

(1986) 03 AHC CK 0036
In the Allahabad High Court
Case No : Election Petition No. 13 of 1985

Dr. Smt. Rajender Kumari Varma

APPELLANT

Vs

Vijai Singh Rana

RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Constitution of India, 1950 — Article 191(1)

Representation of the People Act, 1951 — Section 100(1)

Citation : AIR 1987 All 121

Hon'ble Judges : V.P. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Mathur, J.—Through this Election Petition the election of Sri Vijai Singh Rana respondent from 356 Dayalbagh Legislative Assembly Constituency of District Agra, held during March, 1985, General Elections to the U.P. Legislative Assembly, has been challenged. It is contended that Sri Rana filed his nomination paper on 5-2-85 and the polling took place on 5-3-85 counting was made next day when the Returning Officer declared Sri Rana elected as a member of the U.P. Legislative Assembly from 356, Dayalbagh Legislative Constituency in the district of Agra. It is contended that the election was void because Sri Rana was holding an office of profit under the Government of Uttar Pradesh and was, therefore, disqualified under Article 191(1)(a) of the Constitution and because the result of the election, in so far as it relates to respondent Sri Rana, has been materially affected by the improper acceptance of his nomination for this Constituency. In para 7 and onwards a concise statement of facts has been given. It is contended that respondent Sri Rana was Principal of Maharaja Surajmal Higher Secondary School, Agra. This Institution was a Government aided Institution, receiving grants for its maintenance from the Government and, the State Government was exercising financial control over it in view of the provisions of the U.P. Intermediate Education Act, 1921; U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act,

1971; U.P. Education Code and the U.P. Secondary Education Services Commission and Selection Boards Act of 1982. The respondent was getting his salary from the Government and was an employee of the Government and in that capacity had drawn salary up to February, 1985. The liability of the State Government to pay salary to the teachers including the respondent was a statutory. Director of Education also exercises financial and other administrative control over the management of the Higher Secondary Schools under the Intermediate Education Act and the Act also empowers the State Government to take over the management of the School. It was, therefore, contended that the election of the respondent was thus void in view of Sections 100(1)(a) and 100(1)(d)(i) of the Representation of the People Act, 1951 and was liable to be set aside.

2. Contest was put forth on behalf of Sri Rana through an application purporting to be under Order VI, Rule 16, C.P.C. read with Section 86(1) of the Representation of the People Act and Order VII, Rule 11 read with Section 151, C.P.C. It was contended that paras 7 to 20 of the Election Petition did not contain concise statement of material facts in respect of the grounds taken. They were wholly vague and vexatious and did not disclose any cause of action as contemplated u/s 83(1)(a) of the Representation of the People Act and Order VI, Rule 2 of the Civil P.C. These paragraphs should, therefore, be deleted and then there will be nothing left in the Election Petition, which will thus be liable to be dismissed.

3. A perusal of the Election Petition, of which a summary has been given by me in the beginning of this judgment, will clearly show that the election of Sri Rana has been challenged only on one ground and it is that he was serving as Principal of Maharaja Surajmal Higher Secondary School, Agra which was a Government aided Institution and which used to receive grants from the Government for its maintenance and thus he will be deemed to be a person holding an office of profit under the Government and would, therefore, be debarred from standing as a candidate for the election. The question, therefore, for decision that will arise would be whether Sri Vijai Singh Rana, the respondent, in view of his being Principal in a recognised school getting grant-in-aid from the Government, will be deemed to be holding an office of profit under the Government on the date of nomination for election and whether the result of the election so far as it concerns Sri Rana, the returned candidate, will be deemed to have been materially affected on account of his nomination having been accepted. The second question does not call for much of argument since it is Sri Rana who is the victorious candidate and if it is ultimately held that his nomination was not capable of being accepted and has yet been accepted, it will naturally mean that the acceptance has materially affected the result of the election so far as the returned candidate, is concerned. Therefore, the first question will be material for decision in this case.

4. A case in similar circumstances came before this Court in Election Petn. No. 54

of 1985, *Sarnam Singh v. Smt. Pushpa Devi*, (reported in 1986 All LJ 507). In that case respondent 1 was declared elected having secured 23006 votes. The next number of votes namely, 20735, was obtained by respondent 2 and there was thus a margin of 2271 votes in between. Respondent No. 8, who was also a candidate got 2606 votes. The petition was filed by an elector in the Constituency on the ground that the result of the election, in so far as it concerned the returned candidate, has been materially affected by the improper acceptance of the nomination of respondent No. 8, who on the relevant date of nomination and even thereafter continued to be a teacher in the L.T. Grade in Baburam Singh Intermediate College, Baburala, district Budaun. It was contended that the post that respondent 8 holds and has been holding, constitutes an office of profit, held under the Government, and hence he had incurred disqualification in view of Article 191(1)(a) of the Constitution.

5. As in the present case, in *Sarnam Singh's* case (*supra*) also the facts were not disputed but it was contended that respondent 8 as a teacher did not hold an office of profit under the State Government and hence there was no question of disqualification and his nomination was rightly accepted. The Court considered all the facts and circumstances of the case and, the law on each point. It considered the provisions of Article 191(1)(a) and the parallel and relevant provisions of Arts. 58(2) 102(2)(a) and 66(4) of the Constitution. It was held that there was no controversy that there is an office which exists independently of respondent 8 filling it; it is a post or place to which certain duties are assigned. In the present case also there is no dispute that the office of the Principal of Maharaj Surajmal Higher Secondary School, Agra, does exist and it carries with it certain duties. It also gives return to the holder of the office by way of pecuniary gain inasmuch as he gets regular remuneration and hence it cannot be disputed that the holder of that office would be deemed to be holding an office of profit. But the question does not end there. The crux of the dispute will always be whether it is an office of profit, held, under the State Government in view of the specific mention of that fact in Article 191(1)(a) of the Constitution. The basic concept is that one need not be in the service of Government nor there need be relationship of Master and Servant between them in order to come to a conclusion whether the person who holds the office of profit holds it under the Government. The real reason behind Article 191(1)(a) of the Constitution is that there should be no conflict between the personal interest and the duties assigned. If such a conflict remains, it might give some temptation to the member concerned. The law, therefore, requires that the person who is elected to the Legislature should not be so subordinate to the Government influence as to render his independent action as a member of the Legislature impossible, Remuneration, even if it is not from public revenue, will also not be decisive factor, it will only be neutral. Power to appoint, remove, regulate of discipline may be good indicia but would not be decisive. In *Sarnam Singh's* case 1986 All LJ 507 (*supra*) all these points were considered and ultimately brother B, D. Agarwal(J) came to the conclusion that even an aided Institution, which gets Government grants for specific purposes, is

run by a Committee of Management, which is a registered Society, and in the capital of which the Government has no share nor has the Society any State conferred or State-protected monopoly status. The Scheme of Administration of the Institute is to be regulated by the Society. The Committee of Management has to manage and conduct the affairs of the Institution which includes superintendence, management and control. The members of the Committee have to be elected by the general body of the Society from among its members. Some other persons specified in the law and the rules have also to be included. The term of holding of the office is a fixed term to be governed by the Regulations of the society. Even under the U.P. Act No. 1 of 1981 the Scheme of Administration has been specifically provided and the provisions clearly show that the State Government cannot impose any person in the committee nor can it remove any one. It also lays down that the Principal or the Head Master shall be responsible to the Committee of Management through the Manager and in financial matters also he has to follow the directions of the Committee of Management. The Act lays down the powers, duties and functions of the Committee of Management vide Regulation 13. It is also clear in view of the various Regulations of this Act and Sections 15 and 16 of the U.P. Act No. 26 of 1975 that whatever powers are to be exercised by the Government are in the nature of emergency powers, meant to safeguard against maladministration and to ensure excellence of education, but the law completely vests the day to day running of the Institution in the charge of the Committee of Management. Even appointment of Authorised Controller is a temporary measure with limited powers and at no stage there is divesting of the Committee of Management of its power to manage, which, of course, is to be exercised subject to the provision of the State Government.

6. The grant-in-aid question, in view of para 293 of the Education Code, is subject to certain conditions. If they are fulfilled, the Government releases the grant by way of aid, which ordinarily does not exceed one-half of the whole tuitional expenditure and it has been made clear that the charges on account of management and on account of construction of buildings and major repairs are not to be treated as tuitional expenses. In terms of para 296 of the Education Code, grants for purposes of acquisition of sites, erection of buildings, carrying on of major repairs are not to exceed the total amount constituted for that purpose from other sources. The Management has, therefore, to arrange for a matching amount from its own resources and then the aid (grant) is to be given, and lastly in Para 309(b) an Institution, which has sufficient income from its own sources for efficient running of the same, has not to be granted any aid.

7. The U .P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971 also does not absolve the Managing Committee from its liability to pay salary to the teachers. Ultimately the liability remains of the management and the law even makes the Manager criminally liable to punishment, (Under Section 10(2)) the State Government has the authority to recover any amount in respect of which any liability is incurred by it under Sub-section (1) by attachment of the income from the property belonging

to or vested in the Institution, as arrears of land revenue. There is also a provision of law that the management is to deposit in a separate account 80% of the amount received from the students as fees. This percentage may be higher if the Government so directs. Rates of the fee have also been prescribed. The aim of the Act is, therefore, simply to ensure regular and honest payment of the salary to the teachers and other employees of the Institution. The liability which the Government has taken upon itself does not exonerate the management nor does the management stand exempt from the liability to contribute and perform its part, in operating separate joint account, maintained in the bank.

8. So far as the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 is concerned, it only lays down that before a teacher is removed from service, there should be prior approval of the State Government. Thus checks have been placed on the arbitrary powers of the Managing Committee, but it does not mean that the control of the Government is to the complete exclusion of the right of the Managing Committee to manage the Institution.

9. In short, in view of the plethora of rulings on various aspects of the matter, it was held in the case of Sarnam Singh 1986 All LJ 507 (supra) that -

"the control of the State Government though expanding vis-a-vis the Committee of Management constituted under the Scheme of Administration framed in accordance with the provisions of the Intermediate Education Act or the Commission created under the U.P. Act 5 of 1982, is not such as might give rise to any conflict between the personal interest of a person placed in the position of the respondent as teacher in a Higher Secondary School and his duties as a member of Legislature, and in this way defeat the central object underlying the statutory disqualification."

10. In the present case also the facts and circumstances being similar, I have to hold in the light of the decision in Sarnam Singh's case 1986 All U 507 (supra) that the respondent Sri Vijai Singh Rana as Principal of a Government aided educational institution did not incur any disability or disqualification to contest the election to the U.P. Legislative Assembly. The plea to that effect taken in the Election Petition, therefore, does not constitute any valid cause of action and the Election Petition is liable to be dismissed.

11. In the result, since the solitary ground taken in the Election Petition does not furnish the required cause of action to be proceeded with, as contemplated under Order VII, Rule 11, C.P.C. or under Order VI, Rule 16, C.P.C. read with Section 83(1)(a) of the Representation of the People Act, the petition is hereby dismissed with costs to the respondent which are assessed at Rs. 500/-.