
(1967) 02 DEL CK 0005
In the Delhi High Court
Case No : Civil Writ No. 72 of 1967

Durlab Singh Sant Singh	Vs	APPELLANT
Mehr Chand Khanna and Others		RESPONDENT

Date of Decision : 06-02-1967

Acts Referred:

Citation : AIR 1967 Delhi 68

Hon'ble Judges : S.K. Kapur, J; Narain Andley, J

Bench : Division Bench

Advocate : V.S. Sawhney, for the Appellant; Ram Lubhaya Oberoi Nanak Chand, Inder Mohan Oberoi, S.N. Shanker and Radhe Mohan Lal, for the Respondent

Judgement

S.K. Kapur J.

(1). In this petition, we are concerned with the new Delhi Parliamentary constituency. The petitioner applied to the Chief Electoral Officer (4th respondent) for supply of a copy of the Electoral Roll, on 16th Jan. 1967. The office is alleged to have reported that no such copy was available. The petitioner claims that he approached the officer concerned again and the 4th respondent agreed to supply one copy partly in English and partly in Hindi. A copy was in fact supplied to the petitioner and it has been alleged in Paragraph 7 of the petition that it was neither properly arranged nor indexed, nor numbered. Besides there were a large number of loose sheets adding to, altering or amending the various parts of the roll, without any indication on those supplementaries and amending lists as to which particular part of the roll they pertained to:

(2) To 1st respondent Shri Mehr Chand Khanna filed two nomination papers being Nos.10 and 11 on the 19th January, 1967. The petitioner filed objections against both the nomination papers which have been set out in Annexure "A" to the petition. The substance of the objections was that part numbers of electoral rolls with respect to the first respondent and his proposers were wrongly stated

in the said nomination papers it was stated that name of the first respondent was borne in part 60 of the electoral roll and the allegation of the petitioner was that there existed no such part in the electoral roll of the constituency. The very same controversy has been raised in the petition also and it is for reason that the 1st respondent has filed the electoral rolls, which were allegedly supplied to him. If these copies then there would be no mistake in the nomination papers.

(3) 21st January 1967 was fixed for the scrutiny of the nomination papers and by order of the same date (Annexure "B" to the petition) the objections of the petitioner were rejected. There are certain observations in the order on which strong reliance has been placed by Mr. V.S. Sawhney, the learned counsel for the petitioner, in aid of his argument that the Returning Officer failed to perform the statutory duty cast on him to effectively decide the question of the validity of the nomination papers. The position taken by the 1st respondent before the Returning Officer was that as a result of redelimitation of certain constituencies in new Delhi. The electoral roll should be revised and the particulars contained in the nomination papers were in accordance with the revised rolls. The impugned order shows that the rolls relied upon by the first respondent were not available even in the election office

The Returning officer in his order said "The records available in this office are numbered and listed by volumes and parts as urged by the objector and described above. On all of them are corrections which were not initiated by any body. The amendment shown to me on behalf of the candidate (1st respondent) also bears hand-written corrections and numbers which is not initialled". The Returning Officer, however, as I look at the Order, founded his decision on the fact that the names of the candidates and his two proposers did exist in the electoral rolls, though it was not possible for him to verify the particulars from the records available with him. Probably, if I am surmise a bit, he thought that if the names existed on the electoral rolls, any mistakes about the part numbers, etc., did not amount to a substantial defect entailing the rejections of the nomination papers. It is noteworthy that u/s 36(4) of the Representation of the People Act, 1951, the Returning Officer is enjoined not to reject any nomination paper on the ground of any defect which is not of a substantial character.

(4) A preliminary objection has been raised on behalf of the respondents that Article 329(b) of the Constitution bars the jurisdiction of this Court to decide the controversy now presented before us. The suggestion of Mr. Oberoi, the learned counsel for the 1st respondent and Mr. Shankar, the learned counsel for the 2nd respondent is that the decision of the Returning Officer even if it be erroneous cannot be interfered with at this stage.

(5) It is argued on behalf of the respondents that the word "election" in Article 329(b) is of sufficient amplitude to embrace the stage of filling of nomination papers as the term connotes the entire procedure to be gone through to return a candidate to the legislature with the result that the controversy regarding the acceptance or non-acceptance of the nomination papers falls within the forbidden

sector. Reliance has been place in support of the contention on the decision of their Lordships of the Supreme .Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . Mr. Sawhney, the learned counsel for the petitioner seeks to distinguish this case on the following grounds:

(i) That was a case of rejection of a nomination papers.

(ii) There a direction was sought to be Returning Officer to include his name in the list of persons validly nominated while the petitioner is only asking for quashing of the Order of the Returning officer.

(iii) In the case at hand, there is no decision at all, as the Returning Officer himself has observed that he is, on the basis of present record unable to decide whether or not the particulars given in the nomination papers are correct.

(iv) The Returning Officer, has acted outside the statute and the decision Therefore, suffers, from complete absence of jurisdiction

(v) In view of the provisions of Sec. 80(A) of the Representation of the People Act 1951, the apprehension as expressed by the Supreme Court in Ponnuswami's case about the conflicting views can no longer exist as the election petitions are now triable by High Courts.

(vi) If the contention of the respondents were to be accepted, Section 170 of the Representation of the People Act would be completely reduced to silence.

(vii) The Supreme Court Expressly reserved its opinion as to the scope of Articles 226, 227 and 136 in the matters of election.

(6) None of the above points provide any valid distinction. Two points were finally decided by the supreme Court in Ponnuswami's case:

(1) " The word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process" and

(2) Two attacks on matters connected with election proceedings, one while they are going on by invoking extraordinary jurisdiction of the High Court under Article 226 and the other after they have been completed, by an election petition are forbidden by Article 329(b) of the constitution.

Consequently, if article 329 of the Constitution bars interference at an intermediate stage, with the process of election, as it does, the High Court cannot entertain a petition challenging the acceptance of a nomination appear, particularly when such challenge is based on the order being merely erroneous.

I have already said that the decision of the Returning Officer, tome appears to be, based on the view that the names of the 1st respondent and the proposers were included in the electoral roll and the alleged mistakes did not constitute a defect of a substantial nature. If that be so, the decision cannot by any process of extension be termed as anything more than a mere erroneous decision. The

suggestion of Mr. Sawheny is that it is no decision at all and this case, Therefore, ie eminently fit for a breakthrough the veil of protection cast on the orders by the authorities under the Representation of the People Act, Mr Sawhney also pressed on us that it would be more convenient to dispose of the dispute at this stage rather than allow the election to go on and then set it a side subsequently.

I am afraid that in the face of the clear mandate of the Constitution, the ground of convenience does not find favor with me. I am really not called upon to answer as to what would be the position in the face of Art. 329(b), if it were a case of total lack of jurisdiction. I would, Therefore prefer to reserve my views on this. So far as this case in concerned, I am convinced that no question of jurisdiction of the Returning Officer arises at all. In view of Article, 329 the High Court cannot in my opinion, be called upon to interfere with the decision at such a stage even, if it suffers from some slip of form. The provision of Article 329 and the fetters contained on the jurisdiction of the Courts has been imposed not merely as a matter of form, but in recognition of the truth that democracy will find it hard to function if such scrutiny at intermediate stages wee permitted. This provision is to merely a historical review of the sediments deposited by the generations that have come before but is intended to proved a real and effective safeguard and to keep the avenues open for the practical aspects that lie ahead of us.

That practical aspect is that elections should not be interfered with at very step. For the very same reasons, Mr. Sawheny's argument that public time and money will be saved by a decision at this stage, does not appeal to me. The matter being directly covered by Art. 329. I think this court has no jurisdiction to decide the controversy involved. I would, Therefore, reject the petition with no order to costs.

(7) Mr. Sawheny has requested for grant of certificate under Article 132 and 133 of the Constitution. The matter appears to us to be directly covered by the decision in Ponnuswami's case and we, Therefore , not feel justified in granting the certificate asked for.

(8) S.N. Andley, J: -- I agree

(9) Petition dismissed.