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PAMPAKAVI RAYAPPA BELAGALI

v.

B. D. JATTI & OTHERS

October 15, 1970

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[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Representation of the People Act vTEV—Section 100(1)(d)—Election petition—Trial of—Whether there is jurisdiction o question validity of entry of name in Electoral Roll—Representation of the People Act 1950 and ules made thereunder—If only provsions under which such validity may be questioned.

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By an election petition two electors of the constituency, the appellants, challenged the election of the first respondent to the Mysore Legislative Assembly in 1967 from the Jamkhandi constituency. It was alleged *inter alia* that the first respondent had ceased to be a person ordinarily resident within the constituency during the period relevant to the 1967 General Elections, and the validity of the entry of his name on the Electoral Roll was questioned; it was claimed that he was not therefore qualified to stand for election from the constituency. The petition also contained allegations of corrupt practices including misuse by certain Police Officers of their position to prevent voters from voting freely, and mal-practices by the Presiding Officer at the time of polling, etc.

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After framing an issue on the question and taking the view that the Court had jurisdiction to determine the validity of the inclusion of the first respondent's name as an elector on the Electoral Roll, the trial judge held on a consideration of the evidence, that the petitioners had failed to prove he first respondent was not an elector and was not qualified to stand for election from the constituency. The High Court also rejected the allegations of corrupt practices and dismissed the petition.

On appeal to this Court,

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HELD: (i) Under section 30 of the Representation of the People Act, 1950, no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled for registration in an Electoral Roll for a constituency. There are elaborate rules which have been promulgated for preparation and revision of the Electoral Rolls, namely, Electors' Rules 1960. The conditions about being ordinarily resident in a constituency for the purpose of registration are meant for that purpose alone and have nothing to do with the disqualifications for registration which are prescribed by s. 16 of the Act of 1950, which alone are relevant to the definition of an "elector" as given in s. 2(1)(e) of the Act of 1951. The entire scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved. The present case did not also involve any violation or infringement of Article 173 or any other provision of the Constitution. [615 H]

The question whether respondent No. 1 was ordinarily resident in Jamkhandi constituency during the material period and was entitled to

be registered in the Electoral Roll could not therefore be the subject matter of enquiry except in accordance with the provisions of the Act of 1950.

Under s. 100(1)(d) an election can be declared void only if the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or of the Act of 1951 or of any rules or orders made thereunder. Nothing could be clearer than the ambit of this provision. It does not entitle the court in an election petition to set aside any election on the ground of non-compliance with the provisions of the Act of 1950 or of any rules made hereunde with the exception of s. 16. [617 E]

Durga Shankar Mehta v. Thakur Raghurai Singh & Others, [1955] 1 S.C.R. 267; *K. Sriramulu v. K. Deviah* (1965) 1 Mys. L. J. 676; *Roop Lal Mehta v. Dhan Singh and Others* (1967) P.L.R. 618; referred to.

On the evidence, no reasons were shown for this court to differ from the findings of the Trial Judge on the allegations of corrupt practices.

Meghraj Patodis v. R. K. Birla & Others; Civil Appeal No. 1094/69 dated 10-9-1970; referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2394 of 1968.

Appeal under s. 116A of the Representation of the People Act, 1951 from the judgment and order dated July 24, 1968 of the Mysore High Court in Election Petition No. 9 of 1967.

B. S. Patil, Vineet Kumar and Shyamala Pappu, for the appellant.

A. V. Albal and M. Veerappa, for respondent No. 1.

The Judgment of the Court was delivered by

GROVER, J.—This is an appeal from a judgment of the Mysore High Court dismissing an election petition which had been filed by two electors challenging the election of respondent No. 1 B. D. Jatti from the Jamkhandi Constituency at the General Elections held in 1967.

The last date for filing of nomination papers was January 19, 1967. The polling took place on February 2, 1967 and the result was declared on February 22, 1967. The only contesting candidates were respondent No. 1 and respondent No. 2 M. M. Shivappa. Respondent No. 1 secured 24,578 votes whereas respondent No. 2 got 21,261 votes. The election petition was filed

- A** on April 6, 1967 by I. S. Ghattarki and P. R. Belagali who were electors in the Jamkhandi Constituency. Each of them had acted as an election agent of respondent No. 2. Petitioner No. 1 Ghattarki was his election agent from February 10, 1967 till the last date of the election and petitioner No. 2 Belagali acted as an election agent from January 19, 1967 to February 4, 1967.
- B** The trial of the petition commenced on December 11, 1967 and after certain witnesses had been examined on February 1, 1967 petitioner No. 1, Ghattarki, made an application praying for permission to withdraw from the petition "for all purposes". Petitioner No. 2 objected to his withdrawal. The learned judge dismissed the application of petitioner No. 1 on the ground that
- C** s. 110(1) of the Representation of the People Act, 1951, hereinafter called the "Act", did not permit withdrawal by one petitioner without the consent of his co-petitioner. It has, however, been noted by the learned judge that both the petitioners continued to be represented by one counsel Shri B. S. Patil.

- D** It may be mentioned at this stage that the election petition is a very long document and that the evidence which has been produced by the parties is also voluminous. The judgment of the learned judge consists of 227 printed pages. A number of issues were framed but the controversy before us has been confined only to certain points.

- E** The first question which falls for consideration arises out of issue No. 1 which consists of three clauses and was framed in the following terms :—

"1 (a) Do the petitioners prove that the 1st respondent was not an elector at all and therefore not qualified to stand for election ?

- F** (b) Are the petitioners precluded from questioning the validity of the entry of the name of the 1st respondent as elector in the Electoral Roll relating to Jamkhandi Constituency ?

(c) Has this Court no jurisdiction to go into the said question of validity ?"

- G** It was held by the learned trial judge that the petitioners (in the election petition) were not precluded from questioning the validity of the entry of the name of respondent No. 1 as an elector in the Electoral Roll relating to Jamkhandi Constituency and that the court had the jurisdiction to go into that question. It was, however, found on a consideration of the evidence that the petitioners had failed to prove that respondent No. 1 was not an elector and
- H** was not qualified to stand for election to a seat in the Mysore Legislative assembly from Jamkhandi constituency.

If the view of the trial judge that the court had the jurisdiction in an election petition to go into the question of the validity of an entry in an Electoral Roll is erroneous and if the court was precluded from deciding this matter it will be altogether unnecessary to consider the evidence led for the purpose of clause (a) of issue No. 1.

The principal allegations of the petitioners on issue No. 1(a) were that respondent No. 1 had ceased to be a person ordinarily resident within the constituency of Jamkhandi during the period relevant to the 1967 General Elections. It was further asserted that by long stay in the city of Bangalore the name of respondent No. 1 had been entered in the Electoral Roll relating to the municipal area of that city and that respondent No. 1 with the object of getting his name entered in the Roll of Jamkhandi Constituency had either got his name deleted from the Bangalore Roll or had tried to get it changed from that Roll to the Roll of Jamkhandi Constituency.

In order to decide the jurisdiction and powers of the court trying an election petition under the provisions of the Act to determine the validity or legality of an entry in an Electoral Roll we shall have to look at the relevant provisions of the Act. The Representation of the People Act 1950, to be called the "Act of 1950" and the Constitution. Part II of the Act deals with the qualifications and disqualifications for Membership of Parliament and State Legislature. Section 5(c) is as follows :

"A person shall not be qualified to be chosen to fill a seat in the legislative assembly of a State unless.

(a)

(b)

(c) in the case of any other seat he is an elector for any Assembly constituency in that State."

The word "elector" is defined by s. 2(1)(e) to mean in relation to a constituency 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 s. 16 of the Act of 1950. Chapter III of the Act contains disqualifications for Membership of Parliament and State Legislatures. According to s. 7(b) "disqualified" means disqualified for being chosen as and for being a Member of either House of Parliament or of the Legislative Assembly etc. Sections 8 to 11 give the disqualifications on conviction for certain offences, for commission of corrupt practices and other matters which need not be noticed. The position under

- A** the Act, therefore, is that in order to stand for election to a legislative assembly of a State a person must be an elector for any assembly constituency in that State and he must not be subject to any of the disqualifications mentioned in s. 16 of the Act of 1950 or the disqualifications given in Chapter III of the Act. The Act of 1950 was meant to provide for the allocation of seats 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 and matters connected therewith.

- C** Part III thereof contains provisions for Electoral Rolls for assembly constituencies. According to s. 15 for every constituency there shall be an Electoral Roll which shall be prepared in accordance with the provisions of the Act of 1950 under the superintendence, direction and control of the Election Commission. Section 16 is in these terms :—

S. 16. "Disqualifications for registration in an electoral roll.—

- D** (1) A person shall be disqualified for registration in an electoral roll if he—
- E** (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.
- F** (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"

- G** Section 19 gives the conditions of registration in the Electoral Roll. It provides that every person who is not less than 21 years of age on the qualifying date and is ordinarily resident in a constituency shall be entitled to be registered in the Electoral Roll for that constituency. Section 20 deals with the meaning of "ordinarily resident". The preparation and revision of Electoral Roll has to be made in accordance with s. 21 and the correction of entries is provided by s. 22. Section 24 contains a provision for an appeal which can be filed to the Chief Electoral Officer from any order of the Electoral Registration Officer under s. 22 or s. 23.
- H** Under s. 30 no civil court shall have jurisdiction to entertain or

adjudicate upon any question whether any person is or is not entitled for registration in an Electoral Roll for a constituency. There are elaborate rules which have been promulgated for preparation and revision of the Electoral Rolls, namely, Electors' Rules 1960. It may be noted that the conditions about being ordinarily resident in a constituency for the purpose of registration are meant for that purpose alone and have nothing to do with the disqualifications for registration which are prescribed by s. 16 of the Act of 1950 which alone are relevant to the definition of an "elector" as given in s. 2(1)(e) of the Act. The entire scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless some question of violation of the provisions of the Constitution is involved.

Article 173 of the Constitution relates to qualifications for membership of the State legislature. It reads :—

Art. 173 "A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

The qualifications, as mentioned previously, have been prescribed by s. 5 of the Act. Condition (b) in s. 19 of the Act of 1950 of being ordinarily resident in a constituency finds no place in any of the provisions of the Act or in Art. 173 of the Constitution. The decision of this Court in *Durga Shankar Mehta v. Thakur Raghuraj Singh & Others*⁽¹⁾ involved non-compliance with the provisions of clause (b) of Art. 173 and in case of a candidate who was constitutionally incapable of being returned as a member it was held that the Election Tribunal could declare his election to be void by applying sub-s.(2)(c) of s. 100 of the Act. The present case is clearly not of that kind and no violation or in-

(1) [1955] 1 S.C.R. 267.

A fringement of any provision of Art. 173 has been or could be established.

The other provisions relating to election are contained in Part XV of the Constitution. Article 324 deals with the superintendence, direction and control of elections which are vested in the Election Commission. Article 325 declares that no person shall be ineligible for inclusion in an Electoral Roll on account only of religion, race, caste, sex or any of them. Article 326 says that the elections to the House of the People and the Legislative Assemblies of States shall be on the basis of adult franchise. Article 327 gives power to the Parliament to make provisions with respect to elections to Legislatures. Article 329 bars the interference of courts in electoral matters. By virtue of that Article no election shall be called in question except by an election petition. It is abundantly clear that in the present case the question whether respondent No. 1 was ordinarily resident in Jamkhandi constituency during the material period and was entitled to be registered in the Electoral Roll could not be the subject matter of enquiry except in accordance with the provisions of the Act of 1950. The grounds on which the election can be declared to be void under the Act are set out in s. 100 of the Act. Clause (d) is "that the result of the election, in so far as it concerns a returned candidate, has been materially affected—(i) (ii) (iii) (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." Nothing could be clearer than the ambit of this provision. It does not entitle the court in an election petition to set aside any election on the ground of non-compliance with the provisions of the Act of 1950 or of any rules made thereunder, with the exception of s. 16.

F The learned trial judge does not appear to have fully and properly appreciated the correct ratio and true determination of the points involved in *Durga Shanker Mehta's*⁽¹⁾ case. The distinction is too obvious to bear repetition. It seems that a Bench decision of the Mysore High Court in *K. Sriramulu v. K. Deviah*⁽²⁾ was distinguished without any justification by the learned judge. It was clearly laid therein that in an election petition the correctness of the Electoral Roll cannot be gone into. The decision of a Full bench of the Punjab and Haryana High Court in *Roop Lal Mehta v. Dhan Singh & Others*⁽³⁾ about the finality of the Electoral Roll was also not noticed. In this view of the matter the evidence relating to issue No. 1(a) becomes wholly irrelevant and redundant. The decision on that issue in favour of respondent No. 1, is, however, affirmed.

(1) [1965] 1 S. C. R. 267; (2) (1965) 1 Mys. L. J. 676.

(3) (1967) P. L. R. 618.

[His Lordship next considered the evidence in respect of the allegations of corrupt practice and then proceeded :]

In conclusion it may be observed that the impression left by the facts and circumstances of this case on our mind is that the authorities concerned in the Mysore State were not careful or discreet enough in posting Hasbi for the second time to Jamkhandi in July 1966 when it was known that the relations between him and respondent No. 2 had been very unhappy in the past and by which time it could also be foreseen and appears to be known that there would be another contest between respondent No. 1 and respondent No. 2 who had been fighting elections since 1952. Similarly with regard to Kallur it would have been a wise step to transfer him before the elections from the area in which Jamkhandi is situate because he had also figured similarly in the previous contest between the two respondents. Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done but must also seem to be done; similarly elections should not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in the minds of the electors that everything has been above board and has been done to ensure free elections. It will be a sad day in the history of our country when the police and the government officers create even an impression that they are interfering for the benefit of one or the other candidate. This is particularly so if a candidate is holding an important position or assignment like respondent No. 1, who, at the material time was a Minister in the State.

The appeal fails and is dismissed. In view of all the facts and circumstances of the case we make no order as to costs in this Court.

R.K.P.S.

Appeal dismissed.