, the Janapada area of this Sabha was formed after the amendment of the Local Government Act by amalgamation of some villages of the former Sakti State with some villages from Janjgir tahsil of the Bilaspur district and some villages from Kharsia tahsil of the Raigarh district. The Janapada Sabha, Sakti, was divided into 26 electoral constituencies including one seat from the Municipal Committee, Sakti. As a result of the alteration of the limits of the original Janapada Sabha, all the electoral divisions thereof have been altered.

53. The electoral rolls for the Sakti Janapada Sabha were prepared in 1952, no fresh rolls were prepared after the reconstitution of the Janapada area and elections were however held on the basis of the old rolls in February 1954. The 25 persons whose names are to be found in the petition were declared to have been elected. The petitioner prays that a direction be issued to the Chief Executive Officer prohibiting him from notifying the results of the election, for quashing

the results of the elected candidates and for making such further orders as this Court thinks necessary. However, before the petition came up for hearing, the results were notified in the Gazette.

54. There is no denial in the State Government's return of the allegation that there was not only an alteration of the limits of the Janapada area but there was also a reconstitution of the electoral divisions. What is stated on the point in the return is as follows:

"The electoral rolls which had already been finally published were re-arranged and the electoral divisions re-notified. All the electors were aware of their right to elect Janapada councilors. It was not necessary to republish the electoral rolls and to start from the beginning for finalizing the rolls."

The allegations made by the petitioner must therefore be deemed to have been admitted by the State Government.

55. Upon the view taken on the main point, the elections to the various electoral divisions must therefore be regarded as void. Even though that would be the effect, I am afraid the petition will have to be dismissed with costs on the short ground that the persons who were declared elected from the various constituencies have not been joined as parties to the petition and have not been given an opportunity to be heard before an order adverse to them was passed. This petition must therefore be dismissed with costs. Miscellaneous Petition No.148 of 1954.

56. The petitioner in this case is a voter from one of the constituencies in the Sakti Janapada area. His allegations are the same as those of the petitioner in Misc. Petn. No.116 of 1954. There is, however, no return in this case by the Chief Executive Officer. Here, as in the other case, the persons elected have not been joined as parties and therefore no order adverse to them can be passed behind their backs. In my opinion, therefore, this petition must be dismissed with costs. Miscellaneous Petition No.20 of 1954.

57. The petitioner Premshankar was a voter in the Gondalwada Constituency and is challenging the election thereto of the respondent No.3. Being a voter he has sufficient interest to maintain the petition. The only point which is common to this petition and the other petitions is that though the term of the Hoshangabad Janapada Sabha was due to expire on 31-3-1954, the preparation of the electoral roll was not undertaken within six months of this date. On this point my view is, as already stated above, that sub-rule (1) of Rule 1 of the Rules framed under Section 182 (2) (iv) of the Act casts a duty on the Chief Executive Officer to start the preparation of an electoral roll for each electoral division in the rural circle six months before the date on which the term of the Sabha is due to expire. In his return the Chief Executive Officer has stated that though the preparation of rolls was commenced in 1951 it was in progress during 1952-53 and that the final publication of the rolls took place on 13-2-1953, that is, less than four months before the expiry of the term of the Sabha. What the rule contemplates is the commencement of the preparation of the roll within six months of the date of the expiry of the terms of the Sabha. In this case admittedly the work was started much earlier. The mere fact that the final rolls were published early in 1953 makes little difference. Thus, the Chief Executive Officer had to start the preparation of an electoral roll within six months of 31-3-1954. Since he failed to take in hand the preparation of the roll within six months of 31-3-1954. the elections held on the basis of the

rolls prepared earlier must be regarded as void. However, I am concerned in this case only with the election to the Gondalwada constituency because what is challenged is the election of the respondent No.3 Kishorilal to that constituency.

58. Upon the view I have taken, the election of the respondent No.3 is void and I would consequently direct the Chief Executive Officer to hold fresh elections after complying with the law. Costs of this petition will be borne by the respondents.

Miscellaneous Petition No.350 of 1953.

59. This petition was heard along with Misc. Petn. No.346 of 1953 and several cases on the ground that the main point involved in those cases was also involved in the present case. While that is so, I may point out that this case is also in some respects actually the converse of those cases. The relevant facts are briefly these. The electoral rolls for the Seoni Malwa Janapada Sabha were prepared sometime in the year 1950. They were revised in the year 1952 under the directions of the State Government contained in letter No.551-5223-J-XIII-1950, dated 13-3-1952. A preliminary revised list was published on 10-7-1952 and objections thereto were invited. Objections were filed. The Chief Executive Officer by his order dated 30-7-1952 directed the Deputy Chief Executive Officer to dispose of the objections. The Deputy Chief Executive Officer did so and corrected the electoral roll. This roll was finally published on 10-8-1952. For convenience this roll would hereafter be referred to as the second electoral roll and the original roll as the first roll.

60. On 26-8-1952, the Deputy Commissioner, Hoshangabad, sent a letter to the Chief Executive Officer, Janapada Sabha, pointing out that certain forest villages were not included in the electoral divisions and asked him to include those villages in the appropriate divisions and publish the voters' list of those villages only. The Chief Executive Officer, however, is said to have published the entire electoral roll of the Seoni-Malwa Janapada on 31-8-1952 and to have invited objections thereto. According to the petitioner,

"Many persons lodged objections that they were improperly left out from the roll. These objections were decided by the Chief Executive Officer and by the Deputy Chief Executive Officer respectively. About 300-400 persons were included in the list of voters....."

The roll was therefore re-published on 16-10-1952. This roll will hereafter be referred to as the third electoral roll. According to the Janapada Sabha, if the elections were held on the basis of the third electoral roll, they will be vitiated because the preparation of that roll was affected by various illegalities. The Janapada Sabha therefore made a reference to the Chief Executive Officer but he refused to take any action. They then made a petition on 11-3-1953 before the Board of Revenue. This petition was however dismissed on 14-11-1953 and elections were held on the basis of the third electoral roll on 16-11-1953. According to the petitioners, these elections are entirely void.

61. The grounds given by the petitioners for saying so are: (1) that there was no order of the State Government to revise the second electoral roll which under Rule 7 was final for five years from

the date of its final publication; (2) that the Deputy Commissioner had no power to direct a revision of the second electoral roll; (3) that the revision actually undertaken by the Chief Executive Officer was beyond the scope of the Deputy Commissioner's order; and (4) that the electoral divisions were not revised till 23-9-1952 and therefore the Deputy Commissioner could not order revision of the rolls on 20-8-1952.

62. It was stated in the return of the State Government that the revision of the rolls really only affected four electoral divisions - Temla, Bhiladia, Nandarwada and Bankabedi. This position was accepted on behalf of the petitioners during arguments. It may be mentioned that some forest villages were added to these four constituencies and consequently voters of those villages had to be brought on the electoral rolls of these divisions.

63. No doubt, the proviso to Rule 7(1) confers powers on the State Government alone to direct revision of an electoral roll prepared and published by the Chief Executive Officer under Rule 1 and such revision is to be undertaken within five years of the preparation of the roll. In this case, however, there was a specific direction of the State Government in a letter quoted in paragraph 49 above to the effect that the electoral roll be revised. Thus the second roll which came into being was not unauthorized.

64. I may just point out here that the objections to the preliminary roll were directed by the Chief Executive Officer to be disposed of by the Deputy Chief Executive Officer and this, according to the petitioners, was illegal. The point was not pressed before us in argument on behalf of the petitioners, and in my opinion, quite rightly. It is sufficient to mention that the Chief Executive Officer in his return has stated that he had delegated his authority to the Deputy Chief Executive Officer, which he could do under section 59 of the Act as also under the Rules.

65. I may recall that I have stated earlier that it was after the final publication of the second electoral roll that the Deputy Commissioner required the Chief Executive Officer to publish a fresh voters' list of certain forest villages which were not included in the electoral divisions, the rolls of which had already been published. Upon receiving the Deputy Commissioner's memorandum, the Chief Executive Officer published the entire roll on 31-8-1952 inviting objections thereto and after deciding them, republished the roll on 16-10-1952. As a matter of fact, the rolls of only four constituencies already mentioned were affected. I must therefore confine my attention to those constituencies. It is admitted on behalf of the State that some voters' names were added to the roll of each constituency on the incorporation of the forest villages in them. When names are added or taken away from a roll, that roll must be deemed to have been in fact revised. Such revision could take place only after complying with the proviso to sub-rule (1) of Rule 7. Here, as already pointed out, action was taken on the direction of the Deputy Commissioner alone. The revision of the roll was thus unauthorised and the elections held on the basis of such rolls have consequently been rendered void. Upon this, it must be held that the election of Shrikishan, respondent No.9, from Temla, Vishnuprasad, respondent No.20, from Bhiladia, Harishankar, respondent No.4, from Nandarwada and Nirbhaisingh, respondent No.19, from Bankabedi, is void.

66. The petitioners are however not entitled to claim any relief in respect of the elections of Shrikishan and Vishnuprasad because neither Hazarilal nor Babulal is interested in either of those constituencies. Further, the Janapada Sabha, though it is a petitioner, cannot file a petition

challenging the election of its councillors. For, it is a statutory corporation and can discharge its statutory duties, no matter who are its councillors. As to who are its councillors is no concern of a corporation. It follows, therefore, that the Sabha can have no interest whatsoever in the elections of its councillors. Since the petitioner No.2 Hazarilal was a candidate for election from Bankabedi and the petitioner No.3 Babulal was a candidate for election from Nandarwara, they could challenge elections to their constituencies. Each of them has thus interest in challenging the election to his respective constituency. Relief can therefore be given in so far as the election of Harishankar and Nirbhaisingh is concerned. In the view taken by me, their elections are set aside and the Chief Executive Officer is directed to hold fresh elections to the Bankabedi and Nandarwara constituencies. To this extent only the petition is allowed with costs against respondents 1, 4 and 19 and dismissed with costs against the rest.

67. It would not be out of place to state here that the learned Additional Government Advocate admitted that unless severance in the electoral roll is implied in the provisions of Sections 3A to 3 I the State has no case and urged that this Court should raise a presumption that there was such a severance because there will be no allocation of a councillor to an electoral division unless there was a severance in the electoral roll. As I have already pointed out, allocation of a member to a division was to be made in respect of a Janapada which is effected by reason of the action taken by the State Government under Section 3A. Allocation has to be made from among the existing members and has nothing to do with the elections to be held thereafter. A reference is made to the electoral rolls in section 30 and other provisions only for a limited purpose and that is for determining the Janapada to which the existing councillor is to belong. There is no connection between this and the elections to be held in future for filling a particular constituency.

68. A further argument advanced by the learned Additional Government Advocate was that even where a new electoral division is added to a Janapada area there is no need to prepare an electoral roll for it. This is indeed an extreme argument and the short answer to it is that reading Section 7(1) along with Rule 1(1) framed under Section 182 (2) (iv) of the Act it is manifest that a duty is cast on the Chief Executive Officer of every Sabha to prepare a separate electoral roll for each electoral division. Thus, where an electoral division has been newly added to a Janapada area, occasion may arise immediately thereafter for the preparation of an electoral roll in respect of it and that obligation has to be discharged by the Chief Executive Officer of the Janapada Sabha to which that division has been added.

69. On this point Shri Hazarnavis after referring to Section 3C(1)(a) argued that since under that provision the area of a Janapada reconstituted by virtue of the exercise of powers under Section 3B is deemed to have been the same from the beginning the roll originally prepared shall be deemed to have been prepared for the altered area. In support of his argument reliance is placed on - *'Mahadeosa v. Deputy Commissioner, Amravati'*<sup>8</sup>, In my opinion, that decision does not apply. Section 3C specifically enumerates the effects of the alteration of the limits. By enacting this and other similar provisions, the Legislature has clearly indicated what the consequences of the alterations, amalgamation and splitting up of Janapada areas were to be. When the Legislature has dealt with the matter exhaustively there is no scope, in my opinion, for adding anything to it. No doubt, in - *'State of Bombay v. Pandurang Vinayak'*<sup>9</sup>, Mahajan, J. (as he then was) has observed:

"When a statute enacts that something shall be deemed to have been done, which in fact

and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion....."

The dictum of his Lordship however would not apply to a case like the present where the Legislature has clearly indicated the limits of the fiction.

BY THE COURT:

70. For the reasons separately recorded in Miscellaneous Petition No.346 of 1953 the petition is allowed with costs, the election of the respondent No.2, Kamtaprasad, is set aside and a fresh election after due preparation and publication of the electoral rolls for the Godhi constituency is directed to be held. The outstanding amount of security shall be refunded to the petitioners.

71. Counsel's fee Rs. 100/-, if certified.

Order accordingly.

Cases Referred.

<sup>1</sup> AIR 1955 NUC 148 (Nag)

<sup>2</sup>(1895) 72 LT 502

<sup>3</sup> AIR 1931 PC 132

<sup>4</sup> AIR 1943 PC 164

<sup>5</sup> AIR 1954 SC 202

<sup>6</sup>(1923) 1 Ch 431

<sup>7</sup>1944-1 KB 718

<sup>8</sup>AIR 1954 Nag 217

<sup>9</sup>AIR 1953 SC 244 at p.246