

(1977) 06 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 1083 of 1977

A.B. Shorawal

APPELLANT

Vs

L.K. Advani, Minister for Information and Broadcasting and
Others

RESPONDENT

Date of Decision : 03-06-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Representation of the People Act, 1951 — Section 100, 100(1), 105, 170, 80

Citation : AIR 1977 All 426

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : Party in person, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This is a petition under Article 226 of the Constitution seeking a writ in the nature of mandamus commanding the opposite parties to allow, afford and accord equal opportunity to the petitioner through the mass media T. V. and AIR like any other party or party candidates to put his case and views regarding his candidature to the forthcoming U. P. Legislative Assembly elections. The petitioner has filed his nomination on 18th May, 1977 as an independent candidate seeking election to the U. P. Legislative Assembly from Lucknow East Constituency. He has alleged that with a view to edge an advantage to the Janta Party candidates over the independent candidates opposite party No. 1, who is an important member of the Janta party, has issued a statement and order misusing his High Governmental position as Minister of Information and Broadcasting that Television and All India Radio facilities will be given to the Janta Party and not to the independent candidates vide a news item appearing in the Statesman dated 21st May, 1977 on pages 1 and 7 allowing the Janta Party an opportunity to broadcast in two instalments of 15 minutes each from All India Radio which will also be covered by regional news bulletins. In addition, telecasts from Television are also allowed to the Janta Party of 15 minutes duration from

25th May, 1977 to 7th June, 1977. This, according to the petitioner, will handicap independent candidates by debarring them from reaching millions of the electorate and voters and will thereby affect their election prospects which will be unjust and unfair. A copy of the Statesman dated 21st May, 1977 is Annexure A1 to the writ petition. Further, the petitioner has contended that the opposite party No. 1 has also said in the said statement published in the Statesman dated 21st May, 1977 on page 7 that he and his party in power did wish to discourage such independent candidates. The petitioner is said to have sent a phonogram dated 22nd May, 1977 to the opposite parties 1 and 2 to accord him equal opportunity on Television and A. I. R. to avoid him handicap and discrimination in his election prospects as independent candidate from Lucknow East Constituency, but to no avail. The petitioner had also approached Sri K.K. Mathur, the Station Director of the All India Radio Lucknow, as also Sri Manzur Amin, Director, Television Lucknow, to enable him to make his broadcast from the All India Radio as also telecast from the Door Darshan but they declined to give him, that facility. The petitioner has, therefore, maintained that the prospects and chances of fair and equitable election have thus been greatly jeopardised and the petitioner has been discriminated against. He has, therefore, contended that the action of the opposite parties 1, 2, 3, 8 and 9 in denying him opportunity of using the All India Radio and Door Darshan for propagating his view and ideas and canvassing his candidature is a denial of equal opportunity and a curb on the freedom of his speech and freedom of profession. On these allegations the petitioner has asked for the aforesaid writ of mandamus.

2. The petition has been contested by the opposite parties 3 and 9 and 5 to 7, Sri K.K Mathur, Station Director, All India Radio, Lucknow, has filed his counter affidavit to the stay application on behalf of the opposite parties 3 and 9. In this counter affidavit it is averred that the facilities for broadcasting from Akaswani and Door Darshan have been given only to the political parties recognised by the Election Commission of India and not to independent candidates and unrecognised political parties. The political parties which have secured recognition are: (1) Indian National Congress (2) Communist Party of India, (3) Communist Party of India (Marxist) and (4) Janta Party. Each of these parties is allowed two broadcasts of 15 minutes each by the All India Radio and one telecast of 15 minutes each by Door Darshan. It is averred that the recognised political parties constitute a class by themselves as against the unrecognised parties and independent candidates who have been left out of the group and the said classification is based upon an intelligible differentia which has a reasonable nexus with the object sought to be achieved, namely, that all the recognised parties, which go to the polls should place their programmes and policies before the electorate, who will be in a position to judge them while exercising their franchise. As the party which ultimately emerges with a majority will be entitled to form the Government, the scheme is calculated to help the electorate in their assessment of the parties. Therefore, the scheme does not suffer from the vice of discrimination. It is further averred that no powers are vested in the Director

Television to allot any appearance and give facility which has been offered by the Government of India in the matter of broadcasting from All India Radio and Doordarshan to the recognised political parties. Similarly, the Station Director has also no such power. It is contended that it is not a fundamental right of a citizen to contest for elections or to claim any legal right over concessions or facilities granted by the Government of India or by any other State Government or to challenge the same or to claim right and benefit of the same as a candidate. The petitioner is said to have no locus standi to maintain the writ petition. Further, it is averred that there is no question of any infringement of Article 14 of the Constitution as between independent candidates as his area is confined to one particular constituency as distinguished from recognised political parties which exist in a State or the country as a whole. The averments made in the counter-affidavit have been repudiated by the petitioner in his rejoinder affidavit.

3. The petitioner has personally argued his case. In his submission he reiterated that his freedom of speech and freedom of profession have been curtailed by denying him the use of the All India Radio and Doordarshan to propagate his views and ideas and canvass for his candidature and that he has been discriminated against, inasmuch as the facilities of the user of the All India Radio and the Doordarshan have been given to four national parties only and not to him. The contention of the petitioner was that the candidate set up by the said parties which have been allowed such facility would have an edge over him in the election, which in turn will mar his prospects in the election.

4. In order to appreciate the rival contentions it would be pertinent to refer to the preamble of the Constitution which declares India to be a sovereign socialist secular democratic republic. Needless to say that the Constitution of India is a federal Constitution based on the parliamentary form of representative Government and the democracy as conceived by our Constitution is that of a free and open society. Free and fair elections lie at the basis of a democratic parliamentary form of Government. In other words, free and fair elections are a basic postulate of a free democratic society. The concept of democracy, therefore, pre-supposes the representation of the people in the Parliament and State legislature by the method of election. Part XV of the Constitution deals with the matters relating to election. The scheme and scope of Part XV of the Constitution were examined by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . They were also examined in the latest decision of the Supreme Court in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, . Construing the expression "election" as used in Part XV of the Constitution it was observed by the Supreme Court in *Ponnuswami's* case (supra) that the word "election" has been used therein in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature—Referring to Article 329(b) of the Constitution it was observed by the Supreme Court that it must be read as complementary to Clause (a) of that article. Clause (a) bars the jurisdiction of the Courts with regard to such law

as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. Article 329(b) was held to oust the jurisdiction of the Courts with regard to matters arising between the commencement of the polling and the final selection." If part XV of the Constitution is a Code by itself i. e. it creates rights and provides for their enforcement by a special tribunal to the exclusion of all Courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process, namely, acceptance or rejection of nomination paper to be made the subject-matter of contest before the High Courts and thereby upset the time schedule of the elections. Further, it was observed that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. The Supreme Court further held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the election and if any irregularities are committed while it is in progress and they belong to the category or class, which, under the law by which elections are governed would have the effect of vitiating the election and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress. The Supreme Court declared that Article 329(b) was enacted to prescribe the manner in which and the stage at which this ground and other grounds which may be raised under the law to call the election in question could be urged. It follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting view may be expressed by the High Court at the propelling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

5. This takes us to the provisions of the Representation of the People Act. Section 80 of the Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. Section 80-A lays down that the Court having jurisdiction to try an election petition shall be the High Court. Sub-clause (2) of Section 80-A provides that such jurisdiction

shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. Section 100 of the Act enumerates the grounds for declaring the election to be void. Clause (d) of Sub-section (1) of Section 100 says that subject to the provisions of Sub-section (2) if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void. The Representation of the People Act is a self contained enactment so far as the elections are concerned and as pointed out in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, Sections 80 and 80-A along with Sections 100, 105 and 170 are the main provisions regarding election matters and there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage. It may, therefore, be inferred that the Act provides for only one remedy and that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. Dealing with the scope of Article 226 of the Constitution and the provisions of the Representation of the People Act the Supreme Court has laid down in *Ponnuswami's* case as under:

"The argument that since the Representation of the People Act was enacted under Article 327 subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution is completely shut out by reading the Act along with Article 329(b).... The language used in that article and in Section 80 of the Act is almost identical with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution." These words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress."

The views expressed in *Ponnuswami's* case (*supra*) were referred to with approval in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, wherein it was re-affirmed that the word "election" in Article 329(b) is used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate. An application under Article 226 challenging the validity of any of the acts forming part of that process will be barred. Again in *Narayan Bhaskar Khare Vs. The Election Commission of India*, the Supreme Court has observed that the words in Article 71 are similar to those used in Article 327 and are equally wide enough to cover matters relating to or connected with any stage of the entire election process. Referring to the *Ponnuswami's* case it was reiterated that the well-recognised principle of election law, Indian and English, is that elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to

the time schedule. Considering the plea of discrimination the Supreme Court has observed in Dr. Khare's case (supra) that in so far as the alleged discrimination, if any, in breach of the equal protection clause of the Constitution may be said to be calculated to raise any doubt in connection with the election of the President it will, at best, be a non-compliance with the provisions of the Constitution which may or may not, after the conclusion of the entire election, be made a ground under Sections 18 of the Presidential and Vice-Presidential Election Act 1952 for calling the election in question as to which the law expresses no grievance.

6. Judged in this background, I find that the present petition is not maintainable. The contention that he has been discriminated against by being deprived of the use of Doordarshaa and Akasvani may be said to be calculated to raise any doubt in connection with the election to the Legislative Assembly, It will, at best, be a non-compliance with the provisions of the Constitution which may or may not be a ground under Sections 100(1)(d)(iv) of the Representation of the People Act for calling the election in question. The process of election has already started. The petitioner has filed his nomination paper and he has been allotted a symbol of "horse and rider" There are other candidates who are seeking election from the Constituency from which the petitioner is also seeking election. One of them, according to the petitioner, has been set up by the Indian National Congress, whereas the other has been set up by the Janta Party. There, are some independent candidates as well who are seeking election from the same Constituency. It seems from the publication appearing in the Statesman at pages 1 and 7 dated 21st May, 1977 that "a unanimously acclaimed agreement" was arrived at for making election broadcast over the Government Television and All India Radio and that four national and eight State parties are recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The national parties which are so recognised are Indian National Congress, Communist Party of India, Communist Party of India (Marxist) and Janta Party, A perusal of Table II of the said Order of 1968 shows that there is no recognised State party in the State of Uttar Pradesh. Sri Umesh Chandra Srivastava, learned counsel for the opposite parties 3 and 9, produced before me a schedule of Broadcast by political parties over All India Radio, Lucknow, Allahabad, Rampur. Mathura, Gorakhpur and Varanasi. He has also produced another schedule relating to telecast by the said political parties of these two schedules have been given to the petitioner also. From these schedules it appears that only the aforesaid four national parties have been allowed to make their broadcast over All India Radio and the Television. No independent candidate has been allowed to make use of the All India Radio to make his broadcast or the Doordarshan to make the telecast. The contention on behalf of the opposite parties 3 and 9 was that these national parties form a class and, therefore, there could be no question of any discrimination while denying the opportunity of user of the All India Radio and the Doordarshan by the independent candidates. This submission was repudiated by the petitioner, I need not go into the merits of this dispute at this stage because even if it amounts to discrimination it would mean

an infraction of the provisions of the Constitution, which, as discussed above, may or may not after the conclusion of the entire election, be made a ground under Sections 100 of the Representation of the People Act for calling the election in question but an application under Article 226 of the Constitution challenging the validity of the impugned act which forms part of the process of election is barred as laid down in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , 1, therefore, do not deem it proper to formulate herein any final opinion on the question of discrimination or the curbing of the freedom of speech or profession as contended by the petitioner.

7. The petitioner has also asked for a writ of mandamus commanding the opposite parties to supply him a copy of the Electoral Rolls without any payment. In this connection reference may be made to Rule 1) of the Registration of Electors Rules, 1960 which provides that the Registration Officer shall also make a copy of each separate part of the roll, together with a copy of the notice in Form 5 available for inspection at a specified place accessible to the public and in or near the area to which that part relates; Clause (c) of the Rules requires a Registration Officer to supply free of cost two copies of each separate part of the roll to every political party for which a symbol has been exclusively reserved in the State by the Election Commission, These copies are obviously supplied for a different purpose. The petitioner has not referred me to any provision of law which entitles an independent candidate to the supply of any copy of the electoral Roll free of cost. He, however, contends that as two copies of the Electoral Rolls are supplied free of cost to political parties, he should also be supplied the same number of copies free of cost. There is no provision which entitles the petitioner to the supply of free copies of the said Rolls. There is, therefore, no merit in the second contention.

8. The petitioner has further asked for a writ of mandamus to the opposite parties not to misuse the Press Information Bureau and the Information Department by issuing and misusing publicity material to public and press which may give an edge to the party in power. This relief does not find support from any facts mentioned in the writ petition. No particulars have been furnished. It has not been made out as to how the opposite parties are misusing the Press Information Bureau or the Information Department as alleged, The plea, therefore, is unsustainable.

9. No other point was urged or pressed.

10. In the result, the petition fails and is dismissed but without costs.