
(1991) 05 MAD CK 0005
In the Madras High Court
Case No : Writ Petition No. 7545 of 1991

G. Duraiswami

APPELLANT

Vs

The Election Commission, New Delhi, Nirvachan Sadhan,
Ashok Road, New Delhi and Others

RESPONDENT

Date of Decision : 14-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 321

Citation : (1991) 05 MAD CK 0005

Hon'ble Judges : D. Raju, J

Bench : Single Bench

Advocate : P.N. Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

D. Raju, J.—The above writ petition has been filed for a writ of certiorarified mandamus to call for and quash the proceedings of the third respondent in Order No. O/11129/91 dated 29-4-1991 and consequently directing to refer the dispute to the first respondent herein for a proper disposal of the matter. The basic and relevant facts are not in controversy. The petitioner is an official candidate of the Bharathiya Janatha Party for No. 7, Egmore (SC), Assembly Constituency. The Bharathiya Janatha Party is a National Party and its symbol LOTUS is a Reserved Symbol as defined by the Election Symbols (Reservation and Allotment) Order, 1968. It is also a fact that the Indian National Congress is a National Party and it has its reserved symbol HAND in terms of the said Order. The impugned order is one where-under after the time for withdrawal of candidates is over, the third respondent is obliged and as a matter of fact passed an order listing out the contesting candidates with the name of the party and symbol allotted as against each of the contesting candidates. The relevant portion of the order reads as follows :

Tmt. Janaki was originally sponsored as a candidate by the Indian National Congress. Subsequently, Indian National Congress sponsored Yasodha, Tmt. D as

their Party candidate. Tmt. Janaki has neither withdrawn her candidature before 3:00 p.m. on 29-4-91 nor was she present at the time of allotment of symbol. Hence Tmt. Junki is treated as an Independent candidate and a free symbol from the list of free symbols, viz., AEROPLANE is allotted to her as per the rules

This statement contained in the order discloses that though originally Tmt. Janaki was sponsored as a candidate for the Indian National Congress, subsequently Tmt. D. Yasodha was sponsored as a candidate for the said party, that Tmt. Janaki did not withdraw her candidature and that she was also not present at the time of allotment of symbols and therefore the Returning Officer considered Tmt. Yasodha to be the Official candidate of the Indian National Congress and treated Tmt. Janaki as an independent candidate.

2. Learned Counsel while challenging the action of the third respondent submits that in terms of the Symbol order as well as the Instructions issued by the Election Commission of India dated 1-12-1982 contained at page 159 of the "HAND BOOK. FOR CANDIDATES, For Election to the House of the People, Legislative Assembly; of States & Union Territories and Metropolitan Council of Delhi", the Returning Officer ought to have freezed the HAND symbol, but instead committed an error in allotting the same to Tmt. D. Yasodha. Even at the threshold I drew the attention of the learned Counsel for the petitioner about the maintainability of the writ petition at this stage of the election proceedings, irrespective of the tenability or otherwise of the point raised in respect of the course of action adopted by the third respondent in the matter of allotment of symbols. Learned counsel for the petitioner submits that it is open to this Court in exercise of its jurisdiction under Art. 226 of the Constitution of India to direct the authorities who are amenable to its control to function in accordance with law and ensure that they do not transgress then limits stipulated in the provisions contained in the Symbol Order as well as the Instructions of the Election Commission I am afraid that I can countenance the said submission and enter into the merits of the controversy raised before me for more than one reason. Firstly if the writ petition itself cannot be maintained, it will only be a futile exercise to go into the merits of the controversy. Secondly, if this Court renders any opinion on the merits of the controversy, it will have the effect of denying the competent authority, designated under the Representation of the People Act, 1951 to decide the disputes relating to election effectively and I consider it advisable to avoid such a contingency.

3. So far as the maintainability of the writ petition is concerned, the matter is not RES INTEGRA. On more than one occasion, the Apex Court has declared the position of law in very categorical terms and deprecated the entertainment of writ petitions under Art. 226 of the Constitution of India in the midst of the process of election. In (1988) 1 SC Cases, 277, the Apex Court after referring to the earlier decisions on the subject held thus :

In the above decision this Court ruled that having regard to the important functions which the legislatures have to perform in democratic countries, it had

always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections were over so that the election proceedings might not be unduly retarded or protracted. Hence even if there was any ground relating to the non-compliance with the provisions of the Act and the Constitution on which the validity of any election process could be questioned, the person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with S. 81 of the Act calling in question the election of the successful candidate within forty-five days from the date of election of the returned candidate, but not earlier than the date of election. This view has been re-affirmed by this Court in *Lakshmi Charan Soni v. A.K.M. Hassan Uzzaman* 1985 Supp. I S.C.R. 493 and in *Inderjit Barna v. Election Commission of India*. 1986-4-S.C.C. 689

The High Court failed to recall to its mind that it was not its concern under Art. 226 of the Constitution to rectify any error even if there was an error committed in the process of election at any stage prior to the declaration of the result of the election notwithstanding the fact that the error in question related to a mandatory provision of the statute relating to the conduct of the election. If there was any such error committed in the course of the election process the Election Commission had the authority to set it right by virtue of power vested in it under Art. 321 of the Constitution as decided in *Mohinder Singh Gill v. Chief Election Commissioner* 1978-2-S.C.R. 272, and to see that the election process was completed in a fair manner.

4. In almost a case similar to the one on hand, but arising under the T.N. Panchayats (Conduct of Election of Chairman of Panchayat Union Councils and Presidents and Members of Panchayats) Rules, 1978, the Apex Court while once-again reiterating the principles referred to in the earlier cases, held as follows : 16. The Division Bench of the High Court against whose decision the present appeal by special leave is filed was of the view that the issuing of the Errata Notification by the returning officer amounted to a very serious breach and interference under Art. 226 of the Constitution of India was called for. Taking into consideration all the aspects of the present case including the fact that the person who filed the writ petition before the High Court was not one of the candidates nominated by the Indian National Congress I and the fact that the President of the Tamil Nadu Congress I Committee had written that he had authorised the appellant to contest as the candidate on behalf of his party and he had not given his approval to respondent 6 contesting as a candidate on behalf of his party, we feel that the exercise of the jurisdiction by the High Court in this case under Art. 226 of the Constitution cannot be supported. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy". (Vide: *S.T. Muthuswami v. K. Natarajan* 1988-I-S.C.C. 572.

The above judgment of the Apex Court also is indicative of the fact that while exercising jurisdiction under Art. 226 of the Constitution of India, this Court can also take into account the fact that the person who is before Court is not the one who has staked his claim for particular symbol in question.

Having regard to all these over-whelming authorities of the judicial pronouncements of the Apex Court, I am constrained to reject the above writ petition even at the threshold without going into the merits of the contention and leaving the parties concerned to have the same to be agitated at the appropriate point of time and before the appropriate and competent authorities, in accordance with the law relating to Elections. This Writ Petition is, therefore, dismissed.