

and merely due to the wrong committed by the husband in not even making an effort to comply with the decree. If the contention of the learned counsel for the appellant is accepted, then that would obviously be the result. In this view of the matter, we hold that mere existence of an unsatisfied decree for restitution of conjugal rights for the required period is not sufficient to grant a decree for divorce and that sub-section (1A) of section 13 is subject to the provisions contained in sub-section (1) of section 23.

(6) It was next contended by Mr. H. L. Sarin, learned counsel for the appellant, that the finding of the learned Single Judge affirming that of the learned District Judge that the husband was guilty of not complying with the decree for restitution of conjugal rights passed against him on 16th January, 1963, during the period preceding the filing of the petition under section 13 of the Act by him, was wrong and erroneous. We are afraid, this contention of the learned counsel is liable to be rejected on the short ground that the finding of the learned Single Judge is based on the appreciation of evidence and is a pure finding of fact and cannot legally be challenged in this appeal. After consideration of the entire oral evidence, the learned Single Judge has affirmed the finding of the learned District Judge on this aspect of the matter. Absolutely no ground has been made out by the learned counsel for interference with that finding.

(7) No other point was urged.

(8) For the reasons recorded above, this appeal fails and is dismissed with costs.

N.K.S.

CIVIL MISCELLANEOUS.

*Before H. R. Sodhi, J.*

HARBANS LAL AND OTHERS,—*Petitioners.*

*versus.*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

**Civil Writ No. 363 of 1970.**

July 27, 1970.

*Punjab Municipal Act (III of 1911)—Municipal Election Rules (1952)—Rules 8-J (2), 8-JJ, 8-L and 10—Municipal elections—Revision of electoral roll every year—Whether mandatory—High Court directing the holding of*

Harbans Lal, etc. v. State of Punjab, etc. (Sodhi, J.)

*fresh election—Nominations to such election—Whether to be invited afresh.*

*Held*, that proviso to sub-rule (2) of rule 8-J of the Municipal Election Rules 1952, leaves no manner of doubt that the requirement of revising the electoral roll of Municipal elections in every subsequent year is only directory and that if an electoral roll is not revised in any year the validity of the electoral roll is not affected by this omission. Sub-rule (2) of rule 8-J of the Rules is not to be read in isolation but with the proviso which to a great extent limits the operation of the main provision. All that rule 8-JJ means is that whenever a roll is revised the Government may direct that it shall be so done either intensively or summarily or partly intensively or partly summarily. It does not mean that the roll must be revised every year and any such interpretation would make the proviso to sub-rule (2) of rule 8-J ineffective and inoperative. However, desirable it may be to revise electoral rolls every year, failure to do so cannot necessarily lead to manifest injustice in every case. (Para 5).

*Held*, that the word 'election' is of wide import and covers the whole procedure, right from the stage of inviting nomination papers upto that of taking poll and necessary subsequent steps for declaring the result. When the High Court directs the holding of a fresh Municipal election, the Deputy Commissioner is duty bound under rule 10 of the Rules to prepare a fresh election programme which must include inviting nomination papers. The direction indeed implies that nomination papers are also to be invited afresh. (Para 6).

*Petition under article 226 of Constitution of India praying that a writ in the nature of Mandamus, prohibition or any other appropriate writ, order or direction be issued quashing election from Wards No. 8 and 10 to Municipal Committee Kharar, held in May, 1969 declaring Respondents Nos. 5 and 6 elected members of the said Committee.*

C. L. LAKHANPAL, ADVOCATE, for the petitioners.

S. L. AHLUWALLA, ADVOCATE, FOR RESPONDENT NO. 6. AND A. S. BAINS, DEPUTY ADVOCATE-GENERAL (PUNJAB) for other respondents.

### JUDGMENT

H. R. SODHI, J.—(1) The petitioners in this writ petition challenge the validity of election of respondents 5 and 6 to Municipal Committee, Kharar, District Ropar (hereinafter called the Committee); from Wards Nos. 8 and 10 of the town. It is claimed by them that they were enrolled as voters from these wards and are aggrieved by the failure of respondents 1 to 4 to prepare fresh electoral rolls in

the year 1969 when the elections were held inasmuch as several persons eligible to vote in the two constituencies were denied their right to vote whereas others not qualified to be enrolled voted in the elections from these two wards.

(2) In the course of arguments, Mr. C. L. Lakhanpal, learned counsel for the petitioners, stated that he did not want to press the petition against Mohan Lal respondent who had been elected from Ward No. 10. The Deputy Commissioner, Ropar, respondent 3, in his affidavit by way of reply to the writ petition, has stated that the names of the petitioners are not entered in electoral rolls of Wards Nos. 8 and 10 and that the averment of the petitioners to this effect is obviously false. In order to appreciate the contentions raised by Shri Lakhanpal, it is necessary to state a few facts.

(3) Elections to the Committee were held in the year 1967 and nomination papers of Karam Singh respondent and one Bachan Singh were rejected by the Returning Officer. They instituted two writ petitions Nos. 2010 and 2011 of 1967, respectively, in this Court under Articles 226 and 227 of the Constitution of India. These petitions were dismissed by a learned Single Judge on 13th March, 1968. A Letters Patent Appeal against the judgment of the Single Judge was allowed on 30th January, 1969, it having been held that the orders rejecting the nomination papers of the petitioners in those two cases were manifestly illegal and without jurisdiction. While allowing the writ petitions, the Letters Patent Bench issued a direction that fresh elections to the Committee from Wards Nos. 8 and 10 be held in accordance with law. It was in these circumstances that the impugned elections were held.

(4) The following two points have been urged before me on behalf of the petitioners:—

- (1) That it was incumbent on the respondents to have got prepared a fresh electoral roll and elections could not be held on the basis of that prepared in 1967; and
- (2) That the Deputy Commissioner, respondent 3, committed an error of jurisdiction in inviting nomination papers of candidates other than those who had earlier filed their nominations in the year 1967.

(5) In my opinion, both the contentions are without any basis and must be rejected. The Committee is constituted under the Punjab Municipal Act, 1911 (hereinafter called the Act) and elections thereto are regulated by the Municipal Elections Rules, 1952 (hereinafter called the Rules). A right to vote is not a fundamental right and is the creation of a statute. According to the Rules, only that person is entitled to vote whose name is included in the electoral roll for the Legislative Assembly of the State of Punjab in relation to the constituency concerned, and as a matter of fact the roll of a constituency of a municipality is the electoral roll of Punjab Legislative Assembly in relation to the said constituency as may be operative on the date fixed by the Deputy Commissioner under rule 10 for the submission of nomination papers. The State Government can, of course, under rule 8, direct that an electoral roll for an Assembly shall not be used in any election and that fresh roll shall be prepared in the manner specified in rules 8-A to 8-K which provide a procedure for the preparation of an electoral roll. In the preparation of fresh preliminary electoral rolls for municipal elections there is, of course, nothing to prevent the competent authorities from using the current electoral rolls for the Assembly constituencies. In the instant case, the validity of electoral rolls as prepared in the year 1967 is not challenged and it is a common ground that no fresh electoral rolls were prepared in the years 1968 and 1969, nor were they revised and that elections were held on the basis of the rolls as finalised in the year 1967. When a final electoral roll has been prepared in accordance with the procedure laid down in rules 8-A to 8-J and finally published, it comes into force from the date of its publication. Rule 8-J(2) reads as under :—

“8-J(2) Any roll republished under the provisions of sub-rule (1) with or without a list of additions and corrections, as the case may be, shall come into force from the date of such republication, and shall thereafter be revised in every subsequent year in the aforesaid manner:

Provided that if for any reason the electoral roll is not revised in any year the validity or continued operation of the electoral roll shall not, thereby, be affected.”

The aforesaid proviso to sub-rule (2) leaves no manner of doubt that the requirement of revising the electoral roll in every subsequent year is only directory and that if an electoral roll is not revised in

any year the validity of the electoral roll is not affected by this omission. The argument that rule 8-JJ enjoins that the roll for every constituency must be revised every year under sub-rule (2) of rule 8-J whether it may be done intensively or summarily or partly intensively or partly summarily, is without substance. Sub-rule (2) is not to be read in isolation but only with the proviso which to a great extent limits the operation of the main provision. All that rule 8-JJ means is that whenever a roll is revised the Government may direct that it shall be so done either intensively or summarily or partly intensively or partly summarily, but it is not intended to make the proviso to sub-rule (2) ineffective and inoperative. A proviso, according to the ordinary rules of interpretation of statutes, qualifies whatever is stated in the main enactment and indeed forms a part of the subject matter thereof. Howsoever desirable it may be to revise electoral rolls every year, failure to do so cannot necessarily lead to manifest injustice in every case. A safeguard has been provided in rule 8-L which enables any person whose name is not included in the finally published roll of a constituency to apply in the prescribed manner for inclusion of his name in the electoral roll by making an application to the Director of Elections within five days before the last date fixed for filing of nomination papers on payment of the prescribed fee. The Director of Elections is required immediately to post that application in some conspicuous place in his office and he is also to publish a notice inviting objections to the inclusion of that person in the electoral roll. These objections have got to be disposed of within a period of four days from the posting of the application with the result that a person whose name has been left out of the electoral roll is given an opportunity even till the last minute to get his name registered as a voter. The Director of Elections, in the present case, issued a public notice on 18th April, 1969, calling upon eligible persons to get themselves enlisted by making an application to the Deputy Commissioner concerned under rule 8-L. There was, therefore, no illegality committed in preparation of any electoral roll or using the one prepared in 1967 for the elections held in the year 1969.

(6) The next argument of the learned counsel for the petitioners that fresh nominations could not be invited is equally devoid of force. The High Court had directed fresh elections to be held from Wards Nos. 8 and 10 and the Deputy Commissioner was duty bound under rule 10 of the Rules to prepare a fresh election programme which

must include inviting nomination papers. Mr. Lakhanpal has not drawn my attention to any rule of law which prohibited the Deputy Commissioner from entertaining nomination papers from one who had not sought nomination earlier in the year 1967. The word 'election' is of wide import and covered the whole procedure, right from the stage of inviting nomination papers upto that of taking poll and necessary subsequently steps for declaring the result. When it was directed that fresh elections be held, it implied that nomination papers were also to be invited afresh.

(7) The writ petition merits dismissal also on the short ground that in the circumstances of the present case election petition was the only remedy which should have been pursued by a person entitled to do so, and an approach to this Court in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India was wholly misconceived. I have already observed that the electoral roll was validly prepared and could not be called in question. There was substantial compliance with the Rules and elections conducted on the basis of such an electoral roll cannot be set aside when no defect of any substance has been pointed out. Mr. Lakhanpal, in the course of arguments, today filed a supplementary affidavit of one of the petitioners but that too is quite vague. What is stated therein is that a large number of voters who had not attained the age of 21 years on 1st January, 1967, but had attained that age before the 1st January, 1969, were not allowed to be enrolled as voters but no particulars of any one of them are given. It was open to them to avail of the procedure as laid down in rule 8-L to get a right of vote. Another aspect of the matter is that the petitioners have not come to this Court with clear hands. They have made a false statement that they were registered as voters in Wards Nos. 8 and 10 which fact is denied by the Deputy Commissioner, respondent 3, on affidavit, and I have no reason to doubt his statement. A person who makes false averments in the writ petition is not entitled to the discretionary remedy as may be available to him from this Court in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

(8) For the foregoing reasons, the writ petition must be dismissed but in the peculiar circumstances of this case, I leave the parties to bear their own costs.