

(1998) 03 AHC CK 0127
In the Allahabad High Court
Case No : C.M.W.P. No. 8075 of 1998

Dharam Pal Yadav

APPELLANT

Vs

Election Commission of India and others

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Constitution of India, 1950 — Article 329
Representation of the People Act, 1951 — Section 100, 123, 57, 58

Citation : AIR 1998 All 257 : (1998) 2 AWC 1366

Hon'ble Judges : M. Katju, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : A. Kumar, Yogesh Agarwal and N.K. Pandey, for the Appellant;
Umesh Narain Sharma, Vineet Saran, S.P. Gupta, Krishna Murari and Ajit Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Aloke Chakrabarti, JJ.—This writ petition has been filed for a writ, order or direction for quashing the order of the Election Commission dated 28.2.1998 whereby the petitioner's representation dated 24.2.1998 praying for re-poll has been rejected, and for a direction to the respondents to cancel the polling of the polling stations mentioned in Annexure-2 to the writ petition, and for a further direction to hold re-poll of the said polling stations at the earliest before recounting begins in nine Sambhal Parliamentary Constituencies of District Moradabad.

2. It appears that the election was held for the aforesaid Parliamentary Constituency on 22.2.1998 from 7.00 a.m. to 5.00 p.m. The main contest was between the petitioner, Shri Dharam Pal Yadav and respondent No. 3, Shri Mulayam Singh Vadav. In the writ petition, various allegations have been made in paragraph Nos. 7 to 17 of the writ petition as well as in the Supplementary affidavit regarding alleged malpractices and illegalities committed by the respondent No. 3 or his men. The petitioner made" a representation in this

connection to the Election Commission on 24.2.1998. The petitioner also filed a writ petition before Delhi High Court on 26.2.1998 and when that writ petition came up for hearing on 28.2.1998, the learned counsel for the Election Commission brought to the notice of the said Court that the Election Commission has rejected the representation of the petitioner. The petitioner alleges that he has not been given a copy of the order of the Election Commission rejecting his representation. It was further contended that the petitioner was not given a hearing by the Election Commission. We are not going into the correctness or otherwise of these allegations as we have not called for any counter-affidavit.

3. In our opinion, the law is well-settled by a series of decisions of the Hon''ble Supreme Court e.g. In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, holding that once the election process has started, there is a bar to interfere by the High Court in writ jurisdiction, in view of the provision of Article 329(b) of the Constitution of India. This view has been reiterated by the Hon''ble Supreme Court in the case of Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, . It is not necessary for us to refer to other similar decisions as the law is well-settled in this regard.

4. Mr. A. Kumar, learned counsel for the petitioner submitted that in view of Sections 57 and 58 of the Representation of the People Act. 1951, there can be interference with the election process even before the election result is announced. In our opinion, such interference before the election result is announced can only be done by the Election Commission and not by the Court. In the present case, the Election Commission has rejected the representation of the petitioner. Therefore, we are of the opinion that the remedy of the petitioner, if so advised is to file an election petition under the Representation of the People Act, and he cannot get an order for withholding of the election result or for repelling from this Court. Learned counsel then submitted that no election petition lies on the grounds taken by the petitioner since these grounds are not available u/s 100 read with Section 123 of Representation of the People Act. We are not agreeable to this submission. We are of the opinion that the remedy of the petitioner is to file an election petition under Sections 100 and 123 of the Representation of the People Act.

5. Mr. Yogesh Agarwal, learned counsel appearing on behalf of the petitioner submitted that the ground for adjournment of poll u/s 57 of the said Act is not available u/s 100 since u/s 57 of the said Act. the polls can be adjourned at the instance of any party. We are not agreeable with this submission. All these grounds are available to the petitioner by way of election petition.

6. In reply to the aforesaid arguments, we have heard Mr. Vineet Saran, Mr. S. P. Gupta and Mr. Krishna Murari, learned counsel for respondent No. 3, Mr. Mulayam Singh Yadav and Mr. Umesh Narain Sharma and Mr. Ajit Kumar Singh, learned counsel for the Election Commission.

7. In our opinion, the order of the Election Commission rejecting the representation of the petitioner cannot be treated as binding on the Election Tribunal when it decided the election petition, if filed. The Election Tribunal is empowered to decide the election petition in accordance with the provisions of Representation of the People Act, and it will not treat the order of the Election Commission as res judicata or binding on it.

8. With the aforesaid observation, this writ petition is dismissed. There will be no order as to costs.