

Durga Parshad Taking into consideration the nature of the  
 v. points involved the parties are left to bear their  
 Custodian of Evacuee Property own costs in all the cases.  
 and others

Grover, J.

FALSHAW, J.—I agree.

CHOPRA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Inder Dev Dua, JJ.

LAJPAT RAI AND OTHERS,—Petitioner.

versus

KHILARI RAM AND OTHERS,—Respondents.

Civil Writ No. 1174 of 1959.

1960  
 Feb., 10th

*Constitution of India (1950)—Article 226—Petition for issuance of a writ of quo warranto against all the elected members of a municipality on the ground that electoral rolls had not been prepared in accordance with the mandatory provisions—Whether maintainable—Alternative remedy by way of election petition—Whether bars petition under Article 226—Municipal Election Rules (1952)—Rule 51(e)—‘Material irregularity in the procedure of an election’—Whether includes the defective preparation of electoral rolls—Remedy by way of election petition—Whether equally efficacious, speedy and inexpensive—Petitioner having contested election on the basis of the electoral rolls impugned by him in the petition—Whether entitled to relief—Municipal Election Rules (1952)—Rules 8A to 8K—Electoral Rolls—Meaning, purpose, importance and preparation of—Duty of the officers entrusted with the preparation of, stated.*

Held, that a petition for issuance of a writ of quo warranto against all the elected members of a municipality on the ground that the electoral rolls had not been prepared in accordance with the mandatory and essential provisions of law is maintainable. The High Court is empowered

under Article 226 of the Constitution to interfere with an election matter both before and after the election in question is held on grounds which can also be lawfully taken in an election petition after the conclusion of an election. The existence of an alternative adequate or suitable remedy is not *per se* an absolute bar to a petition under Article 226 of the Constitution. It is only a circumstance, albeit a material circumstance, to be taken into account on the facts and circumstances of each case, when this Court is called upon to issue a prerogative writ or direction, and to determine whether or not to go into the matter and grant relief under Article 226 of the Constitution; it being in its judicial discretion whether or not to afford the extraordinary relief. The Court has in this connection to consider *inter alia* the nature and extent of the right violated, the nature and extent of the injury caused thereby, the delay in approaching the Court and whether the alternative remedy is equally adequate, inexpensive, efficacious and speedy.

Held, that on a consideration of the scheme of the Municipal Election Rules and the relevant provisions of the Punjab Municipal Act it is quite obvious that the expression "material irregularity in the procedure of an election" in Rule 51(e) is intended to be confined to non-compliance with the provisions of the Act or of the rules committed during the course of the election programme as framed by the Deputy Commissioner, and it does not cover illegalities committed antecedent to the steps covered by the said programme like the preparation of electoral rolls which have to be completed before the commencement of the programme of election. The objection that the elections had been held on the basis of a void electoral roll is permissible under Article 226 and cannot be taken in an election petition.

Held, that remedy by way of election petition in the circumstances of the present case, even if available, can hardly be considered to be equally efficacious, convenient and speedy. An election petition is competent only at the instance of a returned candidate or not less than 5 electors and it has to be filed within fourteen days of the declaration of the result of the election. Besides, the expense and delay in its trial is another factor which has to be taken into account in considering its efficacy as an alternative remedy.

Bearing in mind the fact that the petitioners in the instant case are seeking to enforce their right of selecting their representatives to the Local Body which would have power *inter alia* to impose taxes on them and that the entire constituency is likely to be interested in seeing that elections are held strictly according to law, it is not possible to hold that on the circumstances of this case an election petition can be considered to be an equally effective, speedy and inexpensive remedy, and that the High Court should on this ground disallow the petition.

*Held*, that a person, who has taken part in an election, held on the basis of an electoral roll, which is materially imperfect and defective in most essential and mandatory ingredients, cannot be legitimately deprived of the right of approaching and seeking redress from the court, and relief will not be withheld from the Constituency concerned merely because the petitioner took part in the impugned election. Relief in such cases is not granted to a petitioner for his personal or individual benefit but for the benefit of the entire constituency and the court would in such a case feel duty-bound to interfere in the interest of the public weal.

*Held*, that the roll, according to the Municipal Election Rules, 1952, means the roll of persons entitled to vote at an election under the said rules. The primary purpose of preparing the roll seems to be to prevent the perpetration of fraud at elections by providing in advance the list of qualified electors and also to ensure speedy election without interruption by holding elaborate inquiries into the qualification of intended voters. According to rule 8J a final revised roll is to remain in force for only one year from the date of its enforcement, and preparation of a fresh roll every year seems obviously to be contemplated; amendment of the roll by the correction of errors by the Deputy Commissioner is also provided. It is thus clear that the rules postulate maintenance of an up-to-date proper electoral roll so that all persons entitled to vote are enabled to exercise their right of franchise. Though basically entry in the roll need not necessarily be a qualification of a right to vote, it being only a method of proof for ascertaining the electors or voters, yet according to the rules, in the case in hand, the election has to be held on the basis of the roll which is in force under rule 8J(2), and no one can be entitled to vote unless his

name is included in the fresh roll for the constituency concerned; the entry in the roll has, therefore, in essence to be treated as a qualification or an essential prerequisite to the right to vote. This being the position rules 8A to 8K must be held to be mandatory and the electoral roll must be prepared and maintained in accordance therewith. The importance of the preparation of electoral roll to elections in our system of democracy cannot be over emphasized. It is of the essence of these elections that proper electoral rolls should be maintained and elections held on imperfect rolls can acquire no validity.

*Held*, that no precise method has been prescribed in the Municipal Election Rules for preparing the roll which is to be published under rule 8E. The method has been left to the sound discretion of the administrative authorities entrusted with the task. But the roll must be so prepared under the rules as to effectuate their true purpose and object, and the citizens entitled to vote are afforded fullest opportunity to exercise their right of selecting their representatives for the purpose of Local Government administration. It, however, does not mean that every defect or irregularity caused by the negligence or inefficiency or breach of rules by the authorities entrusted with the preparation of roll must necessarily invalidate them and expose to challenge the election held on the basis of such roll nor does the validity of the roll depend on strict observance of minute directions of the statute. The Court should in each case examine the nature and extent of the breach, the circumstances in which it has been committed, and then determine whether the roll in question is so imperfect and improper as to invalidate the election held on its basis.

*Held*, that the amended Rules 8A to 8K were framed as a matter of public policy and they can hardly be ignored or waived, since the doctrine of waiver cannot apply to a law indicated or enforced as a matter of constitutional policy. Reasonably substantial conformity with these rules is essential for the healthy and proper growth and development of the infant democracy in this country.

The authorities entrusted with the preparation of electoral roll are, therefore, expected to keep foremost in their view the true object and purpose of the relevant rules and the rights and interests of the public. Election is not a

purely private affair between the contestants and the controversy with respect to it is not to be treated or dealt with on a personal level between the parties, the constituency being most vitally interested in it.

*Petition under Article 226 of the Constitution of India, praying that a writ in the nature of a writ of quo warranto be issued calling upon the respondents 1 to 9 to furnish information to this Court in respect of their rights to be gazetted as members of Rupar Municipal Committee and directing the Punjab Government not to gazette the names of respondents 1 to 9 as members of the Rupar Municipal Committee and further directions be issued to respondents 1 to 9 restraining them from discharging any of the functions of members to the Municipal Committee Rupar and from exercising any rights as members or any other writ or direction or order be issued as the circumstances of the case require.*

ANAND SWARUP, for the Petitioner.

G. P. JAIN, DALIP SINGH, H. S. DOABIA, Additional Advocate-General for the Respondents.

#### ORDER

Dua, J.

DUA, J.—These five writ petitions (Civil Writs Nos. 1174, 1182, 1211, 1170 and 1176 of 1959) involve common question of law and, therefore, will be disposed of by one judgment.

In *Lajpat Rai and others v. Khilari Ram and others* (1), eight petitioners, claiming to be ordinarily resident within the area of Rupar Municipal Committee and also registered voters in the relevant electoral roll, have approached this Court under article 226 of the Constitution for a writ in the nature of a writ of *quo warranto* calling upon respondents 1 to 9 to furnish information to this Court in respect of their rights to be gazetted as members of Rupar Municipal Committee or their right to act as such and for directions to be issued

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(1) C.W. 1174 of 1959

to the Punjab Government to refrain from gazet-  
ting the names of the said respondents as mem-  
bers of the Rupar Municipal Committee; it is fur-  
ther prayed that the offices of the newly elected  
members of the Municipal Committee, Rupar, be  
declared vacant and directions be issued to the  
aforesaid respondents restraining them from dis-  
charging any of the functions of members of the  
Municipal Committee, Rupar, and from exercis-  
ing any rights as such members; a prayer is also  
made for any other suitable writ, direction or order  
as circumstances of the case require.

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The facts on which this petition is based are that on 4th August, 1959, the Director of Elections (Local Bodies); Punjab, wrote a letter to the Deputy Commissioner, Ambala which the addressee forwarded to the Executive Officer, Municipal Committee, Rupar, intimating the decision of the Government to commence election proceedings in the case of several municipal committees, including that of Rupar, nearabout the 20th August, 1959. A definite detailed programme intended to be followed was to be sent a couple of days later. It was in the circumstances considered necessary that the preparation for the contemplated elections should be taken up in right earnest at all levels. With this end in view it was suggested that the electoral rolls, which were to form the basis of the proposed elections, should be ready in all respects. It was further stated that the Government was contemplating to suitably amend rule 8 of the Municipal Elections Rules, 1952, so as to specify therein that the electoral rolls to be used for municipal elections should be the electoral rolls prepared ward-wise and published by the Deputy Commissioner. But pending such amendment, the Assembly Electoral Rolls of 1958 of the municipal committees concerned were to be arranged according to the finally

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delimited proposed wards, a copy of which was also to follow. Where such preparation could not be done by re-arranging the rolls according to the wards, fresh manuscripts were required to be prepared in hand or typed as convenient, and this work was to be done by the staff of the respective municipal committees and was to be completed before the 10th August, 1959, so that the municipal wardwise rolls so prepared were kept ready for publication regarding which necessary instructions were expected soon to follow. After publication and decision on public claims and objections, the electoral rolls so finalised were to be cyclostyl-ed/printed by the municipal committee concerned under the direction and control of the addressee and the requirements for the copies of the electoral rolls were to be carefully worked out, including those required for sale to the public as well as for official use. Such printing and cyclostyling of the rolls was to be completed by the 20th August, positively. After arranging the manuscript electoral rolls wardwise, the entries made therein were to be given separate serial numbers for each ward. The plans of the delimitation of wards of municipal committees concerned were also sent, because they were to be required for the purpose of arranging the electoral rolls ward-wise. This letter is marked as Annexure 'A' to the petition. In compliance with the instructions contained in the said letter, the Executive Officer, Municipal Committee, Rupar, got prepared a handwritten verbatim copy in Urdu of the Punjab Assembly Electoral Rolls, 1958, relating to Rupar Town re-arranged according to the new municipal wards. On 21st August, 1959, under the orders of the Deputy Commissioner, Ambala, the Executive Officer, Municipal Committee, Rupar, pre-published the aforesaid handwritten copy as "Draft Municipal Roll" under rule 8E of the Punjab

Municipal Election Rules, 1952 (as amended on 13th August, 1959 and published in the Punjab Gazette Extraordinary, dated 14th August, 1959). The new wards of the Municipal Committee, Rupar were finally delimited by a notification dated 20th August, 1959. In the meantime on 19th August, 1959, a letter issued by the Punjab Government, under the proviso newly added to rule 8 by means of the above amendment, directed that the electoral rolls for the Punjab Legislative Assembly, 1958, should not be used for the purpose of the ensuing municipal elections in the State for which rolls should be prepared in respect of each municipality concerned in the manner specified in rules 8A to 8K. This letter is said to have reached the office of the Municipal Committee, Rupar, on 22nd August, 1959, though respondent No. 12, the Deputy Commissioner, Ambala, has controverted this allegation and has asserted that it was received in the Municipal Office, Rupar, on 20th August, 1959. Up to this stage, except with respect to the date of the receipt of the letter, dated 19th August, 1959, and the verbatim re-production of the Assembly electoral rolls, 1958, there is no serious dispute.

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The petitioners plead that in spite of the directions given by the Punjab Government under the proviso to rule 8, the Deputy Commissioner, Ambala, or the Executive Officer, Municipal Committee, Rupar, did not prepare fresh roll in accordance with rules 8A to 8K of the Punjab Municipal Election Rules. No staff was appointed to go from house to house in Rupar Town, nor was any other effective step taken for the purpose of ascertaining and including in the fresh electoral roll the names of those persons who had attained the age of 21 years after the 1st March, 1958, or of those persons who had become ordinarily resident in Rupar Town after the above date ; nor was any

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inquiry made for the purpose of ascertaining and removing from the roll the names of those persons who had either died or ceased to reside in Rupar Town since the 1st March, 1958. It may be stated at this stage that admittedly 1st March, 1958, was the qualifying date for the Legislative Assembly Roll prepared for the year 1958, and, according to the Explanation to rule 8D of the Municipal Election Rules, as amended, the qualifying date for the municipal electoral roll is the date on which the preparation of the roll commences in the constituency concerned, which would obviously be sometime in 1959, and has not been shown to be before the enforcement of the amended rules which were enforced with effect from 14th August, 1959. The petitioners have appended to their application about 140 affidavits of persons said to have been disenfranchised on account of the alleged violation of the rules by the authorities concerned. It has also been stated in the petition that at least 869 persons had left Rupar since 1st March, 1958, and were not ordinarily resident within the area of Rupar Municipal Committee on 21st August, 1959, though their names were included in the Draft Roll published on that date as also in the final roll published on 29th August, 1959. The names and other particulars of those 869 persons have also been attached with the petition as Annexure 'D'. It is further alleged that at least 114 persons (whose names and particulars are given in Annexure 'E') had died since the 1st March, 1958, and were not alive on the 21st August, 1959, though their names were included both in the Draft Roll and in the final roll. The petitioners further assert that on a survey by them in only three out of eight wards of the Municipal Committee it has been revealed that on 21st August, 1959, at least 471 persons ordinarily resident within the said municipality who had attained the age

of 21 years and thus entitled to be registered as voters were neither included in the Draft Roll of the 21st August, 1959, nor in the final roll published on the 29th August, 1959. Their names and particulars have also been attached with the petition as Annexure 'F'. The petitioners' grievance is that no heed has been paid to the qualifying date fixed under the amended rules which, according to the petitioners, should be 22nd August, 1959, the date of the receipt of the letter dated 19th August, 1959, and the authorities concerned have merely utilized the Punjab Assembly electoral roll prepared for the year 1958, which was compiled on the basis of 1st March, 1958, as the qualifying date, with the result that there is no valid and lawful electoral roll in the eye of law for the municipal elections in question. It is then alleged that on 27th August, 1959, without giving any notice to the persons against whom objections had been filed and without holding any proper inquiry or applying its own mind to the matter in question, the Revising Authority decided in a wholly perfunctory manner the claims and objections filed by some of the citizens; it is in this connection stressed that an unreasonably short period was allowed to the citizens for filing claims and objections with the result that the Draft Roll pre-published on 21st August, 1959, cannot be considered to have been validly and properly revised according to the rules. The elections to the Rupar Municipal Committee held on the 17th October, 1959, in which respondents 1 to 9 came out successful, are thus described to be wholly void and, therefore, no elections in the eye of law. It is further asserted that the Punjab Government themselves postponed the elections to the Municipal Committees of Rohtak and Patiala on account of similar defect in the electoral rolls relating to those committees, but in the case of other municipalities the elections have been

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held in spite of the attention of the Government having been drawn to the illegal and defective nature of their electoral rolls ; it is suggested that this was done on account of some ulterior political exigencies. It is on these allegations that the present writ petition seeking a writ in the nature of *quo warranto* and other suitable writ, direction or order has been filed.

In the written statement filed on behalf of the Deputy Commissioner, Ambala, respondent No. 12, it is admitted that handwritten copies in Urdu were got prepared for the municipal elections by the Executive Officer, Municipal Committee, Rupar, on the basis of the Punjab Assembly electoral roll, 1958 ; but it is denied that they were verbatim reproduction of the said electoral roll. Pre-publication of the said handwritten copies of the Draft Municipal Roll by the Executive Officer is also controverted and it is pleaded that the electoral roll was duly published in time on 21st August, 1959. It is further asserted that a general notice of publication for the purpose was also issued by the Executive Officer the same day and signatures of more than 50 responsible members of the public were obtained as a token of the completion of the announcement on the same day. In para 9 of the written statement it is admitted that the electoral roll was prepared on the basis of Assembly roll for the year 1958, and the instructions of the Government, contained in their letter of the 19th August, 1959, having been received on the 20th August, 1959, it was evidently impossible to comply with the instructions fully in regard to the preparation of the roll as it was required to be published on the next following day, i.e., 21st August, 1959 ; it is also stated that the method of going from house to house for making the necessary inquiries could not be adopted within the short time available. The use of the electoral roll for the Assembly

has been denied and the preparation of fresh roll for each ward of the municipal committee is said to have been taken in hand for the election in question. About 98 voters are stated to have been struck off in the roll relating to eight wards of the municipality and about 201 voters added in the final list. Four corrections of names and ages have also been asserted. These figures, according to respondent No. 12, suggest that the citizens of Rupar Municipality took keen interest to get their names entered as voters in the final electoral roll on the basis of which the elections were held. With respect to the survey and the resulting figures alleged in para 12 of the petition, no reply has been given on the pretext that copies of the Annexures to the writ petition had not been received by the respondent, and knowledge of the facts asserted has been denied. With reference to the allegation in the petition that fresh electoral roll should have been prepared on the basis of 22nd August, 1959, as the qualifying date, the reply merely states that fresh electoral roll for the purpose of municipal elections, 1959, was prepared for which the work commenced on the due date, without precisely specifying which, according to them, was the due date. The allegations of omission to give notice to the objectors and of decision of claims and objections on the 17th August, 1959, without proper inquiry, have also been controverted and it has been expressly stated that parties available were informed personally, and in the case of those who were not available notices were affixed on their houses, etc., it has also been suggested that the Revising Authority decided claims and objections in open Court on 17th August, 1959. It is further averred that full five days, from 21st August to 25th August, 1959 (both days inclusive), were allowed for filing claims and objections with the Revising Authority. In the end it is pleaded that

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neither the petitioners nor any other person from Rupar took any objection to the procedure adopted for the preparation of municipal electoral roll, nor was any such objection received with respect to the implementation of the instructions of the Government while the roll was in the process of being prepared or at the time of its publication or even before the polling or the elections. Respondents 1, 2 and 9 have filed one joint written statement ; so have respondents 4 to 7, resisting the petition on almost identical grounds, except that in the written statement filed by respondents 4 to 7 it is also alleged that the defeated candidates having not filed any election petition, the present petitioners have been set up in a *mala fide* manner for the purpose of getting the elections set aside. It has further been pleaded by them that the alternative remedy by way of election petition is the only remedy open to the petitioners and that the present writ petition is incompetent for various reasons, including long delay, involving disputed questions of fact and the grounds urged being insufficient to sustain an election petition.

As is obvious from the record, the only substantial ground on which this petition is based is that the impugned elections have been held on the basis of an electoral roll which has not been prepared in accordance with the mandatory and essential provisions of law, viz., the amended rules 8A to 8K. But before dealing with the case on the merits it is necessary to advert to a preliminary objections raised by Mr. Doabia who has very vehemently urged that there being an adequate alternative remedy available in the form of an election petition, this Court should not investigate into the merits of this petition, but reject it as incompetent. In reply Mr. Anand Swarup has drawn our attention to several cases in which Courts have interfered with election matters, particularly pertaining

to Local Bodies and Panchayats, on petitions under article 226 of the Constitution. In *The Chief Commissioner of Ajmer and another v. Radhey Shyam Dani* (1), an appeal from an order of the Court of Judicial Commissioner, Ajmer, granting a writ was dismissed. In *Lachhman Singh Chuhar Singh and another v. State of Punjab and others* (2), sitting in Single Bench I issued a writ quashing as void the entire election of Morinda Municipal Committee held on the basis of wholly invalid electoral roll, but then it is contended by Mr. Doabia that no objection to this effect was raised before me by the learned Advocate-General and, therefore, that decision is no authority against him. In *Sham Sunder v. State of Punjab* (3), Bishan Narain, J., also set aside an election of Barnala Municipal Committee on a petition under article 226 of the Constitution, and this was affirmed on Letters Patent Appeal *Bindra Ban, etc. v. Sham Sunder etc.* (4), but here again Mr. Doabia submits that no objection, like the one now raised by him, had been urged on behalf of the State. In *Parmeshwar Mahaseth and others v. State of Bihar and others* (5), a Division Bench of the Patna High Court repelled a similar objection raised on behalf of the Government Advocate in the following words :—

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“(14) It was urged by the learned Government Advocate that the election cannot be disputed except by an election petition, as laid down in R. 62 of the Election Rules. He submitted that petitioner 9 had already filed an election petition after the presentation of this writ application. This contention is not valid.

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(1) A.I.R. 1957 S.C. 304  
 (2) A.I.R. 1959 Pun. 522  
 (3) A.I.R. 1958 Pun. 128  
 (4) A.I.R. Pun. 83  
 (5) A.I.R. 1958 Patna 149

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What is challenged here is not the election of a particular candidate, but the validity of the entire election, because of the violation of the essential provisions of the Election Rules and the Act. I think, R. 62 provides for a case where a person challenges the election of a particular candidate. I would overrule the objection."

In *Prabhudayal v. Chief Panchayat Officer, Jaipur, and others* (1), Wanchoo, C.J., (as he then was) similarly set aside the entire election of the Panchayat on a petition under article 226 of the Constitution and an objection based on the existence of an alternative remedy by way of election petition was negatived with the following observations :—

"(6) It has, however, been contended on behalf of the opposite parties that there is an alternative remedy provided under R. 19, and, therefore, this court should not interfere in its extraordinary jurisdiction at this stage. Rule 19 provides for an election petition challenging the validity of the election of any Panch, Sarpanch, or Up-Sarpanch, and this can be done either by a defeated candidate or by 10 duly qualified electors. Rule 20 mentions the grounds on which the election of an individual can be challenged, namely that the election has been the outcome of some misconduct or corrupt practice or some irregularity which has substantially influenced the result thereof. It is being urged by the learned Deputy Government Advocate that the election of the various Panches

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(1) A.I.R. 1957 Raj. 95

who were elected on that date, could have been challenged by election petitions made singly against each of them on the ground of this irregularity and their election could have been set aside if the Collector came to the conclusion that the irregularity had substantially influenced the result of the election.

- “(7) We are of the opinion that the present R. 19 contemplates election petition against individual Panches. It does not contemplate an election petition asking the tribunal to declare the entire election invalid on the ground of a fundamental deficiency in carrying out the mandatory rules relating to the holding of the election. That, in our opinion is a different matter altogether, and R. 19 does not cover this kind of petition. We are, therefore, of opinion that an elector can bring the matter before us so long as he does not challenge any individual's election only on the basis of the grounds mentioned in R. 20. In this case, the applicant has not challenged the election of any individual Panch or Sarpanch or Up-Sarpanch. What he is doing is to challenge the entire election held on that day on the ground of a fundamental deficiency in the procedure preceding the election.”

Our attention has also been drawn by the counsel to at least three unreported decisions by Mehar Singh, J., in *Mahadev Parshad v. Punjab State, etc.*, (1), *Kishan Lal v. Punjab State, etc.*, (2), and *Hari Parkash Chawla v. Punjab State, etc.*, (3), in which

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(1) C.W. 1109 of 1959  
(2) C.W. 1110 of 1959  
(3) C.W. 1123 of 1959

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the elections were stopped on the basis of defective roll prepared without complying with the amended rules which concern us in this case, but then Mr. Doabia contends that before elections are held this Court has full power to interfere under article 226 of the Constitution, and indeed he does not dispute that the Supreme Court in *The Chief Commissioner of Ajmer and another v. Radhey Sham Dani* (1), affirmed the order of the Judicial Commissioner. Ajmer, stopping the elections designed to be held on the basis of illegal electoral roll, but he argues that once the elections have been held or completed, no matter what the nature of the complaint, this Court has no jurisdiction or power to pass any order which may have the effect of setting aside the election of a returned candidate; according to him a writ petition in such circumstances must be held to be legally incompetent. It is relevant to note at this stage that Letter Patent appeals from the judgments of Mehar Singh, J., in the above three cases have since been dismissed *in limine*, two by us and one by a Division Bench consisting of my Lord the Chief Justice and my learned brother Dulat, J.

The argument though somewhat plausible on first impression seems on deeper probe to be neither sound nor convincing. If the High Court is empowered under article 226 to interfere with an election matter before the election in question is held on grounds which (assuming Mr. Doabia's contention to be sound) can also be lawfully taken in an election petition after the conclusion of the election, then I fail to understand how, in the absence of any provision of the Constitution, circumscribing the scope of article 226, this Court can be deprived or divested of that power merely because the aggrieved citizen has approached this

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(1) A.I.R. 1957 S.C. 304

Court with the same grievance after the completion of the election. That this Court does possess power to interfere under article 226 would clearly seem to find support from the decision of the Supreme Court in the case of *Radhey Sham Dani* (1), it would thus require some clear and explicit provision in the Constitution itself to take away from this Court that power on the sole ground that the elections have since concluded. Our attention has not been drawn by the learned Additional Advocate-General to any provision of law, statutory or otherwise, or to any convincing argument in support of his contention. Indeed this argument completely ignores that the power to issue writs and other directions is conferred on this Court by the Constitution and this power can by no means be cut down or curtailed by the Punjab Municipal Act or the rules made thereunder. There is obviously a certain amount of strain involved in the reasoning of the counsel as it hits at the basic rule just stated.

The true legal position, as I visualise it, is that the existence of an alternative adequate or suitable remedy is not *per se* an absolute bar to a petition under article 226 of the Constitution. It is only a circumstance, albeit a material circumstance, to be taken into account on the facts and circumstances of each case, when this Court is called upon to issue a prerogative writ or direction, and to determine whether or not to go into the matter and grant relief under article 226 of the Constitution; it being in its judicial discretion whether or not to afford the extraordinary relief. The Court has in this connection to consider *inter alia* the nature and extent of the right violated, the nature and extent of the injury caused thereby, the delay in approaching the Court and whether the alternative remedy is equally adequate, in expensive,

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efficacious and speedy. The Supreme Court decision in *N. P. Ponnuswami's case* (1), from which Mr. Doabia has sought to seek some support, dealt with the effect of article 329 of the constitution on the power of the High Court under article 226. It was because of the former article that the scope of article 226 was held to be curtailed in respect of elections to either House of Parliament or to the House or either House of the Legislature of a State. It is not possible for me on the basis of this decision to agree with Mr. Doabia that the power of the High Court under article 226 is in any way affected by rule 52 of the Municipal Election Rules, 1952, on which alone Mr. Doabia's contention is based. The argument of the counsel that this Court has no power to interfere at this stage is thus obviously fallacious.

But this apart, in the case in hand I am not satisfied if the relief claimed in the present writ petition on the grounds taken can at all legally be secured by an election petition or, in case it is assumed that it can be so secured, if it is equally adequate, efficacious, inexpensive and speedy, keeping in view the nature of the right and the provision of law violated. The counsel has submitted that the expression "material irregularity" as defined in rule 51(e) of the Municipal Election Rules includes any "non-compliance with the provisions of the Act or the rules made thereunder" and, therefore, the preparation of electoral roll in violation of rules 8A to 8K would be covered by this definition. Election of a returned candidate would thus, according to the counsel, be liable to be called in question on the alleged non-compliance with the provisions of the rules in the preparation of the electoral roll by means of an

election petition with the result that such an election petition would constitute an adequate or suitable alternative remedy. Relying on rule 52, it is submitted that this Court should, in its discretion, refuse to permit the petitioners to call in question the elections of respondents 1 to 9. An attempt has again been made to draw support from the decision of the Supreme Court in *Ponnuswami's case* (1), where the word "election" was not construed in a narrow sense but was held to embrace the whole procedure consisting of several stages whereby an elected member is returned.

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This argument has been sought to be met on behalf of the petitioners by pointing out that "material irregularity" defined in rule 51(e) is a "material irregularity in the procedure of an election", and the procedure of election, according to the counsel, does not include the preparation of electoral rolls. It has also been contended that an election petition can only be filed when the election of a member is called in question and not where the entire process of election is assailed on account of violation of an essential mandatory provision of law. The argument is somewhat like this. Rule 3 enjoins the Deputy Commissioner to frame a programme of general elections and this programme begins with the presentation of nomination papers and concludes with the declaration of the result of elections; and this programme has to be published not less than ten days before the date by which the nomination papers are to be presented. It is obvious from the scheme of the rules, says the counsel, that the electoral roll must be prepared and published before the commencement of the programme for election, and indeed the rules contemplate preparation of a fresh electoral roll every year because a roll published under rule

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(1) A.I.R. 1952 S.C. 64

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3J(1) can only continue in force for one year after its publication, though it is also open to the State Government at any time to direct the preparation of fresh rolls in accordance with the rules.

The contention is not without substance. On a consideration of the scheme of the rules and the relevant provisions of the Punjab Municipal Act it does seem to me that the expression "material irregularity in the procedure of an election" is intended to be confined to non-compliance with the provisions of the Act or of the rules, committed during the course of the election programme as framed by the Deputy Commissioner, and it does not cover illegalities committed antecedent to the steps covered by the said programme. It is, of course, not denied that preparation of electoral roll has to be completed before the commencement of the programme of election. The counsel for the respondents has not been able to bring to our notice any precedent directly supporting his contention that an election petition is competent on grievances pertaining to, or violation of, the provisions of law, antecedent to the stages included in the election programme issued by the Deputy Commissioner. On the other hand the following observations of the Supreme Court in *Hari Vishnu Kamath v. Ahmad Ishaque and others* (1), while dealing with the meaning of the word "election" as used in article 329(b) of the Constitution appear to some extent to go against Mr. Doabia's contention :—

"In '*N. P. Ponnuswami v. Returning Officer, Namakkal Constituency*' (2), it was held by this Court that the word 'election' in Article 329(b) was used in a comprehensive sense as including the

(1) A.I.R. 1955 S.C. 233

(2) A.I.R. 1952 S.C. 64

entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate, and that an application under Article 226 challenging the validity of any of the acts forming part of that process would be barred."

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The Supreme Court decisions in these two cases no doubt lay down that the word "election" in Part XV of the Constitution has been used in a wide sense, but the observation nonetheless suggests that the process would only start with the issue of the relevant notification calling upon the constituency to elect their representatives.

It is, of course, true that before the Supreme Court in *Ponnuswami's case* (1), the objection raised related to nomination papers, and this objection was held to be covered by the word "election" as used in the expression "no election shall be called in question" in article 329(b) of the Constitution. But there is nothing in the said judgment which can properly be construed to support Mr. Doabia's contention that the preparation of electoral roll was considered by the Supreme Court to be included in the above expression; nor do I understand the ratio of this decision to be of any assistance to the counsel. The word "election" was undoubtedly construed in a wide sense as including the rejection of nomination papers and the narrow construction of confining it only to matters arising between the commencement of the polling and the final election was negatived. It was, however, made clear that the decision of the Supreme Court was influenced by the setting and context of the above expression with due regard to the scheme of Part XV of the Constitution.

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Rule 51(e), with which we are concerned, is in the following terms :—

“ ‘Material irregularity’ in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or non-compliance with the provisions of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election.”

I may also here set out, so far as is relevant for our present purpose, section 240 of the Punjab Municipal Act which confers power on the State Government to frame rules—

[His Lordship set out Section 240 and continued :]

The language of the above clauses also supports the view that the expression “procedure of election” has been used by the Legislature in a sense which excludes from its purview the registration of electors, which is obviously the same thing as preparation of electoral roll.

Construing the above section and rule 51(e) in their context and setting with due regard to the scheme of Part III of the Municipal Election Rules, 1952, and reading all these provisions together, I entertain most serious doubts whether the preparation of electoral roll, though broadly speaking and in layman’s popular conception a part of the machinery of election, was at all intended to be included in the expression “procedure of election” as used in the above rule and I would, therefore, as at present advised, be inclined to hold that the

scope of this expression was apparently intended to extend only up to the stage of the acceptance or refusal of nomination papers. Had it been the intention of the framers of the rules also to include the preparation of electoral roll in this expression, the intention would, in view of the importance of the matter, in all probability, have been expressed in more clear and precise language.

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In support of the second point urged on behalf of the petitioners reference has been made to the definition of the word "election" contained in rule 51(c), according to which it means the election of a member, President, or Vice-President of a municipal committee, and also to rule 53 which lays down the competency of an election petition against the return of a candidate on the ground of a corrupt practice or material irregularity in the procedure. It is submitted that the rules postulate an election petition against the return of a candidate and not against the entire election which is asserted to be invalid as a whole on the basis of some material violation of a fundamental provision of law. A similar submission was upheld by a Division Bench of this Court in *Sham Sunder's case* (1), where the order of a learned Single Judge of this Court was affirmed on Letters Patent appeal. This contention also finds support from decisions of the Rajasthan High Court in *Prabhu-dayal's case* (2), and of the Patna High Court in *Parmeshwar Mahaseth's case* (3), from both of which I have quoted relevant passages in an earlier part of this judgment. In *Brij Niwas Dass v. Chief Commissioner* (4), also attack on the very constitution of the municipal committee on the ground that municipal elections had been held on the basis of a void electoral roll was held permissible under

- (1) A.I.R. 1959 Pun. 83  
(2) A.I.R. 1957 Raj. 95  
(3) A.I.R. 1958 Patna 149  
(4) A.I.R. 1956 Ajmer 73

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article 226 of the Constitution. Mr. Doabia has failed to cite any precedent to the contrary and has also not been able to successfully controvert the reasoning in the above decisions.

Apart from rule 53 and the definition of the word "election" contained in rule 51(c), the language of rules 63, 64 and 69 also lends some support to the view taken in the cases cited by the petitioners. As at present advised, therefore, I am inclined to agree with this contention of the petitioners as well.

I may also add that remedy by means of an election petition in the circumstances of the present case even if available (of which I am not quite convinced) can hardly be considered to be equally efficacious, convenient and speedy. An election petition is competent only at the instance of a returned candidate or not less than 5 electors and it has to be filed within fourteen days of the declaration of the result of the election. Besides, the expense and delay in its trial is another factor which has to be taken into account in considering its efficacy as an alternative remedy. Bearing in mind the fact that the petitioners in the instant case are seeking to enforce their right of selecting their representatives to the Local Body which would have power *inter alia* to impose taxes on them and that the entire constituency is likely to be interested in seeing that elections are held strictly according to law, I cannot persuade myself to hold that on the circumstances of this case an election petition can be considered to be an equally effective, speedy and inexpensive remedy, and that this Court should on this ground disallow the petition. In view of the above discussion I find it a little difficult to uphold Mr. Doabia's contention that the present petition seeking information in the

nature of *quo warranto* or for suitable writs, orders or directions under article 226 is incompetent on the grounds urged.

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With these observations I now come to the merits of the case. As already noticed, the complaint of the petitioners is that the electoral roll has not been prepared in accordance with the amended rules and, therefore, no valid election could possibly be held on the basis of such roll, which is, in effect, no roll in the eye of law. Reliance in support of this contention has been placed on the decision of the Supreme Court in *Radhey Sham Dani's case* particularly on the following observations of Bhagwati, J., who delivered the judgment of the Court :—

“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 preparation of the electoral roll 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 roll 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

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Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective.”

At an earlier stage while dealing with provision in the law in force in Ajmer, which permitted adoption of the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the municipality, the learned Judge spoke thus—

“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.”

The counsel also placed reliance on *Lachhman Singh-Chuhar Singh and another v. State of Punjab* (1), in which, following the principle laid down in the Supreme Court decision and relying on *Sham Sunder's case* (2), I interfered under article 226 of the Constitution with the election of the Municipal Committee, Morinda. I am informed by the learned counsel for the State that it is in pursuance of these decisions that the Punjab Government decided to amend the rules and in August, 1959, added rules 8A to 8K to the Municipal Election Rules, 1952. It is, however, contended on behalf of the respondents that the amended rules 8A to 8K have been fully or at least substantially complied with and, therefore, this Court should not interfere under article 226 and set aside the election already held. He has submitted that although the electoral roll was not prepared strictly in accordance with the amended rules inasmuch as no elaborate and detailed inquiries were made by sending people from house to house to prepare the roll, nevertheless sufficient and adequate opportunity was given to the citizens to prefer objections or claims with regard to the roll and that the final roll published under rule 8J cannot be considered to be so defective as to amount to no roll in the eye of law within the rule laid down in the decisions cited above. In this connection the counsel has referred us to the written statement filed on behalf of the Deputy Commissioner and has submitted that the handwritten Urdu copies of the roll were not verbatim reproduction of the Assembly electoral roll, 1958, as alleged by the petitioners. It has also been pleaded that the electoral roll was duly published on 21st August, 1959, and a general notice thereof issued and more than fifty members of the public actually

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(1) A.I.R. 1959 Punj. 522

(2) A.I.R. 1959 Punj. 83

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signed it as a token of the completion of the announcement on 21st August, 1959. It has further been pleaded that the letter dated 19th August, 1959, was received in the Municipal Office, Rupar, on 20th August, and fresh electoral roll was in fact prepared, although on the basis of the Assembly roll for the year 1958, because it was impossible to comply with the instructions fully and prepare the roll wholly independently of the Assembly roll. It has, however, been expressly asserted that fresh roll for each ward of the municipality was prepared and used for the election. Figures of the numbers of voters struck off the roll and of those added have also been given in the written statement. It is true that in para 13 it has been vaguely asserted that fresh electoral roll for the purpose of municipal election, 1959, was prepared for which the work commenced on the due date, without expressly and clearly stating, as it should have been done, as to which date was considered to be the due date by the authorities entrusted with the responsible duty of preparing the electoral roll. This vagueness has afforded an apparently handy argument to the petitioners that this has been deliberately left vague because the date on which the preparation of roll in the constituency concerned commences is the qualifying date according to the Explanation to rule 8D and the roll in question has not been prepared by making actual inquiries as to the persons who were in fact entitled to be registered as voters on such qualifying date. It has further been pleaded by the respondents that full five days were allowed for filing objections and claims though, as the petitioners have shown, out of these five days, i.e., 21st to 25th August, two days, i.e., 22nd and 23rd August, were public holidays being Saturday and Sunday.

Now, the roll, according to the rules in question, means the roll of persons entitled to vote at

an election under the said rules. The primary purpose of preparing the roll seems to be to prevent the perpetration of fraud at elections by providing in advance the list of qualified electors and also to ensure speedy election without interruption by holding elaborate inquiries into the qualifications of intended voters. According to rule 8J a final revised roll is to remain in force for only one year from the date of its enforcement, and preparation of a fresh roll every year seems obviously to be contemplated ; amendment of the roll by the correction of errors by the Deputy Commissioner is also provided. It is thus clear that the rules postulate maintenance of an up-to-date proper electoral roll so that all persons entitled to vote are enabled to exercise their right of franchise. Though basically entry in the roll need not necessarily be a qualification of a right to vote, it being only a method of proof for ascertaining the electors or voters, yet according to the rules, in the case in hand, the election has to be held on the basis of the roll which is in force under rule 8J(2), and no one can be entitled to vote unless his name is included in the fresh roll for the constituency concerned ; the entry in the roll has, therefore, in essence to be treated as a qualification or an essential pre-requisite to the right to vote. This being the position rules 8A to 8K must, in my opinion, be held to be mandatory and the electoral roll must be prepared and maintained in accordance therewith. The importance of the preparation of electoral roll to elections in our system of democracy cannot be overemphasized. As stated by Bhagwati, J., in *Radhey Sham Dani's case* it is of the essence of these elections that proper electoral roll should be maintained, and elections held on imperfect rolls can acquire no validity.

Coming to the rules it is noteworthy that no precise method has been prescribed in them for

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preparing the roll which is to be published under rule 8E. The method has been left to the sound discretion of the administrative authorities entrusted with the task. But the roll must, in my opinion, be so prepared under the rules as to effectuate their true purpose and object, and the citizens entitled to vote are afforded fullest opportunity to exercise their right of selecting their representatives for the purposes of local Government administration. It, however, does not mean that every defect or irregularity caused by the negligence or inefficiency or breach of rules by the authorities entrusted with the preparation of roll must necessarily invalidate them and expose to challenge the election held on the basis of such roll nor does the validity of the roll depend on strict observance of minute directions of the statute. At the same time I would be disinclined to lay down as a positive general rule that the exercise of discretion in the matter before us is solely according to the dictates of the administrator who may be considered to be the final arbiter, wholly immune from examination or scrutiny by this Court; the administrator has to be guided by the object and purpose of the statute which, strictly speaking, circumscribes his discretion. In my view, therefore, the Court should in each case examine the nature and extent of the breach, the circumstances in which it has been committed, and then determine whether the roll in question is so imperfect and improper as to invalidate the election held on its basis.

In the light of the above discussion and on going through the petition and the reply on this record it appears to me that though the electoral roll in question has not been prepared with as much care and attention as it deserved or called for, nevertheless it is not possible to hold that it has not been prepared under or in pursuance of the amended rules or that it has been prepared in such

gross violation of these rules that it must be struck down as no roll in the eve of law. It has, however, to be conceded that the method adopted by the authorities concerned in preparing the roll in question under rules 8A to 8E is not the ideal or perfect or even a commendable method to be encouraged, and it is hoped that preparation of roll would in future be given the importance it deserves in our pattern of democracy. The petitioners have contended that no effective steps were taken by the authorities concerned in getting the fresh roll prepared by making inquiries about the qualifications, on the "due date", of the residents of the respective constituencies and that only a verbatim copy of the Legislative Assembly roll, prepared with reference to 31st of March, 1958, as the qualifying date, was published under rule 8E. I would be inclined to agree that if the respondents did not care to take any reasonably effective steps under the rules to cause to be prepared a roll for each constituency, and if merely the Assembly roll prepared with reference to 31st of March, 1958, as the qualifying date had been copied out verbatim and published under rule 8E, then such a roll may not be considered to have been prepared under and in accordance with the above rules. However, wide the discretion left to the authorities in framing the electoral roll, they are, in my view, bound by the overall object of the statutory provisions which circumscribe their discretion, and if from the point of view of the real object and scope of the rules they have exercised their power so unreasonably or capriciously as not to carry out the true object of the rules, then the roll might well be struck down as prepared in violation of and not under the rules.

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On the record of this case, however, I find that the petitioners' submission on facts has not been

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substantiated. The reply shows that the fresh electoral roll was got prepared under the amended rules, though on the basis of the Punjab Assembly electoral roll, which was presumably used as ready data ; but it is emphatically denied that it was a verbatim reproduction of the latter. It has been explained that the method of making inquiries by going from house to house was not possible because of the short-time available, but this by itself is, in my opinion, insufficient to invalidate the roll. I would, however, like to add in this connection that no reasonable explanation has been offered as to why it was considered so urgently imperative to hold the election on such short notice by rushing through the preparation of the roll at the cost of a more satisfactory method of complying with all the rules for more fully effectuating their real purpose. This hurry has apparently supplied the petitioners with the argument that this undue haste has been inspired by political exigencies. This allegation has, of course, not been substantiated on this record, but I cannot help observing that it is not easy to commend or approve the method adopted by the respondents in preparing the fresh roll. It is not denied that notice inviting claims and objections was duly given, and, as pleaded by the respondents, the roll was substantially revised; it is, however, contended by the petitioners that the notice was unreasonably short because two out of five days were holidays. I agree that it would have been more desirable to provide greater facilities in this respect, but this would hardly constitute a sufficient ground for holding the impugned roll to be so basically imperfect and invalid as to justify interference with the elections by means of a prerogative writ, particularly at this stage. In this connection the fact that the present petitioners did not care to approach this Court for directions in the nature of a writ of prohibition and *mandamus*

before the elections has on the above findings undoubtedly, to some extent, weighed with us.

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Here I may also notice another argument urged by Mr. Doabia. He says that the petitioners are some of the defeated candidates who fought and lost the elections on the impugned roll and, therefore, this Court should not interfere at their instance. Had the elections been found to have been held on the basis of an inherently imperfect roll which could not be considered to be an electoral roll of the constituency in the eye of law and had this Court considered the present case to be otherwise a fit one for interference, then this objection could not possibly have stood in our way. The provision of law with which we are dealing is based on public policy and if public policy so demands, then even a person, who has taken part in an election, held on the basis of an electoral roll, which is materially imperfect and defective in most essential and mandatory ingredients, cannot be legitimately deprived of the right of approaching and seeking redress from this Court, and relief will not be withheld from the constituency concerned merely because the petitioners have taken part in the impugned election. Relief in such cases is not granted to a petitioner for his personal or individual benefit but for the benefit of the entire constituency. This Court would in such a case feel duty-bound to interfere in the interest of the public weal.

I may state here that election of representatives by adult citizens is the main spring of our democratic form of Government, and it is immaterial whether the election is to a municipal corporation created to regulate and administer the local and internal affairs of a city or a town or it is to a State Legislature or to the Parliament. To engraft the doctrine of waiver, which seems to me to be the

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basis of Mr. Doabia's argument, would in effect mean that citizens in this Republic can agree to adopt other means of selecting their nominees; this position under the existing law of our country is difficult to sustain. But as I have already held that the roll is not so basically defective, it is not necessary to say anything further on this point.

But before leaving this case I must make it clear that although on the facts and circumstances of this record we are disinclined to grant the discretionary relief at this late stage by quashing the entire election, this Court can by no means approve of the undue and unexplained hurry in holding the election and the unsatisfactory way in which the electoral roll in question has been prepared. The amended rules 8A to 8K, in view of their general purpose, true object and scope have obviously been intended by their framers to be strictly obeyed and complied with and not to be violated or by-passed or disregarded. These rules having been framed as a matter of public or constitutional policy, strict conformity with them is essential for the proper functioning of the democratic form of our Government. It would also be desirable to fix the qualifying date with greater precision so that the citizens may know of it and take effective steps for exercising their right of suffrage.

For the reasons given above this petition fails and is dismissed, but in the circumstances of the case there would be no order as to costs.

It is agreed at the Bar that Civil Writ No. 1182 of 1959, and Civil Writ No. 1211 of 1959, are on facts not distinguishable from Civil Writ No. 1174 of 1959. These two writs would similarly be dismissed with no order as to costs.

Coming now to Civil Writ No. 1170 of 1959, Mr. Chhachhi has contended that the letter, dated

19th August, 1959, could not possibly have reached the Municipal Committee before 22nd of August, 1959, and the pre-publication of the roll on 20th of August, 1959, was a simple and verbatim reproduction of the Legislative Assembly roll for 1958. On the basis of this assertion it is submitted that the electoral roll in question has been prepared without complying with the amended rules 8A to 8E. In the written statement filed on behalf of the Deputy Commissioner, respondent No. 3, it has been asserted that the Executive Officer, Municipal Committee, Sunam, had been directed to prepare ward-wise electoral rolls on the basis of the Assembly electoral rolls by means of a letter, dated 5th of August, 1959. The allegations contained in para 6 that the electoral rolls for the municipal constituencies were simply copied from the Assembly rolls for 1958, have been denied by the Deputy Commissioner and it has been explained that the rolls for the Punjab Assembly were merely utilized as a "ready material", the tentative roll for the Municipal Committee, Sunam, having actually been prepared, after treating the Assembly rolls as ready material, by a number of employees of the Municipal Committee whose names are actually given in para 6 of the written statement. It is expressly denied that the municipal electoral rolls were verbatim copies of the Assembly rolls, and it is averred that draft electoral rolls were prepared after re-arranging the Assembly rolls. Claims and objections were, according to the reply, duly invited after giving proper publicity and the difference between the total number of electors on the Assembly roll and on the municipal roll has been emphasized for the purpose of showing that the municipal roll is not a verbatim copy of the Assembly roll. It is further denied that the preliminary roll was published before 20th of August, 1959, it being asserted

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that it was published on 21st of August, and it is stated that the preliminary electoral roll was in fact published after observing necessary formalities under the relevant rules, the letter dated 19th August, 1959, having been received on 20th August. On the pleadings I am not satisfied that the petitioners have succeeded in substantiating their allegations that the impugned electoral roll was a mere verbatim copy of the Assembly roll and that no step had been taken in its preparation under the provisions of the amended rules 8A to 8E. This petition must also, in my opinion, fail and is hereby dismissed but without any order as to costs.

As regards Civil Writ No. 1176 of 1959, in the written statement filed by the Deputy Commissioner, Karnal, respondent No. 15, it is admitted that up to 20th of August, 1959, the Administrator, Kaithal Municipality, thought that no action by this municipality was called for because the Assembly electoral rolls for 1958, for Kaithal Town had already been arranged ward-wise as desired by the Director of Elections in his letter, dated 4th of August, 1959, long before even of the enforcement of the amended rules. This would be clear from the fact that paras 2 to 6 of the writ petition have been admitted in the written statement. Indeed, in reply to para 6, after admitting its contents, it is frankly pleaded that five copies of the fresh municipal electoral rolls were got prepared by hand by the municipal staff and published for inviting claims and objections as per election programme. In para 7 of the petition it is alleged that on 21st of August, 1959, verbatim copies of the Punjab Assembly electoral rolls, 1958, relating to Kaithal Town, with only the title-page changed, describing the draft rolls as municipal electoral rolls were published as preliminary rolls to which claims and objections were invited.

In the written statement this para is, of course, denied and it is asserted that fresh municipal electoral rolls were duly prepared in accordance with the new rules and the preliminary publication of these rolls was done on 21st of August, 1959. It is also admitted that the letter from the Punjab Government, dated 19th of August, 1959, issued under proviso to rule 8 of the Punjab Municipal Election Rules, 1952, reached the office of the Administrator, Kaithal Municipality, direct on 22nd of August, 1959, and through the office of the Deputy Commissioner on 25th of August, 1959. It may be noticed that it is this letter in which directions were sent that fresh rolls should be prepared in respect of each municipality concerned in the manner specified in rules 8A to 8K of the amended rules. It is not the respondents' case that they had received any earlier information about the amended rules or any directions to prepare a fresh roll under them. In para 10 of the petition it is alleged that the roll was not prepared in accordance with the amended rules 8A to 8K. In reply, though this para is denied, it is asserted that the roll was prepared in accordance with the Government instructions and duly published on the due date. It is significant that in the reply it is not even specifically contended that the preliminary roll was prepared in accordance with rules 8A to 8E, and indeed from the very nature of things it could not be so prepared. If the letter, dated 19th of August, 1959, reached the Administrator on 22nd of August, 1959, and if the draft roll had actually been published on 21st of August, 1959, it is not possible for me to hold that this draft roll had in fact been prepared in pursuance of the letter, dated 19th August, 1959, or in accordance with rules 8A to 8E. Strictly speaking the officers entrusted with the actual preparation could not contemplate before the 20th August, that they had to take any steps

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under rules 8A to 8E. (of which they are not shown on this record to be even aware on 21st August, 1959), for preparing the preliminary roll. It is true that in para 10 of the written statement it is asserted that about 2,000 claims and objections were received, which indicates that fair publicity was perhaps given to the draft roll and opportunity was also offered to the public to inspect the same and to file claims and objections in order to have the necessary corrections, made, but on the present record it seems to be clear and almost incontrovertible that no step had at all been taken under rules 8A to 8E with the result that this roll must be considered to have been prepared without even the consciousness of the existence of these rules. Such a roll, in my humble opinion, cannot but be held to be invalid. I cannot overemphasize the fact that the amended rules were framed as a matter of public policy and they can hardly be ignored or waived, since the doctrine of waiver cannot apply to a law indicated or enforced as a matter of constitutional policy. Reasonably substantial conformity with these rules is essential for the healthy and proper growth and development of the infant democracy in this country.

It has been contended by Mr. Doabia that the impugned roll having been finalized after publication under rule 8E and after inviting and receiving about 2,000 objections and claims, it cannot be considered to be so tainted and defective as to invalidate the whole process of election. For this submission support is again sought from *Radhey Sham Dani's case*. In my humble opinion that case is of no real assistance to the counsel. There by virtue of rule 7 the final printed roll for a Parliamentary constituency representing the area covered by the municipality was to be the electoral roll of that municipality ; the Supreme Court held that

in spite of this provision opportunity for revision and adjudication of claims and objections was essential under section 30(2) of the Ajmer Merwara Municipalities Regulation VI of 1925. This decision would thus hardly support the proposition that if the roll before us has in fact not been prepared under rules 8A to 8E—and in the instant case the direction for preparing the fresh roll under these rules was admittedly received after the publication of the preliminary roll—then merely because a large number of claims and objections have been received and adjudicated upon, the roll should acquire validity and should be considered to have been prepared in accordance with the rules, so as to form the basis of a valid election. Applying the ratio of the Supreme Court decision to the case in hand, I am of the view that both the initial preparation of the roll and the later adjudication of claims and objections by the Revising Authority should be carried out in accordance with the rules, and unless this is done the entire obligation cast upon the authorities holding the election is not discharged and the election held on such imperfect roll would acquire no validity and would be liable to challenge at the instance of the parties concerned. The learned Additional Advocate-General seems to ignore that in the present case the preliminary publication of the roll was effected on 21st August, 1959, though even directions not to use the Assembly rolls for the election and to prepare a fresh roll under rules 8A to 8K were received on 22nd August, i.e., one day later. No cogent or convincing reason has been shown by the counsel to persuade me to hold such a roll to be in conformity with the rules.

The facts of this case are similar to those of *Hari Parkash Chawla v. Punjab State, etc.* (1), in

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which Mehar Singh, J., allowed the writ petition and issued directions to the respondents to prepare a fresh roll according to rules and then hold elections. A Letters Patent appeal from the above decision has recently been dismissed by us *in limine*.

I am not unmindful of the fact that elections have taken place and if this election is invalidated it would mean considerable expense, but one of first things that prevails in our democratic welfare State is to put the Government departments under the law and this is all the more so when it concerns a fundamental matter like the selection of people's representatives to Legislatures and municipal committees. Keeping in view the numerous functions and wide powers of municipal committees, in my view, election of citizens' representatives to them is of no less importance than election of members of other Legislatures, it being almost undeniable that Local Government Bodies like municipal committees serve as training ground in the art of democratic government. The authorities entrusted with the preparation of electoral roll are, therefore, expected to keep foremost in their view the true object and purpose of the relevant rules and the rights and interests of the public. Election is not a purely private affair between the contestants and the controversy with respect to it is not to be treated or dealt with on a personal level between the parties, the constituency being most vitally interested in it, and indeed the basic principles of this country's pattern of democracy have also to be kept in view in these proceedings. The approach to the problem with which we are confronted in this case is entirely different from the approach to a controversy between the rights of private individuals.

For these reasons I am constrained to allow this writ petition (Civil Writ No. 1176 of 1959) and

to declare that the impugned electoral roll is not valid, having not been prepared in conformity with the rules 8A to 8K of the Municipal Election Rules, 1952, and the election in question held on its basis in October, 1959, is also invalid and is, therefore, quashed. As the petitioners did not approach this Court before the elections were held, they are in my opinion not entitled to costs of these proceedings.

DULAT, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before G. D. Khosla, C. J., and S. S. Dulat, J.

RAM LAL,—Appellant.

*versus*

RAJA RAM AND ANOTHER,—Respondents.

Regular Second Appeal No. 830 of 1957.

*Punjab Pre-emption (Amendment) Act (X of 1960)—  
Section 31—Effect of on pending suits and appeals.*

1960

Feb., 17th

*Held*, that the effect of section 31 introduced by the Punjab Pre-emption (Amendment) Act, 1960, is that whatever the law which governed sales at the time the sale was effected and the law which was in force when a suit was brought, a Court cannot pass a decree in a suit for pre-emption where the ground, upon which the suit was based, is no longer available to a pre-emptor under the new Act. It also follows that where a pre-emptor's suit is dismissed on some ground and he appeals, and the appeal is heard after the new Act has come into force, the appellate Court cannot pass a decree for pre-emption upon a ground which existed only under the old law and no longer exists under the new law, because by so doing the appellate Court will be acting in direct contravention of the provisions of section 31 introduced by the Punjab Pre-emption (Amendment) Act, 1960. Similarly, where a decree for pre-emption has been passed

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