
(2000) 10 AHC CK 0058
In the Allahabad High Court
Case No : Writ Petition No. 4997 of 2000

Achal Mehrotra

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Constitution of India, 1950 — Article 243K, 324
Uttar Pradesh Municipalities Act, 1916 — Section 12B, 13B

Citation : AIR 2001 All 75 : (2001) 1 AWC 510

Hon'ble Judges : Shyamal Kumar Sen, C.J.; Jagdish Bhalla, J

Bench : Division Bench

Advocate : G.K. Mehrotra, N.S. Chauhan and Anupam Mehrotra, for the Appellant; R.C. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Shyamal Kumar Sen, C.J.—Heard learned advocates for the parties.

2. In the instant writ petition, the petitioner has challenged the notification issued by the State Election Commissioner on October 23, 1998 being Annexure-1 to the writ petition and the amendment thereto made on April 26, 2000, being Annexure-2 to the writ petition. Grievance of the writ petitioner is that the State Election Commissioner did not issue correctly notification for registration of political parties for holding election. The State Election Commissioner, for the purpose of holding Municipal election has issued notification for the purpose of registration of the political parties, which according to the petitioner goes contrary to the principles laid down in the Constitution, since the Constitution contemplates participation of political parties in the election to the Central Legislature and the State Legislature. It is the contention of the learned counsel for the petitioner that the Constitution does not contemplate Municipal election to be contested by political parties and as such, the notification goes against the spirit of the Constitution. It is further submitted that there is basic difference between the Election Commission of India and the

State Election Commission. So far as Election Commission of India is concerned, Article 324 of the Constitution provides for the same, which is quoted below :

"324. Superintendence, direction and control of elections to be vested in an Election Commission.--(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections of the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election of the Legislative Council of each State having such council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1)."

3. Article 243K of the Constitution provides for the purpose of elections of the panchayats and Article 243ZA of the Constitution provides for the purpose of elections of the Municipalities, which are quoted below :

"243K. Elections of the chayats.--(1) The superintendence, direction and control

of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine :

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

"243ZA. Election to the Municipalities.--(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities."

4. It appears that similar provisions of superintendence, direction and control of elections have been provided in the State Election Commission under Articles 243K and 243ZA as provided in Article 324 of the Constitution. It also appears that the provisions contained in Article 243ZA(2) relating to superintendence, direction and control for the purpose of conduct of election of Municipalities has been vested in the State Election Commission. Considering the exigency of the situation, the State Election Commissioner on October 23, 1998, issued the said notification for the purpose of registration and providing symbols to the political parties. Although the said notification was issued as early as on October 23, 1998, i.e., two years back, the petitioner has not raised any objection at any point of time and has urged us today that the matter is very urgent since the notification is going to be issued very soon. We fail to appreciate why the petitioner has not come forward earlier to challenge the said notification and waited till the last moment when the notification, according to the petitioner is going to be issued very soon. Be that as it may, on persuasion of the learned counsel for the petitioner, we decided to take up the matter after recess and we have considered all aspect of the matter. We feel that the submissions of the

learned advocate for the petitioner are self-contradictory. If the democratic process of system as envisaged in the Constitution has to be maintained, there is no wrong in the procedure adopted by the State Election Commission for the purpose of registration of political parties. We have also considered relevant provisions of the United Provinces Municipalities Act, 1916 relating to conduct of elections. It appears that in consonance with the constitutional provisions, u/s 13B the power of superintendence, direction and control of the municipal elections have been vested in the State Election Commission. The State Election Commission, in the instant case, for the purpose of conducting municipal elections, has felt the necessity of registration of political parties in the manner prescribed in the notification. The State Election Commission, on perusal of qualifications and disqualifications, apart from the power of superintendence, direction, control and conduct of election vested in it whereby it can issue notifications for the purpose of holding election, which have been provided under the said statute, i.e.. United Provinces Municipalities Act, 1916, gave direction for registration of political parties. Under Sections 13C and 13D of the said Act, there is nothing to show that a member of political party is debarred and disqualified from contesting election under the said Statute. In this view of the matter, we do not find that anything is wrong on the part of the State Election Commission in issuing the said notification for registration of political parties. In fact, it appears to us that the State Election Commission for the purpose of regulating the procedure of election has correctly issued the said notification. In our view, there is nothing in violation of the said Statute and as we have already noted that the election commission has acted in consonance with the democratic process enshrined under the Constitution and accordingly, we are not inclined to interfere with the said notification. We have already noted the fact that the writ petitioner has waited for the last two years and only he has come forward when the notification was going to be issued. Such unexplained delay and laches, in our view, are the additional grounds for which we have declined to interfere with the impugned notification.

5. For the reasons stated above, the writ petition falls and is dismissed. There shall be no order as to costs.

6. Learned counsel for the petitioner prays for leave to file an appeal before the Supreme Court which is declined since no substantial question of law is involved.