

(2002) 07 DEL CK 0012
In the Delhi High Court
Case No : C.W.P. No. 4119 of 2002

Charan Lal Sahu

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 21, 324, 326

Presidential and Vice-Presidential Elections Act, 1952 — Section 13, 14A, 18(2), 2, 5B

Representation of the People Act, 1951 — Section 29A

Supreme Court Rules, 1996 — Rule 2, 3, 39, 6 34

Citation : (2002) 07 DEL CK 0012

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Petitioner in perso, for the Appellant; K.K. Sud, A.S.G., Jayant Bhushan and Neeraj Jain for UOI, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The matter was heard at length on 12.07.2002. While arguing the matter, Mr.sahu, the petitioner, not only prayed for issuance of a Rule, but also prayed for stay. We heard the petitioner in person and the learned Additional Solicitor General Mr. K.K. Sud at great length. Having heard the parties, we had dismissed the writ petition directing that the reasons Therefore would follow. We are, Therefore, setting forth our reasons for dismissing the writ petition of the petitioner.

2. The petitioner is an Advocate. He for contesting the ensuing election of the President of India (hereinafter for the sake of brevity referred to as, "the President") filed his nomination papers. The same was rejected.

He has filed this application inter alias on the ground that the provisions of Article 71(3) of the Constitution of India (hereinafter for the sake of brevity referred to as, "the Constitution") as also Sections 5B and 5C of the Presidential and Vice-Presidential Election Act, 1951 (hereinafter for the sake of brevity

referred to as, "the said Act") are ultra virus the Constitution.

3. In this writ petition, the petitioner has prayed for the following reliefs:-

"Under the circumstances of the petitioner prays for main relief/interim order and consequential reliefs as under:--

(1) That this Hon"ble Court may be pleased to issue an appropriate writ in the nature of Mandamus /Certiorari/Prohibition/ Quo Warranto against the Respondents.

(2) That a Writ of Certiorari may be issued against the Respondent Nos. 1 and 3 as per Annexure I, II, III, IV and V of order dated 26.6.2002 in the interest of justice.

(3) That a Writ of Certiorari/Mandamus may be issued against the Respondent Nos. 1, 2 and 3 and Section 14A (13(a), 5B, 5C and 2(d) and 18(2) of the Presidential and Vice Presidential Elections Act 1952 with Rule 4 of 1974 Rules may be declared as unconstitutional under Articles 14, 21, 38, 54, 5(3), 71(1) (3), 79, 80(1), 324 and 326 of the Constitution of India.

(4) That Section 29(A) of R.P.A. 1951 may be declared as unconstitutional under Article 14, 21, 38 and 324 of the Constitution .

(5) That a Writ of Mandamus may be issued to postpone the election till the disposal of this writ in the interest of justice.

(6) That Rule 39, 34 read with 2, 3, 6 of SCR 1996 MAY BE DECLARED AS VIOGATIVE TO Articles 14,38 and 71 of the Constitution of India.

(7) Any other writ directions, which may be deemed fit may be granted."

4. Mr. Sahu, the petitioner, who has appeared in person, inter alias submitted that having regard to the fact that in terms of Clause (1) of Article 71 of the Constitution, the Supreme Court acts as an Election Tribunal, it cannot go into the question of validity or otherwise of the constitutional provisions and/or constitutionality of the provisions of the said Act.

Mr. Sahu would vehemently urge that even a decision rendered by the Supreme Court in this behalf would not be a binding precedent inasmuch as such a decision had been rendered in exercise of its jurisdiction under Article 71 of the Constitution only.

He would argue that having regard to the fact that by reason of the provisions of Article 58 of the Constitution, qualifications for elections as President had been laid down the Parliament cannot impose any other or further condition(s) in exercise of its jurisdiction under Clause (3) of Article 71 of the Constitution. It was pointed out that in any even Clause (3) of Article 71 of the Constitution being subject to the other provisions of the Constitution, the said Act must conform to the constitutional provisions and nothing else.

5. Mr. Sud, the learned Additional Solicitor General appearing on behalf of the Union of India, however, would submit that the instant case is covered by the decision of the Apex Court in Charan Lal Sahu Vs. Neelam Sanjeeva Reddy, and a Division Bench decision of this Court in Peter Samuel Wallace Vs. Union of India and Others,

6. Before advertng to the question involved in this writ petition, we may notice some of the relevant provisions of the Constitution.

Article 54 of the Constitution lays down the procedure for election of the President.

Article 56 of the Constitution provides for the term of Office of the President.

Article 58 of the Constitution lays down the qualifications for election as President, which are--the candidate:-

- (a) must be a citizen of India;
- (b) has completed the age of 35 years; and
- (c) has qualified for election as a member of the House of the People.

Clause (1) and (3) of Article 71 reads thus:--

"71. Matters relating to or connected with the election of President or Vice-President.--

(1) All doubts and dispute arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or Vice-President."

7. The nomination paper of the petitioner was rejected having regard to the fact that he could not fulfill the conditions contained in Sections 5B and 5C of the said Act insofar as he did not have 50 proposers and 50 seconders in support of his nomination.

The submission of Mr. Sahu is that the basic qualifications for election of Office of the President having been laid down in terms of Article 58 of the Constitution, by reason of any Parliamentary statute, no more condition could be imposed.

Submission of Mr. Sahu, cannot be accepted. Article 58 of the Constitution lays down the basic eligibility criteria and by reason thereof regulatory measures have not been provided for. Such regulatory measures were required to be provided for only in terms of a Parliamentary Act enacted in consonance with the provisions of Clause (3) of Article 71 of the Constitution. By reason of such Parliamentary Act, any other and further conditions which were imposed, in our considered opinion, cannot be faulted.

8. The manner of election of the President has been laid down in Article 55 of the Constitution. Article 55 had been enacted with a view to have uniformity in the scale of representation amongst the States inter-se. It further seeks to maintain parity between the States as a whole and the Union. Clauses (a) and (b) of Clause 2 of Article 55 thereof lay down a formula for securing a member of a State Assembly votes in the ratio of the population of the State, which he represents in the Assembly.

By reason of Section 5B and 5C of the said Act, the number of proposers and seconders have been specified presumably to eliminate filing of nominations by persons, who would not even be able to muster a fraction of required vote.

9. By reason of the provisions of Clause (1) of Article 71 of the Constitution, all doubts and disputes arising out of and in connection with election of the President are required to be enquired into and decided by the Supreme Court, whose decision would be final. The Constitution which is the supreme lex has vested the power of adjudication as regards a dispute arising out of the election of the President on the highest judicial body. The jurisdiction of all other Court is ousted. It may be true that only election disputes arising out of the election of the President can be adjudicated by the Supreme Court, but the same may not debar the Court from examining the contention of the petitioner as regards constitutionality of the statute or the provisions of Clause (3) of Article 71 of the Constitution. Such a boogie, in our opinion, has been raised as the matter is squarely covered by the decision the Apex Court in his own case.

10. The Supreme Court in the aforementioned case, i.e., Neelam Sanjeeva Reddy's case (Supra) had occasion to consider a similar contention. In that case, the Supreme Court noticed that the petitioner questioned the election of late President Fakhruddin Ali Ahmed in Charan Lal Sahu Vs. Fakhruddin Ali Ahmed and Others, wherein also the petitioner had raised similar contentions such as the validity of Clause (3) of Article 71 of the Constitution inter alia on the ground that the same violates the basic structure of the Constitution.

11. In Neelam Sanjeeva Reddy's case (Supra), the Apex Court distinguished its earlier decision in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another,

"11... In the case before us, the impugned amendment of the Constitution only refers to a law by which Parliament may regulate matters connected with the Presidential election including those relation got election disputes arising out of such an election. It cannot be said to take away the jurisdiction of this Court to decide any matter which may be pending before this Court. All it does is to provide that the validity of any law falling under Article 71(1) will not be called in question in any Court. Inasmuch as this Court has been constituted the authority of Tribunal before which the election of the President can be questioned the effect of Article 71(3) is only to give effect to a well known general principle which is applied by this Court that a Court or Tribunal functioning or exercising its jurisdiction under an enactment will not question the validity of that very

enactment which is the source of its powers. The Court functions here as an election tribunal set up under a law made by parliament under Article any force in the attack upon the validity of either Section 5B or Section 5C of the Act or of the amendment which introduced Article 71(3) of the Constitution."

12. In that case, the Apex Court in no uncertain terms held that the petitioner having not fulfilled eligibility criteria was not entitled to maintain the said petition.

The submission of Mr. Sahu that the said decision was rendered by the Apex Court in its capacity as an Election Tribunal and as such is not binding on this Court is preposterous. Article 141 of the Constitution states that the law declared by the Supreme Court shall be binding upon all the Courts within the territory of India. The Supreme Court has several jurisdictions. However, if a law is laid down by the Apex Court whether in terms of Clause (1) of Article 71 of the Constitution or any other jurisdiction, the same would be binding on all the Courts.

13. We may notice that a Division Bench of this Court in Peter Samuel Wallace's case (Supra) has also rejected a similar contention.

14. The petitioner is a lawyer and not a layman. He knows, or at least presumed to have known, that such matters are to be agitated before the Apex Court. He would also be aware of the provisions of Article 141 of the Constitution. The challenge to the virus of Sections 5B and 5C of the said Act raised by him in the petition was already negated by the Supreme Court in his own case. Still he choose to file the instant petition raising such ingenuous but bogus plea. The petition, Therefore, is clearly a misuse and abuse of the process of law. Therefore, while dismissing this petition, We are constrained to impose exemplary cost of Rs. 20,000/-.

15. This writ petition is dismissed accordingly.