

(1984) 12 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15862 of 1984

Anand Mohan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-12-1984

Acts Referred:

Constitution of India, 1950 — Article 83(2)

Representation of the People Act, 1951 — Section 14, 14(1), 14(2)

Citation : AIR 1985 All 114

Hon'ble Judges : S.K. Mookerji, J; S.K. Dhaon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The petitioner, who claims to be a social worker, has invoked the extraordinary jurisdiction under Article 226 of the constitution by initiating so-called public interest litigation blended with the enforcement of his legal rights, though in a half-hearted manner. This Court is being asked to set at naught the process already commenced for constituting the Eighth Lok Sabha (House of the People).

2. The term of the Seventh Lok Sabha expires on 20th January, 1985. The President on 20th November, 1984 issued a notification published in the Gazette of India (Extraordinary) whereby in the purported exercise of powers as contained in Sub-section (2) of Section 14, Representation of the People Act, 1951 (hereinafter referred to as the Act) he called upon all parliamentary constituencies (other than those within the States of Assam and Punjab) to elect members of a new House of the People. The petitioner, who appears in person, questions the jurisdiction of the President to issue such a notification before 20th January, 1985. According to the petitioner, the President could take such an action only after the life of the existing House of the People came to an end.

3. Part XV of the Constitution is confined to "Elections". Article 327 enables the Parliament to pass laws making provisions with respect to all matters relating to,

or in connection with, elections to either House of Parliament or either House of the Legislature of a State, subject to the provisions of the Constitution. This means that the provisions of the Act will be subservient to the provisions in the Constitution? Clause (2) of Article 83 gives the House of the people a normal life of five years from the date appointed for its first meeting; This period can be cut short by the dissolution of the House by the President (Article 85(2)(b)). It also provides that the expiration of the period of five years shall operate as a dissolution of the House. Thus, the Article contemplates the dissolution of the House of the People by two methods, one by the action of the President and the other by the natural effluxion of time. Article 83 fixes the normal tenure of the House of the People by providing that its term will commence from the date appointed for its first meeting and will end immediately after the expiration of a period of five years from that date. We have already seen that Article 85 empowers the President to dissolve the House of the People. It is, therefore, apparent that the Constitution has ensured that, unless the President resolves to dissolve the House, the normal period of five years as provided for cannot be cut short in any eventuality.

4. From a perusal of the provisions contained in the proviso to Clause (4) of Article 352 it is apparent that our constitution does not frown upon a hiatus in the constitution of a new House of the People. Nonetheless, we have still to discern from the various provisions of the Constitution as to whether its framers ever intended either affirmatively or negatively that steps should not be taken to hold a general election to bring into existence a new House of the People, before the end of the life of the existing House,

5. It is now well settled that a constituent or an organic statute should not be interpreted in a narrow pedantic sense. On the contrary, a broad liberal spirit should be the guiding factor to those whose duty is to interpret a Constitution. Lord Wright : --

"A Constitution is a living organic thing". We find that Article 81 provides that the House of the People shall consist of members chosen by direct election from the territorial constituencies in the States. The election shall be on the basis of the adult suffrage (Article 326) Every person who is a citizen of India and who is not less than 21 years of age and is not otherwise disqualified on the grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at the elections of the House of the People. A citizen of India who is not less than 25 years of age and who makes and subscribes an oath or affirmation according to a set form is qualified to be chosen to fill a seat in the House of the People. The architects of the Constitution have given us a Parliamentary form of Government or "Westminster Type". We have thus a model of the British Parliamentary democracy. As in our country, so in Britain the House of Commons endures for five years. Of course, there the term has been laid down by the Act of Parliament of 1911. We have not come across any provision in the Constitution which either expressly or by necessary

implication deprives the electorate of this country of the right to elect members of the new House of the People in advance. Further, the spirit of democracy which pervades the Indian Constitution will gather greater strength if a convention is developed that the elections to the House of the People are held for constituting a new House before the expiry of its duration so that the new House may commence its functions without any loss of time. We may now read Section 14 of the Act: --

"14. Notification for general election to the House of the People.

(1) A general election shall be held for the purpose of constituting a new House of the people on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder :

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of Clause (2) of Article 83."

6. The petitioner has urged that Sub-section (1) of Section 14 alone should be taken into consideration for deciding the validity of the action taken by the President in issuing the impugned notification on 20th November, 1984. He has placed great reliance on the words "on the expiration of the duration of the existing House." The argument is not sound. In Sub-section (2) the words "said purpose" have significance. These words are referable to the purpose mentioned in Sub-section (1), namely, the purpose of constituting a new House of the People. In Sub-section (2) the President is required to call upon all Parliamentary constituencies to elect members by issuing one or more notifications the notification or notifications have to be published in/the Gazette of India. The occasions for the election of the members of the new House of the People are mentioned in Sub-section (1). The first is on the expiration of the duration of the existing House and the second is the dissolution of the existing House. It will be noticed that in Section 14, unlike Article 83(2), the expiration of the duration of the existing House is not treated as its dissolution. The provisions contained in Sub-section (2) came into play either upon the expiration of the duration of the existing House or on its dissolution. Whichever may be the reason for constituting a new House, either expiration of the duration of the existing House or its dissolution, no general election can take place unless the President issues the notification in the-manner provided for in Sub-section (2). The proviso here is playing its usual role; it is carving out an exception to the provisions contained in Sub-section (2). The exception being a situation wherein general election is

being held other than on the dissolution of the House of the People. In other words, it is being applied in a situation where a general election is being held on the expiration of the duration of the existing house. In the proviso the reference to Clause (2) of Article 83 takes in its sweep not only the period of five years as fixed in Clause (2) of the Article, but also the terms of the proviso thereto. The proviso in Article 83(2) dealing with an extraordinary situation brought about by the promulgation of emergency. We are not concerned with the provisions contained in the proviso as it is the petitioner's own case that the normal duration of five years of the existing House of the People is to expire on 20th January, 1985. The word "such" used before the word "notification" in the proviso clearly means that a reference is being made to some notification mentioned earlier. There is no mention of the word notification in Sub-section (1). This word is to be found only in Sub-section (2). The terms of the proviso are, therefore, clear and explicit and are free from any ambiguity. They clearly mean that a notification referred to in Sub-section (2) can be issued for calling upon all Parliamentary constituencies to elect members of the new House of the People only within a period of six months from the date of the expiration of the duration of the existing house. In a nutshell, it means that in the case of the expiration of the duration of the existing House elections can take place six months in advance and not earlier than that. To put it differently, an outer limit of six months has been fixed by the Parliament from the date of the expiration of the duration of the existing House. In other words, the Parliamentary constituencies in the country can be called upon to elect members of the House of the People in advance, at any time within six months from the date of the expiration of the duration of the existing House and not before six months. It is thus clear that the provision as contained in Sub-section (1) cannot be read in isolation of the provisions contained in Sub-section (2) and the proviso thereto. All the provisions contained in Section 14 have to be read as a whole and harmoniously construed. We have, therefore, no hesitation in taking the view that a general election can take place for the purpose of constituting a new House of the People even before the expiration of the duration of the existing House.

7. The petitioner has urged that the provisions as contained in Section 31 of the Act have been observed in their breach in so far as no "public notice" as contemplated by them was ever issued. At this stage Section 31 of the Act may be extracted :

"31. Public notice of election on the issue of a notification u/s 30, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered."

Rule 3, conduct of Elections Rules, 1961, which is relevant, may also be read :

"3. Public notice of intended election. The public notice of an intended election referred to in Section 31 shall be in Form 1 and shall be subject to any directions of

the Election Commission, be published in such manner as the returning officer thinks fit."

It is not the case of the petitioner that no notification u/s 30 of the Act was issued. We have seen the notification issued by the Election Commission of India in pursuance of Section 30. By that notification the Election Commission appointed the 27th November, 1984 as the last date for making nominations, the 28th November, 1984 as the date for scrutiny of nominations, the 30th November, 1984 as the last date for withdrawal of candidatures, different date or dates on which a poll shall take place in each of the parliamentary constituencies and 10th January, 1985 as the date before which the election shall be completed. The learned standing Counsel has placed before us the original record of the District Election Officer/ Returning Officer, Allahabad Parliamentary Constituency. We have perused the same and we are satisfied that due notice was given on the prescribed Form 1 as referred to in Rule 3, Conduct of Elections Rules, 1961. The record discloses that on 20th November, 1984, the notice was directed to be pasted on various notice boards at the various Tehsil headquarters and at conspicuous places in the Allahabad Parliamentary constituency. Prima facie we are satisfied that due compliance of Section 31 of the Act has been made.

8. We have already observed that the notice of the intended election was given in Form 1. It is not the case of the petitioner that the returning officer did not act in accordance with any direction given by the Election Commission. Indeed, no such direction has been brought to our notice.

9. Normally we would have refrained from entering into the merits of this controversy as in our view, in view of the decision of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, such a grievance of the petitioner cannot be entertained by us as we are forbidden to do so by the express mandate of the Constitution as given in Article 329(b). In *Gill's* case (*supra*) the Supreme Court has clearly ruled that the election process commences by the issue of a notification u/s 14 of the Act and it continues to last till a notification u/s 66 of the Act is issued. We repeat ourselves in saying that we are only expressing a tentative opinion and our observations in so far as the compliance and non-compliance of the provisions of Section 31 are concerned, shall have no bearing whatsoever if the petitioner chooses to prefer an election petition later on.

10. In this petition the petitioner impleaded, amongst others, the Chief Electoral Officer, Uttar Pradesh, Lucknow, and the District Election Officer/The Returning Officer, (56) Allahabad Parliamentary Constituency, Allahabad, as the respondents.

In the petition the petitioner did not make any averment that he, at any stage, intended to be a candidate from any of the Parliamentary constituencies carved out for the district of Allahabad. The petitioner prayed for and was granted time to file a supplementary affidavit, A supplementary affidavit has been filed. In this

affidavit too no specific averment has been made regarding the particular constituency in Allahabad from which the petitioner intended to be a candidate. Paragraph 10 of the supplementary affidavit is an interesting reading and the same may be extracted: --

"Para 10. That the petitioner -- deponent had also decided to contest, from at least two seats in U.P. and two seats outside U.P. The petitioner had a mind to place himself against political stalwarts in U.P. and also in New Delhi and Murshidabad. He might have chosen to contest from any seats out of Amethi, Lucknow, Sultanpur, Bagpat, Rae Bareili, or so."

It is significant that the petitioner has not mentioned the Allahabad Parliamentary constituency although the returning officer of that constituency alone has been impleaded as one of the respondents. The petitioner has not impleaded the returning officers of any other place and particularly the returning officers of Amethi, Lucknow, Sultanpur, Bagpat and Rae Bareili. This, in our opinion, is a fatal defect in the writ petition in so far as the challenge of the petitioner on account of alleged non-observance of the provisions of Section 31 is concerned.

11. In the writ petition as well as in the supplementary affidavit the petitioner has devoted practically the entire space to his political view and ideologies. He has even talked of social reforms as also of political reforms. Originally, he had impleaded the President of India in his personal capacity as one of the respondents to the writ petition. He has also impleaded the Prime Minister of the country by name as one of the respondents to the writ petition. When we confronted the petitioner with the provisions of Art 361 of the Constitution he readily made a prayer that the name of the President may be deleted from the array of the parties. We permitted him to do so. We have not been able to appreciate as to what impelled the petitioner to implead either the President or the Prime Minister as respondents to the writ petition. However, we have a feeling that the petitioner may have adopted this course just to give colour to his writ petition. Courts of law should not be used either as a spring board for coming into prominence or as a platform for propagating one's political ideology. Likewise, Courts of law should not be used for dragging in the high dignitaries of the country merely for the fun of it. We hope the petitioner and other like minded persons will desist from doing so in future.

12. This petition lacks merit and is dismissed summarily.