

(2004) 05 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6898 of 2004

Amrik Singh

APPELLANT

Vs

Chief Election Commission and Others

RESPONDENT

Date of Decision : 13-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 137 PLR 645 : (2004) 3 RCR(Civil) 445

Hon'ble Judges : Swatanter Kumar, J;Rajive Bhalla, J

Bench : Division Bench

Advocate : M.L. Sarin, Rohin Dutt and Hemant Sarin, for the Appellant; Ashok Aggarwal, A.G. and Amol Rattan, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—By this common judgment, we would dispose of above titled two writ petitions, as common legal controversy arise for consideration in these petition, on somewhat similar facts.

2. Both the petitioners namely Amrik Singh and Narinder Nath claim to be the social workers, who are involved in active politics in the State of Haryana. These petitioners being desirous of contesting the elections of Lok Sabha from Kurukshetra Parliamentary Constituency, decided to contest the election as independent candidates. According to these petitioners, they were harassed by the office of the Returning Officer-cum-Deputy Collector during the period 20th April, 2004 to 23rd April, 2004 and they were not permitted to submit their nomination papers. On 23rd April, 2004 when the petitioners went to the office of the Returning Officer, which was the last date for submission of nomination papers, all the persons present in the office told them that they were busy in accepting the nomination papers of Abhey Chautala son of the present Chief Minister Shri Om Parkash Chautala and, as such, the nomination papers though not rejected were also not accepted by the concerned authority. The petitioners wrote a letter and also faxed to the Chief Election Commission, Delhi in this

regard and thereafter filed the present writ petition for direction to the respondents to accept the nomination papers of the petitioners.

3. Upon notice, the respondent No. 3 filed a detailed reply, wherein all the facts have been disputed. As per the election programme for which notification was issued on 16th April, 2004, it was clearly stated that last date for filing the nomination papers is 23rd April, 2004. On 24th April, 2004 scrutiny of nomination papers was to take place. It has been specifically averred that on all the dates intervening 16th April, 2004 till 23rd April, 2004, the office remained opened and the nomination papers were being accepted between 11"O clock to 3"O clock in terms of the provisions of Section 33 of Representation of the People Act, 1951 (hereinafter referred to as the Act). A sum of Rs. 10,000/- was required to be deposited by the petitioners being general category candidates in terms of Section 34 of the. Act. Though the petitioners had deposited a sum of Rs. 10,000/- through challan on 23rd April, 2004 in the Government Treasury, but still they did not come within the time to submit their nomination papers. In these circumstances, the respondents prayed for dismissal of the writ petition.

4. During the course of arguments, learned counsel appearing for the respondents at the very commencement of the arguments raised a preliminary objection with regard to the very maintainability of the writ petition, on the ground that efficacious alternative remedy under the provisions of the Act was available to the petitioners. In support of this, they relied upon the judgments of the Hon"ble Supreme Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, .

5. It is true that once, the process of election has commenced, the appropriate and efficacious remedy for the petitioners is to file an election petition and not invoke the jurisdiction of the court under Article 226 of the Constitution of India. In the present case, there is no rejection of the nomination papers of the petitioners. In fact, according to the petitioners themselves, nomination papers were never rejected, but were also not accepted by the office of the Commission, while according to the respondents, nomination papers were never presented to the office of the Commission till 3 p.m. of 23rd April, 2004, as such, the petitioners have no cause of action. The case of Umesh Shivappa Ambi (supra) is relating to the Co-operative Societies Act. It is not necessary for us to go into this question in any greater detail, as we would proceed to discuss the merits of the factual matrix raised in these writ petitions.

6. During the course of hearing, we had requested the learned counsel for the petitioners to show us the original nomination papers which petitioners had filled in. From these papers (photo copies of which we direct to be taken on judicial record), it appears that the petitioners got the affidavits verified at Raipur Rani on 22nd of April, 2003 and were got attested by Notary on 23rd of April, 2004 at Naraingarh District Ambala. The treasury challan of Rs. 10,000/- was also deposited on the same very date i.e. 23rd April, 2004. Other necessary forms

like form 2-K under Rule 4 was also filled in and got attested by different members on 22nd of April, 2004. It is true that the petitioners had a right to submit the nomination forms till 3 p.m. of 23rd April, 2004, but there is no explanation on record to disclose as to why the petitioners did not approach the office of the Commissioner earlier. Infact, there are averments that they were harassed from 20th April, 2004 till 23rd April, 2004 by the office of the Commission. From the documents produced by the petitioners themselves, it is clear that neither the forms were filled nor money was deposited prior to 23rd of April, 2004. We would not expect a person, who is contesting election to the Lok Sabha to state such incorrect facts.

7. There is no reason for us to disbelieve the facts sworn in by the official respondents. It has been argued on the basis of the record that between 2 p.m. to 3 p.m. as many as 4 nomination papers were received by respondent No. 3. This itself shows that the petitioners had not correctly stated that the office was not doing any other work except accepting the nomination papers of the son of the present Chief Minister of Haryana. The jurisdiction under Article 226 of the Constitution of India is equitable jurisdiction and can only be exercised in favour of the person who comes to the court with clean hands and does equity himself. The petitioners have not only stated incorrect facts in the petition, but have also tried to mislead the Court. We may also notice that the contents of Annexure P1, the representation alleged to have been made by the petitioners to the Chief Election Commission dated 23rd April, 2004 is at variance with the pleadings made in the writ petition. It is averred that he had gone to the office of the Commission at 2.45 P.M. and the Deputy Commissioner had told them that she was going for lunch and thus could not accept their nomination papers. No such averments have been made in the writ petition, where the whole emphasis is on harassment and the fact that because of filing of nomination papers by the son of the Chief Minister, no work was being done at the office of the Commission. The election process has admittedly commenced. The petitioners have alternative remedy, but in any case, we see no reason to interfere in exercise of our equitable jurisdiction under Article 226 of the Constitution of India.

8. Consequently, these writ petitions are dismissed, leaving the parties to bear their own costs.