
(1994) 11 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17232 of 1994

Anuradha Gupta

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 30-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Haryana Municipal Election Rules, 1978 — Rule 10, 11, 5, 6, 7

Citation : AIR 1995 P&H 334 : (1995) 109 PLR 436

Hon'ble Judges : K.S. Kumaran, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Atul Lakhanpal, for the Appellant;

Judgement

1. Petitioner a resident of Uk-lana Mandi, District Hisar, has filed this writ petition basically for staying the elections to the Municipal Committee, Uklana Mandi. which are to be held on 28-12-1994 on the ground that Electoral Rolls prepared are not in accordance with and also that bogus voters have been enrolled in different wards and that the same voter is enrolled in more than one ward. The following prayers have been made in the writ petition :--

(i) a writ in the nature of certiorari quashing the revised Electoral Rolls prepared by the respondents of the different wards/constituencies of the Municipal Area of Uklana Mandi of District Hisar;

(ii) a writ in the nature of mandamus directing the respondents to once again revise the above mentioned electoral rolls of the Municipal Committee, Uklana Mandi afresh in accordance with the rules and after publishing a fresh programme/schedule under Rules 5 to 11 of the Haryana Municipal Election Rules, 1978;

(iii) a writ in the nature of prohibition or any other appropriate writ, order or direction restraining the respondents from holding the elections to the Municipal Committee, Uk- lana Mandi till such time as the electoral rolls are revised afresh

or in the alternative the respondents may be directed to allow only the voters with Indentity Cards to vote in the Municipal Elections;

(iv) in the peculiar circumstances of this case this Hon"ble Court may be pleased to issue any other appropriate writ, order or direction that it deems fit; and

(v) during the pendency of this writ petition the respondents be restrained from holding elections to the Municipal Committee, Uklana Mandi till such time as the electoral rolls are revised afresh."

2. As an interim measure, prayer made is that the respondents be restrained from holding the elections to the Municipal Committee, Uklana Mandi till such time as Electoral Rolls are revised afresh or in the alternative, the respondents be directed to allow only the voters with identity cards to vote in the Municipal Elections.

3. Election programme has been issued and the process of elections has already been put into motion on the basis of revised electorals. After the revised electorals were notified, objections were invited. Petitioner had filed his objections against the bogus voters enrolled, which stand dismissed by the Revising Authority. The last date for filing of nomination papers was 28-11-1994 and the elections, if any, are to be held on 28-12-1994. Since the process of elections has already been put into motion, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India at this stage to postpone the elections. The Code for holding the elections is self-contained. Remedies have been provided under the Code for raising objections regarding enrolment of bogus voters, delimitation of wards and of filing Election Petition in case any person is aggrieved of the result of the election on the grounds specified under the Code. If the elections are allowed to be postponed in the manner suggested in this writ petition, then no elections in the country can be completed. Supreme Court of India in Meghraj Kothari Vs. Delimitation Commission and Others, , with regard to the challenge to the delimitation of constituencies observed that if the orders made for delimitation of the constituencies are not taken to be final (at p. 675 of AIR) :

"the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court."

4. Another Constitution Bench of the Supreme Court in Inderjit Barua and Others Vs. Election Commission of India, , held as under :--

"Merely because the elections are challenged as a whole and not individually by filing a writ petition on the ground that the elections were held on basis of unrevised and therefore invalid electoral rolls, the bar under Article 329(b) does not cease to operate. There is in the Representation of the People Act, 1951, no concept of elections as a whole. What that Act contemplates is election from each constituency and it is that election which is liable to be challenged by filing

an election petition. It may be that there is a common ground which may vitiate the elections from all the constituencies, but even so it is the election from each constituency which has to be challenged though the ground of challenge may be identical. Even where in form the challenge is to the elections as a whole, in effect and substance what is challenged is election from each constituency and Article 329(b) must therefore be held to be attracted."

5. In another case, where the dispute was with regard to the claim for inclusion of names and objections relating to inclusion of certain names in the electoral rolls having not been disposed of was involved, the Surpeme Court of India in Lakshmi Charan Sen v. A. K. M. Hassan Uzzaman and Election Commission v. A. K, M. Hassan Uzzaman with A. K. M. Hassan Uzzaman v. Union of India AIR 1985 SC 1233, held as under (at p. 1242 of AIR) :--

"The fact that certain claims for inclusion on names in electoral rolls and objections relating to inclusion of certain names therein are not finally disposed of, even assuming that they are filed in accordance with law cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations."

6. Elected bodies be that the Parliament, the State Legislature or Municipal Comittees, in a democractic country have to perform important functions. It has always been recognised in a democractic functioning that elections should be concluded as early as possible according to the time schedule and all controversial matters with regard to the disputes relating to elections should be postponed till after the elections are over so that election proceedings are not indefinitely stopped. If the contentions raised by the petitioner are accepted, the resultant effect would be that elections to the democractic elected institutions may not be completed for indefinite period. Supreme Court of India in A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others, , had"a word of advice to give and opined as under :--

"Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked."

7. Another contention raised was that voters with identity cards only be allowed to vote in the municipal elections. This prayer cannot be allowed as identity cards have not been issued to all the voters and infact the last date for issuance of identity cards has not expired. Issuance of identity cards to a voter is a new concept which has been enforced by the Chief Election Commissioner of India recently and till the process of issuance of identity cards is completed, the prayer made by the counsel for the petitioner that persons with identity cards be only allowed to vote in the elections cannot be entertained. The Chief Election

Commissioner of India has not yet enforced the mle that only voters with identity cards be allowed to vote in the elections in this part of the country so far.

8. So far as the question of bogus votes and the same voter being registered at more than one place is concerned, we leave it open to the candidate concerned to object to the casting of such votes at the time of elections.

9. For the reason that any interim order passed at this stage would result in postponing the electi'on, which is reaonably imminent, we are not inclined to exercise our jurisdiction under Articles 226 of the Constitution of India in this case.

10. Dismissed.

11. Petition dismissed.