

CHIEF COMMISSIONER, AJMER

v.

RADHEY SHYAM DANI.

(S. R. DAS C.J., BHAGWATI, VENKATARAMA AYYAR,
B. P. SINHA and S. K. DAS JJ.)

Municipal Election—Electoral roll—Election Rules—No provision for revision of electoral roll and for adjudication of claims—Validity of the electoral roll—Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925), ss. 30 (2), 43—Ajmer State Municipalities Election Rules, 1955, r. 7.

Sub-section (2) of s. 30 of the Ajmer-Merwara Municipalities Regulation, 1925, as amended, provided that "every person who would be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a parliamentary Constituency if that Constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency comprising the Municipality, shall be entitled to be enrolled as an elector of the Municipality"; and s. 43 enabled the Chief Commissioner to make rules consistent with the Regulation for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment.

In exercise of this power the appellant framed Rules which, *inter alia*, provided that the electoral roll for the particular Municipality shall be the same as the final printed roll for the Parliamentary Constituency representing the area covered by the Municipality. He notified an election programme and also authenticated and published an electoral roll on August 8, 1955. The respondent whose father's name was recited wrongly in the electoral roll applied for rectification of the mistake in the Parliamentary Electoral Roll, on August 10, 1955, but it was rejected on the ground that the roll of the Municipal elections had been finally published on August 8, 1955, and therefore no correction could be made. The respondent challenged the validity of the notification and the electoral roll.

Held, that under s. 30 (2) of the Ajmer-Merwara Municipalities Regulation, 1925, the electoral roll for the Parliamentary constituency was only treated as the basis for the electoral roll of the Municipality and that the rules in so far as they made no provision for the revision of the electoral roll, for the adjudication of claims to be included therein or for entertaining objections to such inclusion, were defective and, therefore, the electoral roll of the Ajmer Municipality which was authenticated and published by the appellant on August 8, 1955, was not in conformity with the provisions of s. 30 (2) and the relevant provisions of the Regulation

and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 181 of 1956.

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Appeal by special leave from the judgment and order dated September 5, 1955, of the Judicial Commissioner's Court, Ajmer, in Civil Writ Petition No. 108 of 1955.

M. M. Kaul and *R. H. Dhebar*, for the appellants.

The respondent did not appear.

1956. November 15. The Judgment of the Court was delivered by

BHAGWATI J.—This is an appeal with special leave from the judgment of the Judicial Commissioner, Ajmer, restraining the District Magistrate, Ajmer, from holding the elections and poll to the Ajmer Municipal Committee on September 9, 1955.

The respondent claimed to be a voter of the Ajmer Municipality. By an order dated March 12, 1953, the Ajmer Municipal Committee had been suspended and that suspension was to continue till September 11, 1955. In view of the impending elections after the period of suspension was over, the Chief Commissioner, Ajmer, the appellant before us, framed the Ajmer State Municipalities Election Rules, 1955, in exercise of the powers conferred by s. 43 of the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925) and published them in the Government Gazette dated August 4, 1955. On August 8, 1955, he notified an election programme and also authenticated and published an electoral roll. This electoral roll had been corrected and altered by the orders of the Sub-Divisional Officer on certain days prior to August 8, 1955, but the respondent's name was alleged to have been incorrectly described therein, his father's name having been mentioned as Ratan Lal instead of Chitar Mal. On August 10, 1955, he applied for the correction of his father's name in the Parliamentary Electoral Roll and on August 16, 1955, he filed his nomination paper. His nomination was, however, rejected on August 17, 1955,

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the Returning Officer stating that he was not one of the electors according to the roll. His application for rectification of the mistake in the Parliamentary Electoral Roll was also rejected on August 18, 1955, by the Electoral Registration Officer on the ground that the roll of the Municipal elections had been finally published on August 8, 1955, and therefore no correction could be made. The respondent thereupon filed on August 26, 1955, a writ petition being Civil Writ Petition No. 108 of 1955 in the Court of the Judicial Commissioner at Ajmer against the appellant and the District Magistrate, Ajmer, inter alia for a mandamus against the appellant to reconstitute the Ajmer Municipal Committee by a properly made and published notification under s. 8(1) of the Regulation and an order against the District Magistrate, Ajmer, restraining him from holding the elections and poll to the Ajmer Municipal Committee on September 9, 1955, as notified.

The learned Judicial Commissioner upheld the contention of the respondent in regard to the reconstitution of the Committee but did not issue any directions in regard to the same in view of the fact that the appellant had already before that date issued a notification under s. 8(1) of the Regulation to reconstitute the Committee. He also held that Rule 7 of the Election Rules was not in consonance with and was in contradiction to s. 30, sub-s. (2), of the Regulation and was in excess of the rule-making power conferred upon him, and the elections proposed to be held on September 9, 1955, were not lawful. He, therefore, directed the District Magistrate, Ajmer, to refrain from holding the elections and poll to the Ajmer Municipal Committee on September 9, 1955.

On an application made by the appellant for a certificate under Art. 133(1)(c) of the Constitution, the learned Judicial Commissioner was of opinion that the direction given by him against the District Magistrate, Ajmer, was merely not to hold elections on September 9, 1955, and as that date had already passed when the application was disposed of by him, no useful purpose would be served by granting him a certificate and he accordingly refused to grant the same. The appellant;

however, approached this Court and obtained special leave under Art. 136 for filing an appeal against the decision of the learned Judicial Commissioner.

When the appeal came up for hearing before us, the respondent communicated to us his desire not to appear and contest the appeal with the result that the appeal has been heard by us *ex parte*.

At the outset we pointed out to the learned counsel for the appellant that the appeal had become academic. The appellant had in fact reconstituted the Ajmer Municipal Committee by a proper notification under s. 8(1) of the Regulation and the date on which the elections and the poll to the Ajmer Municipal Committee were to be held, viz., September 9, 1955, had also passed. The learned counsel for the appellant, however, urged before us that the pronouncement of the learned Judicial Commissioner to the effect that Rule 7 of the Election Rules was not in consonance with and was in contradiction to s. 30, sub-s. (2), of the Regulation and was in excess of the Rule-making power conferred upon the appellant was a stumbling block in the way of the appellant holding further elections on the basis of the electoral roll as it had been authenticated and published by him on August 8, 1955. If that pronouncement stood, it would be incumbent on the appellant to authenticate and publish another electoral roll and incur the expenses which were inevitable in that process. He, therefore, pressed upon us that we should set aside that pronouncement so that the Municipal elections may be held hereafter without straining the attenuated finances of the Municipality.

The relevant provisions which fall to be considered by us are the following :—

“Section 30. (1) : A person shall not be deemed to be an elector for any purpose of this Regulation or of any rule unless he is enrolled as an elector.

(2) *as amended by Act LXV of 1950* : Every person who would be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary Constituency if

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that Constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency comprising the Municipality shall be entitled to be enrolled as an elector of the Municipality.

Section 43 : The Chief Commissioner may, by notification, make rules consistent with this Regulation for the purpose of regulating all or any of the following matters, namely, :—

(a)

(b)

(c) the preparation and revision of electoral rolls, and the adjudication of claims to be enrolled and objections to enrolment;

.....

Section 248. (4) : On publication in the official Gazette of any rules made under this Regulation, such rules shall have effect as if enacted in this Regulation.

Elections Rules :

Rule 7—Electoral rolls : In accordance with the provisions of sub-section (2) of section 30 of the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925) the electoral roll of the particular Municipality shall be the same as the final printed roll for a Parliamentary Constituency representing the area covered by that Municipality.

Rule 9—Electors : No person shall be deemed to be an elector for the purposes of these rules unless his name appears in the electoral rolls mentioned above.....”

It is clear from s. 30, sub-s. (2), of the Regulation that in order to be entitled to be enrolled as an elector of a Municipality, a person has to fulfil two conditions, viz., (1) that he should be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary Constituency if that Constituency had been co-extensive with the Municipality, and (2) that his name should be registered in the electoral roll for a Parliamentary Constituency comprising the Municipality. If

both these conditions are fulfilled he would be entitled to be enrolled as an elector of the Municipality. In regard to the first condition reference need be made to the qualifications prescribed for being registered in the electoral roll for the Parliamentary Constituency and it is only if these qualifications are possessed by the person that he would be entitled to be so registered. In order, therefore, to determine whether a person is entitled to be enrolled as an elector of a Municipality, it would be necessary to ascertain in the first instance whether he is entitled to be registered in the electoral roll for the Parliamentary Constituency. Once that condition is fulfilled, it would be further necessary to consider whether his name is registered in the electoral roll for the Parliamentary Constituency. If, in spite of his fulfilling the condition that he is entitled to be registered in the electoral roll for the Parliamentary Constituency, his name is not registered in the electoral roll for the same, he would not be entitled to be enrolled as an elector of the Municipality. The latter condition does not require any scrutiny for its fulfilment. The fact of his being registered in the electoral roll for the Parliamentary Constituency would be apparent on the face of the electoral roll itself. The fulfilment of the first condition, however, would be subject to scrutiny and it would be open to any resident of the Municipality to object to the enrolment of a particular person as an elector of the Municipality. Even in the case of the electoral roll for the Parliamentary Constituency it would be open to a person to apply for a revision of that roll by applying for a correction of the mistakes or mis-descriptions which might have crept therein as also to have his name registered in the roll if it had not been so registered provided he fulfilled the first condition, viz., that he was entitled to be registered in the electoral roll for the Parliamentary Constituency. Objections could also be filed to the enrolment of particular persons as electors in the Parliamentary Constituency and also in the Municipality. Apart from the preparation of the electoral roll for the Municipality it would, therefore, be necessary to have a revision of such electoral rolls and

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also the adjudication of claims to be enrolled therein and objections to such enrolment.

This was clearly envisaged by the framers of the Ajmer-Merwara Municipalities Regulation, 1925, and with that end in view it was provided in s. 43(c) that the Chief Commissioner may by notification make rules consistent with the Regulation for the purpose of regulating *inter alia* the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and the objections to enrolment. Such rules when framed and published in the official Gazette were, by virtue of s. 248(4) to have effect as if enacted in the Regulation. They were to have statutory effect and were to be treated as part and parcel of the Regulation and contained therein.

Before the amendment of s. 30, sub-s. (2), of the Regulation by Act LXV of 1950 there were in existence sub-ss. (2) and (3) of that section which prescribed the qualifications for being enrolled as electors of the Municipality. They were, however, substituted by the amended s. 30, sub-s. (2), set out hereinabove. It thus substituted for the qualifications which had till then been considered requisite for such enrolment all the qualifications which were required for being registered in the electoral roll for the Parliamentary Constituency. That, however, was a provision prescribing the qualifications for the purposes of such enrolment and the object of the amendment was to adopt the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality. It did not eliminate the further steps in the matter of the revision of such electoral roll as also the adjudication of claims to be enrolled therein and objections to such enrolments. The amendment did not obviate the necessity of taking these further steps in spite of the electoral roll for the Parliamentary Constituency being treated as the electoral roll of the Municipality. By thus treating the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality, the trouble and expenses involved in the preparation of the electoral roll for the Municipality were saved but the Municipality was not absolved

from the obligation of providing for the revision of such electoral roll as well as the adjudication of claims to be enrolled therein and objections to such enrolment.

When the Ajmer State Municipalities Election Rules, 1955, came to be framed in exercise of the power conferred by s. 43 of the Regulation, the Chief Commissioner framed Rule 7 which provided that the electoral roll for the particular Municipality shall be the same as the final printed roll for the Parliamentary Constituency representing the area covered by the Municipality. He dispensed with the independent preparation by the Municipality of the electoral roll but did nothing further. Rule 9 provided that no person shall be deemed to be an elector for the purpose of the Rules unless his name appeared in the electoral rolls mentioned above. That had reference obviously to the second condition prescribed in s. 30, sub-s. (2), of the Regulation but did not go far enough. It did not say that a person whose name appeared in the electoral rolls for the Parliamentary Constituency was to be deemed to be an elector for the purposes of the Rules so as to obviate the necessity of fulfilling the first condition therein prescribed and rightly so, because, if it did say so, it would be in conflict with s. 30, sub-s. (2), of the Regulation. These Rules did not eliminate the scrutiny which could be made at the instance of the parties concerned as to whether a person whose name was registered in the electoral roll for the Parliamentary Constituency was in fact entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be so registered and whether he possessed the qualification prescribed in that Act in this behalf nor did they eliminate the further scrutiny for the purpose of the revision of such electoral roll or the adjudication of claims to be enrolled therein and objections to such enrolment.

It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll

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opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective.

It was urged that the expression "the final printed roll for the Parliamentary Constituency" predicated that the electoral roll for the Parliamentary Constituency had been finalised after going through the whole procedure in accordance with the provisions of the Representation of the People Act, 1950 (XLIII of 1950) and, therefore, there was no necessity for making any further provision of that nature in the matter of the electoral roll of the Municipality. This contention is unsound for the simple reason that by using this phraseology the whole of the procedure laid down in the Representation of the People Act, 1950 (XLIII of 1950) is not bodily incorporated in the Ajmer-Merwar Municipalities Regulation, 1925 (VI of 1925). Neither the Regulation nor the Rules which have been framed by the Chief Commissioner in exercise of the powers conferred under s. 43 of the Regulation make any mention of any such incorporation nor is it possible to urge that, merely because the electoral roll for the Parliamentary Constituency was treated as the basis for the electoral roll of the Municipality, these provisions were bodily incorporated in the Rules. If Rules 7 and 9 above referred to were intended to form a complete code for the finalisation of the electoral roll of the Municipality they did not serve the intended purpose and were either inconsistent with the provisions of s. 30, sub-s. (2), of the Regulation or were defective in so far as they

failed to provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the Municipality. If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on August 8, 1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on September 9, 1955, or at any time thereafter.

In the view which we hold, it is not necessary to consider whether, in the event of an inconsistency between s. 30, sub-s. (2), of the Regulation and the Rules framed by the Chief Commissioner in exercise of the power conferred under s. 43 of the Regulation, the section would prevail or the Rules. Suffice it to say that the electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner on August 8, 1955, was not in conformity with the provisions of s. 30, sub-s. (2), and the relevant provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.

Under the circumstances we see no substance in the appeal and dismiss the same. There will be, however, no order as to costs of the appeal in so far as the respondent has not appeared and contested the appeal before us.

Appeal dismissed.

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(JAGANNADHADAS, B. P. SINHA and JAFER IMAM, JJ.)

Trust deed—Construction—Vested interest or contingent interest—Transfer of Property Act, 1882 (IV of 1882), ss. 19, 21—Attachable interest—Execution of decree—Compromise decree providing for a personal remedy and a charge—Whether personal remedy could be pursued in the first instance.

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