
(2004) 02 AHC CK 0244

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4220 of 2004

Abdus Salam @ A. Salam

APPELLANT

Vs

Election Commission of India and Another

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Representation of the People Act, 1951 — Section 10A, 11

Citation : (2004) 02 AHC CK 0244

Hon'ble Judges : Umeshwar Pandey, J; S.P. Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. S.P. Srivastava, J.—Heard the learned Counsel for the Petitioner.

2. The learned standing counsel representing the Respondents who has put in appearance at this stage on advance notice has also been heard.

3. The Petitioner is aggrieved by the order of the Election Tribunal dated 7.1.2003 whereby exercising the jurisdiction as envisaged u/s 10A of the Representation of the People Act, 1951 the Petitioner was disqualified for a period of three years. In the order dated 7.1.2003 the Tribunal has recorded a categorical finding that inspite of notice the Petitioner had not furnished any explanation.

4. The fact that the Petitioner had not submitted any explanation is not disputed. Further the correctness of the recitals contained in the order dated 7.1.2003 passed by the Election Commission is also not disputed. However, after passing of the order dated 7.1.2003, the Petitioner moved an application u/s 11 of the aforesaid Act seeking removal of the disqualification imposed under order dated 7.1.2003. In this connection the Petitioner has filed copies of the applications dated 6.2.2003, 25.7.2003 and 6.10.2003. In the application filed u/s 11 of the Act, which was supported by an affidavit, the Petitioner had set forth his

grievances in detail

5. The Election Commission after considering the applications rejected the same vide the impugned order dated 20th October, 2003.

6. The only submission urged and pressed by the learned Counsel for the Petitioner in support of this writ petition is that the Petitioner had not been afforded any personal hearing.

7. Learned Counsel for the Petitioner has strenuously urged that the Respondent-authority has acted in a manifestly illegal manner in passing the impugned order without giving the Petitioner an opportunity of being heard.

8. In the aforesaid connection, it has further been urged that it was incumbent upon the Respondent-authority to afford an opportunity of personal hearing to the Petitioner before taking a decision on his application filed u/s 11 of the Representation of People Act Since the Respondent-authority had not afforded any personal hearing to the Petitioner, it is urged that the impugned order disposing of the application is vitiated in law and is not at all sustainable.

9. The question as to whether hearing necessarily involved affording of opportunity of personal hearing or opportunity to give written submissions/representation setting forth the version of the aggrieved party is substantial compliance of affording of opportunity of hearing has been the subject matter of various decisions of the Apex Court.

10. In its decision in the case of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , the Apex Court had observed that it is no doubt the principle of natural justice that a quasi judicial Tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. However, it was further observed that such an opportunity need not necessarily be by personal hearing. It can be by written representation. It was further observed that whether the said opportunity should be by a written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the Tribunal.

11. In its decision in the case of State of Assam and Another Vs. Gauhati Municipal Board, , the decision of the High Court that omission to give an opportunity of oral hearing violated the principles of natural justice was reversed by the Apex Court holding that the opportunity to submit an explanation was sufficient.

12. In another decision in the case of State Bank of Patiala v. Mahendra Kumar Singhal, 1994 Supl. (2) SCC 463 the Apex Court had indicated that no rule could be brought to its notice, which required the Appellant to grant a personal hearing. It was further indicated that the rule of natural justice does not necessarily in all cases confer a right of audience, as indicated in the earlier decision of the Apex Court in the case of F.N. Roy Vs. Collector of Customs, Calcutta, . In indecision in this case, the Apex Court had observed that there is

no rule of natural justice that at every stage, a person is entitled to a personal hearing.

13. In the present case the Petitioner had given his version and the facts in support of his case in detail in his application filed u/s 11 of the Representation of People Act. The Petitioner, in the circumstances, could not be held to be prejudiced at all.

14. We are clearly of the opinion that the duty to hear does not necessarily mean affording of personal hearing or audience and an aggrieved party may be heard orally or through the medium of written representation ensuring that no prejudice is caused.

15. Considering the peculiar facts and circumstances of the present case, we are clearly of the view that the impugned order cannot be held to be vitiated in law on account of its having been passed in violation of principles of natural justice, as claimed and further that an effective opportunity had been afforded to the Petitioner.

16. The contention of the learned Counsel for the petitioned referred to here in above, is totally devoid of any merit and is not at all acceptable.

17. It should not be lost sight of that for considering the question of violation of principles of natural justice, all that has to be seen is, as to whether the concerned authority had acted in a fair manner. There is nothing rigid or mechanical about the principles of natural justice. Whenever, there is a reference to the rules of natural justice, it signifies that the principle and procedure which are to be applied have to be such which in any particular set of circumstances, are right, just and fair.

18. Natural justice, in fact, refers to fair play in action. It is a concept which has succeeded in keeping the arbitrary action within the limits of preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the Courts have been circumspect in extending it to situations where it would cause more injustice than justice.

19. Taking into consideration the facts and circumstances as brought on the record, in their totality no ground has been made out for any interference by this Court while exercising the extraordinary jurisdiction as envisaged under Article 226 of the Constitution of India.

This writ petition accordingly fails and is dismissed.