
(2008) 11 CHH CK 0023
In the Chhattisgarh High Court

Gopal Prasad Kaushik

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 MPHT 32 : (2009) 2 MPJR 52

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The facts, in nutshell, are that the respondent No. 5 was duly elected as President of the Krishi Upaj Mandi Samiti, District Bilaspur (for short "the Mandi Samiti") in the election held on 20-1-2006 and on 24-1-2006. The petitioner is a permanent resident of Village Parsada, District Bilaspur, and voter in the Mandi Samiti. The respondent No. 5, despite having disqualification u/s 36 (m) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, i.e., the respondent No. 5 was having five living children out of which two were born after 26th January, 2001, filed nomination on 4-1-2006. The petitioner raised objection at the time of filing of nomination. The same was rejected. Thus, after election, this writ petition for declaring election of respondent No. 5 as void on the ground of having disqualification at the time of filing nomination.

2. Shri B.L. Dembra, learned Counsel appearing for the petitioner submits that the issue as to whether the respondent No. 5 was disqualified on the date of filing of nomination for election to the post of President, Krishi Upaj Mandi Samiti, District Bilaspur, cannot be examined in the election petition which is prescribed u/s 66-A of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972.

Learned Counsel appearing for the respondents, per contra, submit that the disqualification of a candidate in the election is one of the principal grounds to challenge the election petition and as such, contention of the petitioner that the

question of disqualification of a candidate or a member who has filed nomination paper cannot be decided in election petition, may be rejected.

3. It is well settled principle of law that if statute provides for filing of an election petition, writ petition is not maintainable. The Hon"ble Supreme Court, in the matter of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , by a Bench of Hon"ble six Judges, observed as under:

12. It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statutory only must be availed of. This rule was stated with great clarity by Willes, J. in Wolver Hampton new Water Works Co. v. Hawkesford (1859) 6 CB (NS) 336, at p. 356, in the following passage:

There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy : there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in *Nevile v. London Express Newspaper Ltd.* (1919) AC 368, and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant & Co.* 1935 AC 532 and *Secretary of State of Mask & Co.* 44 Cal. W.N. 709; and it has also been held to be equally applicable to enforcement or rights (See *Hurdutrai v. Off. Assignee of Calcutta* 52 Cal. W.N. 343, at p. 349. That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.

4. In the matter of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Hon"ble Supreme Court held that High Court has no jurisdiction to entertain a writ petition under Article 226 of the Constitution when appropriate forum of filing election petition is provided under the statute as the election petition requires a full trial.

5. In the matter *Indrajit Barua and Others Vs. Election Commission of India and Others*, and *Manda Jaganath Vs. K.S. Rathnam and Others*, , the Hon"ble

Supreme Court reaffirmed the view taken in the matter of N.P. Ponnuswami (supra).

6. Subsequently, in the matter of Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others, , wherein the Hon''ble Supreme Court relying on the ratio laid down in the case of N.P. Ponnuswami (supra), observed as under:

19. It is well-settled principle that where elections are conducted in accordance with the provisions of a statute and the statute also provides a remedy of settlement of election disputes by filing an election petition before a Tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. This view has been taken in a series of decisions rendered by this Court....

7. The dicta laid down as above was reiterated in the matter of Gurdeep Singh Dhillon v. Satpal and Ors. (2006) 10 SCC 616.

8. Reliance of learned Counsel on a decision of Halke Mahate v. H.C. Kamthan, Sub Divisional Officer, Karera and Ors. 1969 JLJ 39, is not of any assistance to the petitioner as the issue has been considered time and again in several decisions by the Hon''ble Supreme Court. Even otherwise the decision in the present case deals with exercise of discretionary power of the High Court under Article 226 of the Constitution of India.

9. As a result and for the reasons mentioned hereinabove, the writ petition is dismissed as not maintainable. No order as to costs.