CIVIL MISCELLANEOUS

Before Tek Chand, J.

BUDHA MAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 761 of 1967

August 31, 1967

Punjab Municipal Act (III of 1911)—S. 255—Punjab Municipal Election Rules (1952)—Rules 11, 51, 63 and 69—Double-member constituency containing one general seat and one seat reserved for scheduled castes—Wrongful rejection of nomination papers of candidates for reserved seat—Whether makes the election of the member from general seat void—Material irregularity—Meaning of—Constitution of India (1950)—Art. 226—Mandamus—Whether can issue to State Government to hold election in accordance with rule 69—Importance of election to local bodies stressed.

Held, that the wrongful rejection of the nomination papers of the candidates for the reserved seat in a double-member constituency is a material irregularity which affects the election of the member from the general seat also and makes it void and the election of the member from the general seat was rightly set aside by the State Government under section 255 of the Punjab Municipal Act, 1911. The basic distinction between case of improper rejection and improper acceptance of a nomination paper is that in the former case the candidate whose nomination paper has been wrongly rejected has been kept out of the arena; and such a keeping out is presumed to have materially affected the result of the election.

Held, that the expression "material irregularity" occurring in rule 63 of the Punjab Municipal Election Rules, 1952, is not without significance. An irregularity is deemed material when it is substantial, essential or real. The irregularity must have a bearing on the matter, as distinguished from form. An irregularity to be material must have influence or effect on the merits. An irregularity capable of influencing the result of election will be deemed material. It has to be emphasised that the return of a successful candidate is a serious matter, and his election should not lightly be set aside. Before an election is upset, the Commissioner ought to be satisfied beyond all doubt that the election was void. A non-compliance or a mistake not affecting the result of the election cannot be a material irregularity. It has to be shown that there was non-compliance with the provisions of the Act or of any Rules made thereunder, and secondly, it must

be established, that as a consequence thereof, the election had been materially affected. The casual connection between the transgression of the Rule and the result of the election has to be established. A result would be materially affected in such a case, if it was, in consequence of, and not merely, subsequent to, wrong rejection. The fallacy of *post hoc propter hoc* must perforce be avoided.

Held, that rule 69 of the Punjab Municipal Election Rules, 1952, casts a mandatory duty upon the Commissioner or the Punjab Government, as the case may be, to direct the holding of a new election. The choice of the word "when" instead of the word "if" or even "after" is of special significance. The selection of the word "when" is deliberate as conveying the sense of "at the time that" or "as soon as". The word "when" in this sense refers to the time at which the Commissioner or the Punjab Government is required to direct the holding of the new election. The emphasis is that as soon as the election of a candidate is declared void, a new election shall be held. It is, therefor, compulsive to direct the holding of a new election, and the authorities cannot sleep over it, and this they might possibly have done, in case the sentence had commenced with the conjunction "if" or "after". The statutory right to elect candidates for municipal constituency could not, either directly or indirectly, be denied or abridged, but the non-compliance with the statutory provisions has, in this case, violated the exercise of their right; and till the constituency is called to elect its representative, the franchise stands abridged. The voter in this constituency has been shut off from the ballot box, which is obnoxious to the statutory guarantee of the right to vote. The principle underlying the policy of the rule of law while conferring right also imposes an obligation not only on the citizen, but also on the State. The State which has rights, has also undeniable duties, enforceable under the law, where the law permits, legal obligation owed by the State can be enforced in a court of law. Any contravention of law by or in the name of the State can be resisted in the judicial forum. So also, violations of any rights, whether of the citizen, or by the citizen, of the State, or by the State, may be judicially resisted and the rights may be enforced. *Lex non a rege est violanda*—the law is not to be violated by the king—is an old maxim, and equally applicable to the modern State. The discharge of a legal duty on the part of the State is not only a statutory obligation but also a moral one, to which the principle *noblesse oblige* is attracted. In this case, there is statutory obligation to hold election. Even if law were to afford no remedy for enforcing it, there is imposed a duty upon the High Court to remedy the wrong and interfere by *mandamus*. The duty to hold an election is, no doubt, ministerial but the statute does not invest the State Government or any of its officers with the arbitrary power of refusing to take any action. On the contrary, it is their statutory duty to conform to the letter and spirit of Rule 69. The State whose duty for holding election is purely ministerial can, in an appropriate case, be compelled to act by a writ of *mandamus*. The High Court is not without power to issue *mandamus* in a case like the present, where, in consequence of laches, the holding of an

election has been unduly delayed. A writ of *mandamus* to compel the holding of an election is competent at the instance of an elector or a candidate.

Held, that the essential character of a democratic form of Government is bound to be lost if the executive becomes so unmindful of its mandatory duty, that it will not fill the vacancy resulting from the illegal acts of the Returning Officer in rejecting the nomination papers of three candidates, which were valid. Freedom of franchise is a valuable right which must not be destroyed or delayed, and the working of the democratic machinery ought not to be suspended, or, unlawfully interfered with. The basic feature of a democracy is, that the sovereign power resides in the people as a whole, and is exercised through the elected representatives. A democratic ideal will be delusive if government servants can stall its functioning by delaying elections, or by not calling upon the constituency to fill the vacancy by electing its representatives. In such a contingency—as has occurred in the instant case—, the democratic functioning remains suspended, and all this, because of the remissness of the executive. It is of consequence, that the wishes and opinions, not excluding even prejudices of the voters shall count, as also their interests represented. But when a constituency, through an executive act of omission, remains unrepresented, the wishes, the opinions and the interests of the electorate become mute and voiceless. The effective prevention of the democratic process by allowing the vacancy to remain unfilled is not a trite or a negligible omission; it cannot be dismissed from thought as a trifling peccadillo, or mere trivia, or minutiae too trumpery to call for serious notice. The municipal committee as well as those, for whose benefit the institution of the local Government is intended, are entitled to the judgment, intelligence, experience, guidance and counsel of the elected representatives of the people in the constituency. The executive in this case has deprived a section of the community from the services of its elected representatives. The inordinate delay in not inviting the electors to choose their nominee cannot but be deprecated, especially when it has remained unexplained, and was avoidable.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing and setting aside the impugned Notification (Annexure "A") as illegal, arbitrary, void ultravires, capricious,* malafide, *without jurisdiction apart from being violative of the provisions of the Act and the Rules as also being against the principles of natural justice and fair play.*

H. L. Sarin, Senior Advocate, *with* Balraj Bahal and B. S. Malik, Advocates, for the Petitioner.

B. S. Wasu, Advocate, *for* Advocate-General, Punjab, for respondents 1 to 3 *and* G. P. Jain, Advocate, *for* P. C. Jain, Advocate *with* G. C. Garg, Advocates, for the other Respondents.

ORDER

TEK *Chand,* J.—This is a writ petition seeking inter alia the quashing and setting aside of the impugned notification, dated 23rd of March 1967 (Annexure A) to the effect that the election of the petitioner Budha Mal as member of Municipal Committee, Dinanagar, from ward No. 1 was void on the ground that nomination papers of respondents 7 to 10—candidates for the reserved seat—were improperly rejected.

The facts of this case are, that the petitioner Budha Mal was elected as a Municipal Commissioner for the Municipal Committee, Dinanagar, from ward No. 1 which is a double-member constituency, at the last election held on 31st of May, 1964, under the provisions of the Punjab Municipal Act, 1911. The petitioner contested the general seat of ward No. 1 and defeated his rival candidate, Shri Autar Krishan, respondent No. 4, by securing 357 votes as against 331 polled by the respondent. The respondents 7 to 10 had filed their nomination papers for contesting the reserved seat of ward No. 1, but their nomination papers were rejected.

Respondents No. 5, 6 and 10 were also nominated as candidates for the general seat, but they did not contest the election having withdrawn their candidature.

On 15th of June, 1964, Shri Autar Krishen, respondent No. 4 had filed an election petition under Rule 53 of the Municipal Election Rules, 1952, challenging the election of the petitioner on the ground that election to the general seat only could not be held when there was no candidate for the reserved seat—the nomination papers of all the candidates for the reserved seat for this ward having been rejected. The election petition was allowed on 8th of November, 1966 by the Election Commissioner, Shri K. K. Dhir (Annexure R/1). He expressed the view, that the nomination papers of respondents 7 to 10 were improperly rejected by the Returning Officer and then by the Revising Authority. The Election Commissioner allowed the election petition, being of the opinion that the election to the general seat of ward No. 1 could not stand on the ground, that the election to the reserved seat was null and void. The result was, that whole of the election of the double-member constituency was set aside. Following the order of the Election Commissioner of 8th of November, 1966, the notification referred to above was issued on 23rd of March, 1967 (Annexure A). In this case, the Returning Officer had accepted the nomination papers of respondents 7 to 9 while that of

respondent No. 10 was rejected. The Additional District Magistrate, Gurdaspur, on a revision application having been presented, also rejected the nomination papers of respondents 7 to 9, thereby leaving no candidate to contest the election for the reserved seat. In this writ petition, it has not been seriously contested that the rejection of the nomination papers of respondents 7 to 10 was contrary to law. The petitioner maintained, that regardless of the fact whether the rejection of the nomination papers of the respondents 7 to 10, who were contesting from the reserved seat, was in accordance with law, or not, the election of the petitioner who contested from the general seat of ward No. 1 could not be held null and void. The nomination paper of no candidate for the general seat had been rejected; and in a straight contest with respondent No. 4, Shri Autar Krishen, the petitioner had defeated him by a margin of 26 votes. It has also been contended in the alternative, that it was the statutory duty of the Election Commissioner to have complied with the mandatory provisions of Rule 69 to direct the holding of a new election which has not been done till now.

Before adverting to the arguments of the learned counsel, the relevant provisions of law may be considered. The Municipal Election Rules, 1952, give in detail the mode and procedure for holding municipal election. Under Rule 11(2), in a constituency where a seat is reserved for a member of the scheduled Castes, no candidate shall be deemed to be qualified to be chosen to fill that seat, unless his nomination paper is accompanied by a declaration verified by any of the authorities specified, that the candidate is a member of the scheduled caste for which the seat has been so reserved.

Rule 31 refers to the manner and recording of votes and requires that in a two-member constituency, where one seat is reserved for a member of the scheduled caste, each elector shall have two votes, but no elector shall give more than one vote to any one candidate. According to sub-rule 2, if an elector gives more than one vote to any one candidate, then only one vote is taken into account at the time of counting, and the other vote is rejected as void.

Rule 51(e) provides:

> "51. In this part unless there is anything repugnant in the subject or the context—
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> * * * *
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> (e) "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."

Rules 52 and the following deal with the election petition and the mode of presenting the petition.

Rule 63 enumerates the grounds for declaring an election void. The relevant portion of the rule runs as under:—

"63(1) Save as hereinafter provided in these Rules if in the opinion of the Commissioner—

* * * *

(c) there has been any material irregularity, the Commissioner shall report that the election of the returned candidate shall be deemed to be void."

Rule 69 runs as under:—

"When as a result of any inquiry under these rules the election of a candidate is declared void, the Commissioner or the Punjab Government, as the case may be, shall direct that a new election shall be held ....."

Under section 254 of the Punjab Municipal Act, 1911, at the conclusion of the inquiry, the Election Commission is required to submit a report of its finding to the State Government. Under section 255, on receiving the report of the Commission, the State Government shall pass the necessary orders which shall be notified in the official gazette. In this case, the report was made by the Commission on 8th of November, 1966 and the notification which was published in the gazette was, dated 23rd of March, 1967. So far, no direction has been issued for the holding of new election despite the fact that the constituency has been left unrepresented for sveral months.

The case of the petitioner is, that the respondents 7 to 10 filed their nomination papers for contesting the reserved seat of ward No. 1, but their nomination papers were rejected. That respondents 5, 6 and 10 were also duly nominated candidates for the general seat, but they withdrew their candidature and did not contest the election.

The petitioner maintains that the rejection of the nomination papers of respondents 7 to 10, who were contesting the reserved seat of ward No. 1, could not affect the result of the election of general seat, far less, materially. The further contention of the petitioner is, that even if the rejection of the nomination papers was illegal, the election of the petitioner from the general seat could not be declared void. What might have been avoided was the election of the candidate from the reserved seat, but this question did not arise in this case as the nomination papers of all candidates for the reserved seat had been rejected.

The expression "material irregularity" occurring in Rule 63 is not without significance. An irregularity is deemed material when it is substantial, essential or real. The irregularity must have a bearing on the matter, as distinguished from form. An irregularity to be material must have influence or effect on the merits. An irregularity capable of influencing the result of election will be deemed material. An argument is raised that the rejection of the nomination papers of the candidates for the reserved seat could not materially affect the contest between the petitioner and respondent No. 4, both of whom were candidates for the general seat. An election ought not to be held void by reason of transgression of the law not involving procurement of the result of election through corrupt practice. Where the result of the election, meaning thereby, the success of one candidate over the other was not and could not have been affected by such transgression, the irregularity cannot be termed material. It has to be emphasised that the return of a successful candidate is a serious matter, and his election should not lightly be set aside. Before an election is upset, the Commissioner ought to be satisfied beyond all doubt that the election was void. A non-compliance or a mistake not affecting the result of the election cannot be a material irregularity, *vide Islington* (1) *and Warrington* (2). It was held by the Supreme Court in *Vashist Narain Sharma* v. *Dev Chandra and others* (3), that where the finding of the Tribunal, that the result of the election had been materially affected, was speculative and conjectural, the Supreme Court would interfere with the finding in special appeal. This was a case under section 100(1)(c) of the Representation

(1) (1901) 5 O'M & H. 125=(1901) 17 T.L.R. 210.
(2) (1869) 1 O'M & H. 43.
(3) A.I.R. 1954 S.C. 513.

of the People Act, 1951, before its amendment by Act 27 of 1956. The relevant provisions of section 100(1)(c) are—

> "If the Tribunal is of opinion—
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> * * * *
>
> (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be *wholly void.*

In *Sheo Chand* v. *Sada Nand* (4), it was held by Narula, J., that before setting aside an election under the Punjab Gram Panchayat Act on the ground of improper reception, refusal or rejection of any vote or the reception of any vote which is void, the prescribed authority must come to the conclusion that the result of the election had been materially affected. Similar view was also expressed by Pandit, J., in an unreported decision *Hari Ram* v. *Hans Raj* (5), C.W. 902 of 1964 decided on 20th November, 1964.

It has to be shown that there was non-compliance with the provisions of the Act or of any Rules made thereunder, and secondly, it must be established, that as a consequence thereof, the election had been materially affected. The causal connection between the transgression of the Rule and the result of the election has to be established. A result would be materially affected in such a case if it was, in consequence of, and not merely, subsequent to, wrong rejection. The fallacy of *post hoc propter hoc* must perforce be avoided.

Reference may also be made to the decision of the Supreme Court in *Hari Vishnu Kamath* v. *Ahmad Ishaque and others* (6), which was a case under section 100(2)(c) of the Representation of the People Act, 1951, before its amendment. In order to appreciate the decisions based upon the Representation of the People Act, 1951, the changes made in the relevant provisions by the amending Acts, ought not to be lost sight of. Section 84 of the Act, prior to amendment, among the three declarations which a petitioner might claim, included "(c) that

(4) 1965 P.L.R. 1211.
(5) C.W. 902 of 1964 decided on 20th November, 1964.
(6) A.I.R. 1955 S.C. 233.

the election is wholly void." The Representation of the People (Second Amendment) Act (No. 27 of 1956) amended Section 84 as it then existed. Section 47 of the Amending Act, substituted a new section for section 84, according to which—

> "a petitioner may in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

Thus the declaration in section 84(c) that the election is *wholly void,* was omitted. There is now no provision either in the Representation of the People Act, 1951 or in the Punjab Municipal Act, 1911, justifying a declaration that the election is *wholly void.*

The language of section 100(1)(c) of the Representation of the People Act, 1951, before its amendment, contemplated the declaration that the election was *wholly void,* but this provision was also amended by Act 27 of 1956. Section 55 of the amending Act substituted section 100 by a new section and in its amended form the relevant portion runs thus—

> "(1) Subject to the provisions of sub-section (2) if the Tribunal is of opinion—
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> * * * *
>
> (c) that any nomination has been improperly rejected; or
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
>
> (i) by the improper acceptance of any nomination, or .....
>
> The Tribunal shall declare the election of the returned candidate to be void."

There is no longer any provision in the Central Act for declaring the election as *wholly void.* According to the statement of objects and reasons for the amendment of the Representation of the People Act, 1951—

> "There does not appear to be any sound and valid reason why the entire election should be set aside on the ground of improper acceptance or rejection of any nomination. It is accordingly proposed to omit clause (c) of sub-section (1) of section 100 and to make a provision in sub-section (2) (*vide* proposed clause (d)) that if the Tribunal is of the

opinion that the result of the election in so far as it concerns a returned candidate has been materially affected by the improper acceptance or rejection of a nomination, the Tribunal shall declare the election of the returned candidate to be void."

(*vide* Gazette of India Extraordinary, Part II, Section 2, page 331).

The pivotal question is, whether in consequence of the rejection of the nomination papers of respondents 7 to 10, who belong to the Scheduled castes amounted to "material irregularity" by itself, or whether it had to be proved *aliunde*, resulting in avoidance of the election of the returned candidate. Mr. Ganga Parshad Jain, for respondent No. 4, the defeated candidate, has contended that the illegal rejection of the nomination papers of respondents 7 to 10, by itself, was sufficient to conclude that the result of the election had been materially affected. He has cited from the judgment of the Supreme Court reported in *Surinder Nath Khosla and others* v. *S. Dalip Singh and others* (7). That was a case of an election from a double-member constituency, and of the two seats, one was reserved for scheduled caste and the other was a general constituency. The Returning Officer accepted all the nomination papers except that of Buta Singh. When the result was announced, it showed that the first appellant Shri S. N. Khosla had obtained 13853 votes in the general constituency and the second appellant Pritam Singh had polled 13663 votes for the reserved seat. As they had secured the largest number of votes from their respective constituencies, they were declared to have been duly elected. The other candidates polled lesser number of votes. Buta Singh, whose nomination paper had been rejected by the Returning Officer did not take any further steps. But Dalip Singh, a defeated candidate, filed an election petition. The Tribunal found that the Returning Officer had wrongly rejected the nomination paper of Buta Singh and consequently, the result of the election as a whole had been materially affected. The election was declared void as a whole, and the election of the successful candidates (the appellants) was set aside. The contention raised on behalf of the appellants in the Supreme Court was, that the Tribunal should be satisfied

(7) A.I.R. 1957 S.C. 242.

not only that there has been an improper rejection of a nomination paper, but also, that improper rejection has materially affected the result of the election. This contention did not find favour with the Supreme Court on the ground, that while in the case of an improper acceptance of a nomination paper, the election may not necessarily be materially affected and, therefore, proof had to be placed on the record that the improper acceptance had materially affected the result of the election. In the case of an improper rejection of a nomination paper, it is to be presumed that the election had been materially affected. Sinha, J., observed:—

> "It appears that though the words of the section (section 100(1)(c) of the Representation of the People Act, 1951) are in general terms with equal application to the case of improper acceptance, as also of improper rejection of a nomination paper, case law has made a distinction between the two classes of cases. So far as the latter class of cases is concerned, it may be pointed out that almost all the Election Tribunals in the country have consistently taken the view that there is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration ..... The conjecture therefore, is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending section 100 by the Representation of the People (Second Amendment) Act, 27 of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void."

It was finally observed—

> "the election in this case was in respect of a double member constituency and was one integral whole. If it had to be declared void, the Tribunal was justified in setting aside the election as a whole".

On the basis of the above reasoning, the learned counsel for respondent No. 4 has contended that rejection of a nomination paper implies that election is materially affected, though it may not be true in the case of wrong acceptance of nomination paper, in which case, the petitioner may be put to proof and be requird to show *aliunde* that the result of the election was in fact materially affected. Therefore, the presumption, which may or may not arise in the case of improper acceptance, does arise in the case of improper rejection of a nomination paper. This point also arose in a recent decision of the Supreme Court in *Mahadeo* v. *Babu Udai Partap Singh and others* (8). The basic distinction between case of improper rejection and improper acceptance of a nomination paper is that in the former case the cadidate whose nomination paper has been wrongly rejected has been kept out of arena; and such a keeping out is presumed to have materially affected the result of the election. Gajendragedkar, C. J., observed—

> "It would thus be seen that the view, which the Election Tribunals and the Courts had been consistently taking in dealing with the question about the effect of the improper rejection of any nomination paper, has been confirmed by the Legislature and now, the position is that if it is shown that at any election, any nomination paper has been improperly rejected, the improper rejection itself renders the election void without any further proof about the material effect of this improper rejection".

It may be noticed, that section 54(4) of the Representation of the People Act, 1951, before its amendment by Act 27 of 1956 was analogous to Rule 40(b) of the Punjab Municipal Election Rules and section 63 of the Act is similar to Rule 31(1)(2) of the Punjab Municipal Election Rules. Both these provisions have now been repealed by the Representation of the People (Amendment) Act, 1961 (40 of 1961), section 54, by section 12, and section 63 by section 14 of the amending Act 40 of 1961. The reason for deletion of these two sections is, that there no longer are double member constituencies, but in their stead there are separate constituencies for members of the scheduled castes besides general constituencies for others. This change was brought about by the Two-Member Constituencies Deletion Act (No. 1 of

(8) A.I.R. 1966 S.C. 824.

1961). So far as Punjab Municipal Act is concerned, the legal position remains the same as it was under the Representation of the People Act before the repeal of sections 54 and 63. The argument of the learned counsel for the petitioner that in a double-member constituency, there are separate elections, one where members of the scheduled castes contest from the reserved seat and the other where the nominated candidates for the general seat contest. This view is entirely wrong and has no foundation. As pointed out by the Supreme Court in *V. V. Giri* v. *D. S. Dora* (9) :

> "A member of the scheduled tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. Once it is realised that the election is from the constituency as a whole and not by reference to two separate and distinct seats, there would be no difficulty in accepting the view taken by the returning officer when he declared respondent I to have been duly elected for the general seat."

In view of what has been stated above, it must be presumed that in consequence of the wrongful rejection of the nomination papers of respondents 7 to 10, the election has been materially affected and was, therefore, rightly set aside by the State Government under section 255 of the Punjab Municipal Act, 1911.

There is, however, one matter which is of considerable importance to all candidates, who wish to contest election from the double-member constituency of ward No. 1 and in which their interests are identical as against the State. Rule 69 of the Municipal Election Rules runs as under:—

> "When as a result of any inquiry under these rules the election of a candidate is declared void, the Commissioner or the Punjab Government, as the case may be, shall direct that a new election shall be held .....".

(9) A.I.R. 1959 S.C. 1318.

This Rule casts a mandatory duty upon the Commissioner or the Punjab Government, as the case may be, to direct the holding of a new election. The choice of the word "when" instead of the word "if" or even "after" is of special significance. The selection of the word "when" is deliberate as conveying the sense of "at the time" or "as soon as". The word "when" in this sense refers to the time at which the Commissioner or the Punjab Government is required to direct the holding of the new election. The emphasis is that as soon as the election of a candidate is declared void, a new election shall be held. It is, therefore, compulsive to direct the holding of a new election, and the authorities cannot sleep over it, and this they might possibly have done, in case the sentence had commenced with the conjunction "if" or "after". There are weighty considerations in support of the above interpretation of the rule. Further support is lent to this view by the Oxford English Dictionary, according to which "when" indicates "the time at which something happens (or did or will happen)". In this sense, the Commissioner or the Punjab Government shall direct that a new election shall be held when "the election of a candidate is declared void". As a matter of fact, at the time mentioned in rule 69, the holding of the new election was not directed, not even, soon after.

Under section 254 of the Municipal Act, the Election Commissioner submitted the report of his finding to the State Government on 8th of November, 1966, recommending that the election of Shri Budha Mal, as a member of the Municipal Committee, Dinanagar, from ward No. 1 may be declared as null and void, and set aside. Under section 255 of the Act, on receiving the report of the Commission, the State Government shall pass orders declaring the election to be void which shall be notified in the official gazette. This was done on 23rd of March, 1967, more than four months and fifteen days after the report of Commission. No explanation is forthcoming as to why it took the State Government so much time to pass the necessary order. Five more months have passed since the publication of the notification. The statutory rule 69 still remains uncomplied with; and no direction for the holding of the new election from this ward has been given. This constituency has remained unrepresented for a period of ten months and in matters relating to local self-Government, the constituency's representatives, who could have had an important voice in the administration of the municipal affairs, could not do so as the election was not held.

The essential character of a democratic form of Government is bound to be lost if the executive becomes so unmindful of its mandatory duty, that it will not fill the vacancy resulting from the illegal acts of the Returning Officer in rejecting the nomination papers of three candidates, which were valid. Freedom of franchise is a valuable right which must not be destroyed or delayed, and the working of the democratic machinery ought not to be suspended, or, unlawfully interfered with. The basic feature of a democracy is, that the sovereign power resides in the people as a whole, and is exercised through the elected representatives. A democratic ideal will be delusive if government servants can stall its functioning by delaying elections, or by not calling upon the constituency to fill the vacancy by electing its representatives. In such a contingency—as has occured in the instant case—,the democratic functioning remains suspended, and all this, because of the remissness of the executive. It is of consequence, that the wishes and opinions, not excluding even prejudices of the voters shall count, as also their interests, represented. But when a constituency, through an executive act of omission, remains unrepresented, the wishes, the opinions and the interests of the electorate become mute and voiceless. The effective prevention of the democratic process by allowing the vacancy to remain unfilled is not a trite or a negligible omission; it cannot be dismissed from thought as a trifling peccadillo, or mere trivia, or minutiae too trumpery to call for serious notice. The municipal committee as well as those for whose benefit, the institution of the local Government is intended, are entitled to the judgment, intelligence, experience, guidance and counsel of the elected representatives of the people in the constituency. The executive in this case, has deprived a section of the community from the services of its elected representatives. The inordinate delay in not inviting the electors to choose their nominee cannot, but be deprecated, especially when it has remained unexplained, and was avoidable.

The statutory right to elect candidates for municipal constituency could not either directly or indirectly, be denied or abridged, but the non-compliance with the statutory provisions has, in this case, violated the exercise of their right; and till the constituency is called to elect its representative, the franchise stands abridged. The voter in this constituency has been shut off from the ballot box, which is obnoxious to the statutory guarantee of the right to vote.

The principle underlying the policy of the rule of law while conferring right also imposes an obligation not only on the citizen, but also on the State. The State which has rights, has also undeniable duties, enforceable under the law. Where the law permits, legal obligation owed by the State can be enforced in a court of law. Any contravention of law by or in the name of the State can be resisted in the judicial forum. So also, violations of any rights, whether of the citizen, or by the citizen, of the State, or by the State may be judicially resisted and the rights may be enforced. *Lex non a rege est violanda*—the law is not to be violated by the king—is an old maxim, and equally applicable to the modern State. The discharge of a legal duty on the part of the State is not only a statutory obligation, but also a moral one, to which the principle *noblesse oblige* is attracted. In this case, there is a statutory obligation to hold election. Even if law were to afford no remedy for enforcing it, there is imposed a duty upon this court to remedy the wrong and interfere by *mandamus* [*see Veley* V. *Burden* (10) at p. 266].

In a case like the present, the duty to hold an election was ministerial in its character, and there is no controversy as to the existence of the conditions upon which the call of the election was founded. The officer responsible, or, the State Government, can be compelled by *mandamus* to make the call and hold election. *Mandamus*, in the circumstances, is an appropriate remedy to compel performance by officers and by the State, of their duty with respect to the holding of an election. The statute does not invest the State Government, or any of its officers with the arbitrary power of refusing to take any action. On the contrary, it is their statutory duty to conform to the letter and spirit of Rule 69. The State whose duty for holding election is purely ministerial can, in an appropriate case, be compelled to act by a writ of *mandamus*. This court is not without power to issue *mandamus* in a case like the present, where, in consequence of laches, the holding of an election has been unduly delayed. A writ of *mandamus* to compel the holding of an election is competent at the instance of an elector or a candidate. In this request, the petitioner, Shri Budh Mal as also respondents 4 and 7 to 10 have joined, as they are keenly interested in contesting the election and in having the law as laid down in Rule 69, enforced.

(10) 12 A. & E. 265.

For reasons stated above, while dismissing the petition of Shri Budha Mal, in so far as he has impugned the Government notification, dated 23rd of March, 1967, (Annexure A) and while holding that the nomination papers of respondents 7 to 10 were improperly rejected and thereby, the result of the election as a whole had been materially affected, I direct a writ of *mandamus* to issue to respondent No. 1, the State of Punjab, requiring it to comply with the provisions of the Municipal Election Rule 69. I further direct that a new election be held in the double-member constituency from ward No. 1 for the Municipal Committee, Dinanagar. Respondent No. 1 may direct that a new election be held in the constituency within three months. In the circumstances, I will leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

JODH SINGH CHOWDHARY,—*Petitioner*

versus

HARDEV KAUR,—*Respondent*

Probate Case No. 2 of 1966

September 4, 1967

Provident Funds Act (XIX of 1925)—S. 5—Defence Services Officers' Provident Fund Rules (1931)—Rule 9(viii)(b)—Person entitled to receive the amount of provident fund under—Whether acquires rights of ownership therein or holds it in the capacity of receiver or trustee for the lawful heirs of the deceased.

Held, that although in accordance with rule 9(viii)(b) of the Defence Services Officers' Provident Fund Rules the widow is entitled to receive the amount of the provident fund of her deceased husband, she cannot be in a better position than that of a nominee and cannot by virtue of the provisions of the Provident Fund Act of 1925 or Provident Fund Rules of 1931 maintain that she is entitled to the beneficial interest in the money or has become its owner. She certainly has the right to receive the provident fund under the Act and the Rules but such right to receive is subject to the rights of others under the law or arising out of any disposition made by subscriber, namely, the will in the case.

Petition for Probate of the Will of the deceased under sections 222, 276, 279, 280, 281, 273 and 300 of the Indian Succession Act.

K. L. KAPUR, ADVOCATE, for the Appellant.

ATMA RAM, ADVOCATE, for the Respondent.