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BAIDYANATH PANJIAR

v.

SITARAM MAHTO & ORS.

August 13, 1969

B [K. S. HEGDE AND A. N. RAY, JJ.]

Representation of the People Act, 1950—*Elections—Section* 22, *sub-s.* (3), *s.* 27(2)—*Inclusion of names in electoral roll after last date of filing nomination—Validity of votes cast—Section* 22(3) *if mandatory.*

Sub-section (3) of s. 23 provides that no direction for the inclusion of name in the electoral roll of a constituency shall be given after the last C date for making nomination for an election in that constituency and before the completion of that election.

The appellant's election to the Bihar Legislative Council was challenged on the ground that some of the votes cast in his favour were not valid because the names of the voters were included in the electoral roll after the last date for filing nomination. The High Court set aside the election and declared the second respondent elected since on counting the D validly cast votes the second respondent secured more votes than the appellant.

On the question whether it was within the competence of the electoral registration officer to amend the electoral rolls after the last date for making the nomination was over,

HELD : The legislative mandate like the one embodied in s. 23 sub-s. E (3) must be considered as mandatory not merely because of the language employed in that sub-section but also in view of the purpose behind the provision. The sub-section does not deal with any mode or procedure in the matter of registering the voters. It interdicts the concerned officers from interfering with the electoral rolls under the prescribed circumstances. It puts a stop to the power conferred on them. Therefore it is not a question of irregular exercise of power but a lack of power. [842 D-F]

F There is no conflict between sub-s. (2) of s. 23 and sub-s. (2) of s. 27 because a fair reading of the various clauses in s. 27(2) will make it clear that it is the electoral roll of a constituency as it stood on the last date for making the nominations for an election in that constituency that is to be considered final for the purpose of that election. [842 H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 25 of G 1969.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated December 11, 1968 of the Patna High Court in Election Petition No. 4 of 1968.

D. Goburdhun, for the appellant.

H *Birendra Prasad Sinha, S. K. Bagga, Hardev Singh* and *S. Bagga,* for respondent No. 1.

Hardev Singh, for respondents Nos. 2 and 3.

The Judgment of the Court was delivered by

Hegde, J. The principal question raised in this appeal under s. 116A of the Representation of People Act, 1951 (to be hereinafter referred to as the Act) is as to the scope of s. 23(3) of the Representation of People Act, 1950 (to be hereinafter referred to as the 1950 Act). A few subsidiary contentions have also been canvassed. They will be considered at the appropriate stage.

The election petition from which this appeal arises relates to the Darbhanga Local Authorities Constituency of the Bihar Legislative Council. The calendar for the election for that constituency was as follows :

1. Last date for filing nomination papers	2-4-1968.
2. Date of scrutiny of nomination papers	4-4-1968.
3. Last date for withdrawal of candidatures	6-4-1968.
4. Date of Poll	28-4-1968.
5. Date of declaration of result	29-4-1968.

Originally five candidates submitted their nomination for the election in question. On scrutiny all of them were held to have been validly nominated. Two of them later withdrew their candidatures within the period prescribed leaving in the field Shri Baidyanath Panjiar, the appellant herein, Shri Raj Kumar Mahaseth, respondent No. 2 and Shri Gangadhar, respondent No. 3. There were six polling stations in the constituency. 134 votes were polled out of which 33 votes were polled at Dalsingsarai polling station. Counting of the votes showed that the appellant had secured 45, the second respondent 49 and the third respondent 40, first preference votes. As none of them obtained an absolute majority of the votes cast, the third respondent was eliminated and his second preference votes were taken into consideration. 14 of his second preference votes went to the appellant and 5 to the second respondent. Therefore the appellant was declared elected. His election was later challenged by the 1st respondent herein. The High Court has set aside the election and declared the 2nd respondent elected on the ground that on counting the validly cast votes, the second respondent has secured more votes than the appellant. It held that some of the votes cast were not valid votes.

The controversy relating to the validity of some of the votes polled arose under the following circumstances. In the electoral roll as it stood on the last date of filing nomination papers, the registered voters were only 123; 16 of the registered voters were of the members of Dalsingsarai Notified Area Committee. On April 13, 1968, as per a notification under s. 389(c) of the Bihar

A and Orissa Municipal Act, 1922, 40 members were nominated as members to the said Notified Area Committee in place of the old members. Most of them were newly appointed members. To be exact 35 of the 40 members nominated were new members. Thereafter the electoral roll was amended on the 27th April, 1968, just a day prior to the polling. As per the amended electoral roll, there B were 39 electors in the Dalsingsarai polling station. Only four of them stood registered in the electoral roll as it stood on April 2, 1968. 12 of those who were electors under the original roll were removed from the roll. 33 out of the 39 electors included in the electoral roll relating to Dalsingsarai polling station exercised their franchise during the poll on April 28, 1968.

C The question for consideration is whether it was within the competence of the electoral registration officer to amend the electoral rolls after the last date for making the nomination was over.

Provisions relating to the preparation of electoral rolls for the Legislative Councils' Constituencies are found in Part IV of the 1950 Act. Section 27(2) of the Act prescribes the mode of pre- D paration of the electoral rolls regarding the local authorities constituencies of a Legislative Council. Clause (e) of that subsection stipulates that provisions of ss. 15, 16, 18, 22 and 23 shall apply in relation to local authorities' constituencies as they apply in relation to assembly constituencies. Section 22 deals with correction of entries in the electoral rolls. Section 23 deals E with the inclusion of names in the electoral rolls. Sub-s. (3) of that section provides that :

> "No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the F last date for making nomination for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election."

The object behind sub-s. (3) of s. 23 of the 1950 Act would G be clear if we examine the scheme of the Act and the principles underlying that scheme. Part III of the 1950 Act provides for the preparation of the electoral rolls for assembly constituencies. Section 15 provides that for every constituency, there shall be an electoral roll which shall be prepared in accordance with the provisions of that Act under the superintendence, direction and con- H trol of the Election Commission. Section 16 enumerates what disqualifications will disentitle a person from being enrolled as a voter. Section 18 provides that no person shall be entitled to be registered in the electoral roll for any constituency more than once.

Section 18 enunciates the principle "one person—one vote". Section 22 provides for correction of entries in the electoral rolls. Section 23(1) permits a person whose name is omitted from the rolls to apply for inclusion. Sub-s. (2) of s. 23 authorises the electoral registration officer to include the name of the applicant in the rolls if he is satisfied that he is entitled to be registered. The object of the aforementioned provision is to see that to the extent possible, all persons qualified to be registered as voters in any particular constituency should be duly registered and to remove from the rolls all those who are not qualified to be registered. Sub-s. (3) of s. 23 is an important exception to the rules noted earlier. It gives a mandate to the electoral registration officers not to amend, transpose or delete any entry in the electoral roll of a constituency after the last date for making nominations for election in that constituency and before the completion of that election. If there was no such provision, there would have been room for considerable manipulations, particularly when there are only limited number of electors in a constituency. But for that provision, it would have been possible for the concerned authorities to so manipulate the electoral rolls as to advance the prospects of a particular candidate. This would be more so if either all or a section of the electors are persons nominated to local authorities. The legislative mandate like the one embodied in s. 23(3) must be considered as mandatory not merely because of the language employed in that sub-section but also in view of the purpose behind the provision in question. In our opinion, cl. 23(a) takes away the power of the electoral registration officer or the chief electoral officer to correct the entries in the electoral rolls or to include new names in the electoral rolls of a constituency after the last date for making the nominations for election in that constituency and before the completion of that election. Section 23(3) does not deal with any mode or procedure in the matter of registering the voters. It interdicts the concerned officers from interfering with the electoral rolls under the prescribed circumstances. It puts a stop to the power conferred on them. Therefore it is not a question of irregular exercise of power but a lack of power.

It was next urged by Mr. Goburdhan, learned Counsel for the appellant that s. 23(3) of the 1950 Act is subject to s. 27(2) of the same Act and therefore in view of the direction issued by the electoral registration officer to include the names of the electors in question, it was not open to the election petitioner to take any objection to the same. We see no substance in this contention. There is no conflict between sub-s. (2) of s. 23 and sub-s. (2) of s. 27. In fact, as noticed earlier, the provisions of s. 23 have been incorporated into s. 27(2) in view of s. 27(2)(e). A fair reading of the various clauses in s. 27(2) will make it clear that

A the entries in an electoral roll of a constituency, as they stood on the last date for making the nominations for an election in that constituency should be considered as final for the purpose of that election.

It was next urged that in view of s. 62(1) of the Act no valid B objection can be taken to the franchise exercised by the electors whose names were included in the electoral roll on April 27, 1968. Section 62(1) says that "no person who is not, except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency." That provision no doubt stipulates that C every person who is for the time being registered in the electoral roll of any constituency except as expressly provided by the Act shall be entitled to vote in that constituency. The question is which is the electoral roll referred to in that section? Is it the electoral roll that was in force on the last date for making nominations for an election or is it the electoral roll as it stood on the date of the polling? For answering that question we have to go D back to s. 23(3) of the 1950 Act. In view of that provision the electoral roll referred to in s. 62(1) of the Act must be understood to be the electoral roll that was in force on the last day for making the nominations for the election.

It was next urged that even if we hold that in including fresh E electors in the electoral roll on April 27, 1968, the electoral registration officer contravened s. 23(3) of the 1950 Act, the same cannot be made a ground for invalidating the election as the contravention in question does not come within the purview of sub-s. (1) of s. 100 of the Act. This contention again does not appear to be sound. Clause (d)(iii) of sub-s. (1) of s. 100 of the Act provides that if the High Court is of the opinion that the result F of the election in so far as it concerns the returned candidate has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, it shall declare the election void. We have earlier come to the conclusion that the electoral registration officer had no power to include new names in the electoral roll on April 27, 1968. There- G fore votes of the electors whose names were included in the roll on that date must be held to be void votes. That conclusion satisfies one of the conditions prescribed in s. 100(1)(d). We have now to see whether the other conditions prescribed in that clause namely whether the High Court on the material before it could have been of the opinion that the result of the election in so far H as it concerned the returned candidate has been materially affected because of the reception of the votes which are void. The High Court elaborately considered that question. It has examined each one of the disputed votes and has come to the conclusion that if

those votes had been excluded, the valid votes received by the contesting candidates in the first count would have been as follows : A

Appellant	—	32
Respondent No. 2	—	46
Respondent No. 3	—	23. B

In the second count after the elimination of the third respondent and taking into consideration the second preferences given by the electors, who gave their first preference to him the following would have been the position :

Appellant	—	43 votes and	C
Respondent No. 2	—	57 votes.	

No material was placed before us to show that this conclusion was wrong. There was some controversy about two votes but we do not think it necessary to go into the same as any decision as regards their validity will not affect the final conclusion. D

Before leaving this case, it is necessary to mention that at one stage of the arguments, the learned Counsel for the appellant contended that the decision of this Court in *B. M. Ramaswamy* v. *B. M. Krishnamurthy and Ors.*(1) governs the facts of this case. But after some discussion he gave up that contention. The ratio of that decision has no relevance for our present purpose. In E that case, the High Court came to the conclusion that the corrections in the concerned electoral roll had been made before the last date prescribed for filing nominations to the election but it came to the conclusion that the electors newly added to the list were not qualified to be registered as electors. This Court overruled that finding holding that every person whose name finds place F in the electoral roll must be held to be qualified to be a candidate whether he was qualified to be registered as an elector or not. In other words it upheld the finality of the electoral roll as it stood on the last date for filing nominations for the election.

For the reasons mentioned above this appeal fails and the same is dismissed with costs.

Y.P. *Appeal dismissed.*

(1) [1963] 3 S.C.R. 479