

(2014) 08 DEL CK 0203

In the Delhi High Court

Case No : W.P.(C) 5465/2014 & CM No. 10859/2014

All India Students Association

APPELLANT

Vs

The Chief Election Officer

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 329(b)

Citation : (2014) 08 DEL CK 0203

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Colin Gonsalves, Sr. Advocate and Mohit Chaudhary, Advocate for the Appellant; M.J.S. Rupal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed seeking a direction to respondents to ensure that the distribution of the ballot numbers to the candidates in 2014 election of Delhi University Students Union is not based on an alphabetical order of names, but on a draw of lots/lottery conducted in a free and fair manner.

2. Mr. Mohit Chaudhary, learned counsel for petitioner states that candidates whose name appears first in the list of candidates stands a higher chance of winning as there exists a significant number of voters "who are either unsure of whom they wish to vote for or are unaware of the merits and demerits of the various candidates, and vote for the candidate whose name appears on the top of the list by default." He states that many candidates have added weird-sounding initials to their names to appear on the top of the ballot paper.

3. Mr. Chaudhary submits that this Court under Article 226 of the Constitution of India can interfere with the electoral process. In support of his submission, he relies upon the judgment of the Supreme Court in *Pundlik Vs. State of Maharashtra and Others*, and the judgment of the Bombay High Court in

Sudhakar Deoraoji Wele and Another Vs. Commissioner, Nagpur Division and Others, . The relevant portion of the Pundlik judgment (supra) is reproduced hereinbelow:-

"18. We are also supported in taking this view by a recent three- Judge Bench decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra. In that case, electoral roll was prepared on the basis of bye-laws which were held to be illegal. When the action was challenged it was contended that the Court could not interfere with the list of voters prepared in accordance with the provisions of the Rules and the only remedy available to the aggrieved party was to file election petition after the election was over. Reliance was placed on Sant Sadguru Janardan Swami. The Court, however, distinguished Sant Sadguru Janardan Swami and held that where the voters' list had been prepared on the basis of non- existent Rules, it would be illegal and the Court could interfere under Article 226 of the Constitution."

4. Though there is no absolute bar in entertaining a writ petition in electoral matters, yet once an election process has commenced, it must normally be concluded in accordance with its schedule and any challenge to the election must await the conclusion of the election. The Courts normally pass orders only to assist completion of elections and not to interdict the same.

5. In fact, the Supreme Court judgment in Pundlik V. State of Maharashtra and Ors. (supra) is based on peculiar facts. In the said judgment, it was held that once Sangh had a right to change its representative under the Rules and when the right had been exercised within the stipulated period by passing a resolution, the action of Collector in not effecting the change was contrary to law and ought to have been interfered with by the High Court. In the present case, no action has been taken by the respondent contrary to any rule or law.

6. In Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others, , a three-Judge Bench of the Supreme Court has held that where elections are conducted in accordance with the provision of a statute, recourse cannot be taken under Article 226 of the Constitution. The relevant portion of the Avtar Singh Hit (supra) is reproduced hereinbelow:-

"19. It is well-settled principle that where elections are conducted in accordance with the provisions of a statute and the statute also provides a remedy of settlement of election disputes by filing an election petition before a tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. This view has been taken in a series of decisions rendered by this Court. The earliest decision was rendered in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, by a Bench of six learned Judges. In this case the nomination paper of the appellant for election to the Madras Legislative Assembly was rejected by the Returning Officer. The appellant challenged the rejection of the nomination paper by filing a writ petition in the High Court which was dismissed on the ground that it had no

jurisdiction to interfere with the order of the Returning Officer on account of Article 329(b) of the Constitution, which says that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. In appeal, this Court examined the question whether the writ petition would be maintainable at the initial stage against an order rejecting the nomination paper. Certain observations made in AIR para 9 of the reports are relevant and they are being reproduced below: (SCR p. 228)

"The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court."

20. In AIR para 12 it was observed:

"Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

It will be a fair inference from the provisions of the Representation of the People Act to draw that the Act provides for only one remedy, 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."

21. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it was held that if during the process of election, at any intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law.

22. The same view has been taken in regard to the elections held in accordance with some statutory provisions where Article 329(b) of the Constitution is not applicable and they are not governed by the Representation of the People Act. In *K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others*, the dispute related to election to the Bar Council of Madhya Pradesh under the Advocates Act and Rule 31 of the Election Rules framed by the Bar Council of Madhya Pradesh provided that all disputes arising under the Rule shall be decided by a tribunal to be known as an Election Tribunal. The defeated candidate approached the High Court under Article 226 of the Constitution challenging the validity of the election which was allowed by the High Court. This Court set aside the judgment of the High Court with the following observations: (SCC p. 496, para 3)

"Where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms."

23. In *Gujarat University Vs. N.U. Rajguru and Others*, the dispute related to election to the Court of Gujarat University. Some teachers challenged the holding of elections by means of a writ petition before the High Court which was allowed. In appeal, this Court set aside the judgment of the High Court with the following observations: (SCC p. 516, para 6)

"6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental nor a common law right, instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution bypassing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify bypassing the alternative remedies."

24. There are several other decisions where the same view has been taken. *S.T. Muthusami Vs. K. Natarajan and Others*, is a case relating to election to the office of Chairman of a Panchayat Union under the Tamil Nadu Panchayats Act, 1958 where it was held that the parties who are aggrieved by the result of the election can question the validity of the election by an election petition which is an effective alternative remedy and it is not appropriate for the High Court to interfere with the election process.

25. *C. Subrahmanyam Vs. K. Ramanjaneyullu and Others*, is a case relating to election under the Andhra Pradesh Panchayat Raj Act and in a short judgment it was observed that the main question for decision being the non-compliance with a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution should not have been entertained for this purpose.

26. In *Ashok Kumar Jain v. Neetu Kathoria* [(2004) 12 SCC 73] a writ petition was filed under Article 226 of the Constitution challenging the election held under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972. This Court observed that Section 66A of the said Act provided that an election under the Act could be challenged only by presenting an election petition and except in some exceptional extraordinary circumstances, normally remedy under Article 226 of the Constitution, challenging the election by filing a writ petition would not be

available.

27. Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, is a case relating to election of the President, Vice- President and Chairman, etc. under the Karnataka Cooperative Societies Act, wherein the High Court in a writ petition under Article 226 of the Constitution set aside the order by which the nomination of the first respondent therein was rejected. This Court reversed the judgment of the High Court with the following observation: (SCC p. 529)

"Once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes."

28. Similar view has been taken in Harnek Singh Vs. Charanjit Singh and Others, which is a case relating to election of Chairman of the Gram Panchayat and the judgment of the High Court by which the order of the Returning Officer was set aside in a writ petition was reversed."

7. On 22nd August, 2013, a Division Bench of this Court after considering a number of judgments, has in The Yachting Association of India Vs. Boardsailing Association of India and Others, held as under:-

"22. In the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the Supreme Court, inter-alia, considered the meaning of the word "election" as used in Article 329(b) of the Constitution of India which provided that no election to the Parliament would be called in question except by a election petition. The Supreme Court observed that the word "election" had acquired a wide and a narrow meaning. While in the narrow sense it could mean the election of a candidate. In the wider sense, the word "election" could encompass the entire electoral process culminating in declaring the election of a candidate. The Court summed up its conclusions as under:-

"16. The conclusions which I have arrived at may be summed up briefly as follows:

(1). 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.

(2). 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."

In the case of Supreme Court Bar Association and Others Vs. B.D. Kaushik, , the Supreme Court has expressed a similar view as under:

"43. It hardly needs to be emphasized that in any Body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder.....

xxxx xxxx xxxx xxxx

"60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process."

23. The principles of law relating to election of candidates under the Representation of People Act, 1951 have been extended to elections in general also. In the case of Shri Sant Sadguru (supra), the Supreme Court while considering a case of elections to the Managing Committee of a society registered under the Maharashtra Cooperative Societies Act, 1960 reiterated the settled law as under:-

""12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

24. In light of the aforesaid judgments, we are inclined to accept the contention urged on behalf of the appellant that the election process having commenced, the same ought not to have been interdicted and any challenge to the election could be pursued only after the elections are over. We further do not find that any irreparable loss or prejudice would be caused to respondents Nos. 1 to 12, if

the election process as commenced is concluded. Accordingly, the directions contained in the impugned order restraining the opening of the ballot boxes and counting of the votes are set aside. The appellant would be at liberty to complete the election process and declare the results.

25. We further clarify that we have not expressed any opinion as to the merits of the disputes between the parties and it shall be open for the respondent nos. 1 to 12 to pursue their challenge to the elections in the pending writ petition.

26. The parties are left to bear their own costs."

(emphasis supplied)

8. This Court would also like to clarify that the term "election" includes all steps and entire process commencing from the date of notification of election till the date of declaration of result. Consequently, at this stage, that means, prior to declaration of result, there should normally be no stay of the election process.

9. Moreover, this Court is of the opinion that the petitioner attributes lack of awareness, maturity as well as understanding to the voters. There is no presumption to draw such a conclusion.

10. Accordingly, the present petition and application are dismissed.