
(1953) 03 PAT CK 0005
In the Patna High Court
Case No : Misc. Judicial Case No. 87 of 1953

Amin Ahmad

APPELLANT

Vs

Nand Lal Sinha

RESPONDENT

Date of Decision : 16-03-1953

Acts Referred:

Constitution of India, 1950 — Article 226, 324(1), 327, 329
Representation of the People Act, 1951 — Section 151, 39(2)

Citation : AIR 1953 Patna 293

Hon'ble Judges : Ramaswami, J;Jamuar, J

Bench : Division Bench

Advocate : B.C. Ghosh and Arun Chandra Mitra, for the Appellant; A.G. and Bhagwat Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In this case the petitioner Saiyid Amin Ahmad has obtained a rule calling upon the Chief Electoral Officer Bihar, to show cause why a writ in the nature of certiorari or prohibition, ought not to be issued commanding the latter not to hold a poll for election of twenty four persons to the Bihar Legislative Council on 19-3-1953. Cause was shown against the rule by the Advocate General on behalf of the Chief Electoral Officer, Bihar to whom notice of the rule was directed to be given.

2. The petitioner Saiyid Amin Ahmad was a member of the Bihar Legislative Council till 19-2-1953. On that date the Election Tribunal declared that the entire election from the Bihar Legislative Assembly to the Bihar Legislative Council was null and void and as a result Saiyid Amin Ahmad and twenty three other persons of the Bihar Legislative Council ceased to hold their seats. On 2-3-1953 a notification was issued in the Bihar Gazette extraordinary on behalf of Election Commission calling upon the members of the Bihar Legislative Assembly to elect twenty four persons to the Bihar Legislative Council before 27-3-1953. The notification was issued by the Election Commission by virtue of the power

conferred by Section 151, Representation of the People Act, 1951. On the same date there was another notification by the Election Commission appointing the Chief Electoral Officer, Bihar to be the returning officer for the bye-election to the Bihar Legislative Council. There was also a third notification u/s 39(2), Representation of the People Act 1951 fixing the dates for the nomination and for taking of the poll. It is alleged on behalf of the petitioner that the notifications under Sections 39(2) and 151 were illegal and without jurisdiction since they were not issued by Mr. Sukumar Sen who was Chief Election Commissioner on that date but by Mr. P.C. Subramanian who has designated himself as an officer on special duty. The submission of the petitioner is that Sri Nand Lal Sinha, the Chief Electoral Officer, has illegally assumed jurisdiction on the basis of these notifications, and that writ of certiorari or prohibition should be issued restraining the Chief Electoral Officer from further proceeding in the matter of the bye-election.

3. An affidavit was filed on behalf of the respondent to the effect that the Election Commission had approved the gazette notifications and had authorised Mr. P.S. Subramanian to sign and authenticate the gazette notifications on its behalf. It was stated that a telegram was received from the Election Commission to the respondent to that effect.

4. The first question which arises is whether the notifications issued by the Election Commission under Sections 151 and 39(2), Representation of the People Act are void and illegal.

5. The argument presented on behalf of the petitioner is that the Election Commission had no authority to delegate to Mr. P.S. Subramanian the duty of signing and authenticating the notifications. Mr. B.C. Ghosh pointed out that u/s 169 Representation of the People Act the Central Government has after consulting the Election Commission framed rules for carrying out the purposes of the Act. Learned counsel referred to Rule 7 which states that the Secretary to the Election Commission shall sign the certificates issued by the Election Commission u/s 8(3) or u/s 33(3) or u/s 39(4).

6. The submission of the petitioner is that there is no rule which permits the Election Commission to delegate to the special officer the duty of signing and authenticating the notifications issued under Sections 39(2) and 151. In my opinion the argument of the learned counsel is not sound.

7. Parliament enacted the Representation of the People Act by virtue of the legislative authority conferred by Article 327 of the Constitution. Article 327 is, however, made expressly subject to "other provisions of the Constitution." In this connection Article 324 is important. Article 324(1) states that

"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 including the appointment of election tribunals for the decision of doubt and disputes arising out of or in connection with elections to parliament

and to the Legislatures of States shall be vested in the Election Commission".

Article 324, therefore, confers executive authority on the Election Commission to superintend, direct and control all elections to Parliament and to the Legislatures of every state.

8. The executive authority of the Election Commission under Article 324 cannot be limited by any law passed by Parliament under the provisions of Article 327. It was rightly pointed out by Mr. B.C. Ohosh that the Representation of the People Act does not provide as to how the Election Commission is to sign and authenticate the notifications issued under Sections 39(2) and 151. There is also no provision in any Article of the Constitution as to the manner in which the Election Commission would exercise its authority under Article 324.

9. But this does not mean that the Election Commission cannot regulate its own procedure or that it is powerless to authorise the officer on special duty to authenticate and sign the notifications issued in the name of the Election Commission. In the absence of any provision of the Constitution it must be taken the Constitution makers intended that the Election Commission should follow the procedure laid down by itself and considered necessary for the proper and efficient performance of its duties.

10. It is a matter of internal arrangement over which the Election Tribunal has full competence and control.

11. The principle is enunciated by the House of Lords in -- "Local Government Board v. Arlidge 1915) AC 120 (A). Rejecting the contention that the Local Government Board conducting a statutory enquiry should have been guided by the procedure of a Court of justice, Lord Haldane observed:

"Its (the Board's) character is that of an organisation with executive functions. In this it resembles other great departments of the State. When, therefore, parliament entrusts it with judicial duties. Parliament must be taken, in the absence of any declaration to the contrary, to have intended to follow the procedure which is its own and is necessary if it is to be capable of doing its work efficiently."

This passage was expressly approved by the Supreme Court in -- Sri Sankari Prasad Singh Deo Vs. Union of India (UOI) and State of Bihar, .

12. In that case the question that arose for decision was whether the Constitution (First Amendment) Act, 1951, which had inserted Articles 31A and 31B in the Constitution of India was ultra vires and unconstitutional. It was argued for the appellant that Article 368 was a complete code in itself and did not provide for any amendment being made in the bill after it had been introduced in the House. The bill in question was admittedly amended in several particulars during its passage through the House and it was hence submitted that the Amendment Act could not be said to have been passed in conformity with the procedure prescribed] in Article 388. The argument was rejected by the Supreme

Court on the ground that in the absence of any special provision in the Constitution there was no reason why Parliament should not adopt in a case under Article 368 its own normal procedure so far as that procedure could be followed consistently with the statutory requirements. At page 462 the Chief Justice of India states:

"Having provided for the constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (Art. 118) the makers of the Constitution must be taken to have intended Parliament to follow that procedure, so far as it may be applicable, consistently with the express provisions of Article 368 when they entrusted to it the power of amending the constitution."

Applying the principle to the present case it is clear that the Election Commission has in the absence of any specific provision in the Constitution authority to regulate its own procedure for issue and authentication of the notifications under Sections 39(2) and 151 of the Representation of the People Act.

Mr. B.C. Ghosh submitted that a notification u/s 17 was usually signed by the Chief Secretary of the State acting under the authority of the Governor of the State. Learned counsel referred to Articles 123(1) and 243(2) of the Constitution and stated that the president himself signed the notifications issued under these Articles. There is, however, no analogy between authority of the President or the Governor on the one hand and the authority of the Election Commission on the other hand. Article 77(2) provides that orders and other instruments made and executed in the name of the president shall be authenticated in such manner as may be specified in rules to be made by the president. Article 166 similarly provides that order and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor.

13. In the case of the Election Commission the Constitution does not provide in what manner the orders made and executed in the name of Election Commission shall be authenticated. Articles 77 and 166 show by contrast the position of the Election Commission in the constitutional Scheme.

14. The absence of any specific constitutional provision would suggest that the constitution makers intended that the Election Commission should have unfettered authority to regulate its domestic procedure. For the reasons already stated I think that the Election Commission could validly authorise Mr. P.S. Subramanian to authenticate and issue the notifications, under Sections 39(2) & 151 in the name of the Election Commission. The argument of Mr. B.C. Ghosh on this part of the case must, therefore, fail.

15. I turn to the next question whether Article 329 is a bar to the jurisdiction of the High Court under Article 226 of the Constitution. It was argued by the Advocate General that the High Court has no jurisdiction to issue a writ in this case in view of the provisions of Article 329(b) of the Constitution. The mainstay

of the argument of the Advocate General is the decision of the Supreme Court in -- N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . The question at issue in that case was whether the High Court had jurisdiction to interfere with the order of the returning officer rejecting the nomination paper of a candidate for the election to the Legislative Assembly of the State. It was held by the Supreme Court that the High Court had no jurisdiction to issue a writ and that the word "election" in Article 329(b) must be interpreted in a wide sense so as to connote the entire process culminating in a candidate being declared elected. The argument of the Advocate General on this point is well founded and in view of the Supreme Court decision it must be held that Article 329(b) excludes the jurisdiction of the High Court to issue a writ in the present case. The "ratio decidendi" of the Supreme Court decision was that the questioning of the rejection of a nomination paper was the questioning of the election within the meaning of Article 329(b) of the Constitution & that the word "election" has been used in part 15 of the Constitution in a wide sense, that is to say, to connote the entire procedure to be gone through to return the candidate to the Legislature.

The decision proceeded on the principle that it was a matter of first importance that the elections to the Legislatures should be concluded as early as possible according to the time schedule and that all controversial matters should be postponed till after the election is over. The Supreme Court also proceeded on the other principle that it was the sole right of the Legislature to examine and determine all matters relating to the election of its own members and If the Legislature took it out of its own hands and vested it in a special tribunal and entirely new and unknown jurisdiction, that jurisdiction should be exercised in accordance with the law which created it. On this point the Supreme Court quoted with approval the following passage from the Judgment of Lord Cairns in -- "The berge v. Laundry (1876) 2AC 102 (D).

"The two Acts of Parliament, the Acts of 1872 and 1875 are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction, in a particular Court for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that Court, that very peculiar jurisdiction which up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive, and enable the Constitution of the Legislative Assembly, to be distinctly and speedily known."

16. In the course of his argument Mr. B.C. Ghosh referred to the decision of the Patna High Court in -- Sukar Gope Vs. State of Bihar, . Mr. Ghosh referred to page 154 of the report where the Chief Justice interprets the word "election" to

mean

"all the different stages of the election commencing after the appointment of dates as provided in Section 30 of the Representation of the People Act,"

and states that

"the Returning officer commences his election activities as soon as any person is nominated as a candidate for election and the nomination paper is delivered to him in the prescribed manner".

Learned counsel placed much stress on this passage of the judgment. But the view of the law laid down by the Division Bench is not consistent with the decision of the Supreme Court which has given a much wider interpretation of the word "election" in Article 329(b) of the Constitution. The view of the Division Bench cannot, therefore, be held to be authoritative and the principle laid down by the Supreme Court must take precedence over the view of the Division Bench. Applying the principle laid down by the Supreme Court it is manifest that the issue of notifications under Sections 151 and 39(2) of the Representation of the People Act is a part of the process of "election" within the meaning of Article 329(b) of the Constitution and that the jurisdiction of the High Court to issue a prerogative writ is barred.

17. For the reasons which I have expressed I think that the application of the petitioner under Article 226 fails and must be dismissed with costs : hearing fee five gold mohars.

Jamuar, J.

18. I agree.