

(1989) 08 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9198 of 1989

Gurtej Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 15, 16, 19
Representation of the People Act, 1951 — Section 29(A), 29A(7), 8(1)

Citation : (1990) 1 ILR (P&H) 418 : (1990) 97 PLR 294

Hon'ble Judges : V. Ramaswami, C.J.;G.R. Majithia, J

Bench : Division Bench

Advocate : G.S. Dhillon, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, C.J.—Whether , clause () of sub-section (1) of Section 8 and Section 29-A amended by the Representation of the People (Amendment) Act, 1988 (hereinafter referred to as the" Amended Act") is ultra vires of Articles 14, 15,16,19, 25, 26,29 and 30 of the Constitution is the principal question which arises for adjudication in this writ petition.

2. The facts :

The petitioner claims himself to be the General Secretary of Shiromani Akali Dal (Simranjit Singh Mann Group). He is a staunch believer of Sikh religion and has always been resisting any move by the State to interfere with its essential tenents. The concept of Sikh religions and politics are totally inseparable for Sikhs. The politics gets birth from the religion. Shiromani Akali Dal came into existence in order to protect the Sikh religion from atrocities being committed b other communities and is fighting for the noble cause for last 70 years. It has its own Constitution. As provided therein, any Sikh man or woman, who is not less than 18 years of age, can become a member of the Shiromani Akali Dal. The Government of India, in order to crush the Sikhs, their religion and their religious

institutions, passed "Religious Institutions (Prevention of misuse) Act, 1988". The purpose appears to be to crush the Sikhs politically, economically as well as socially and create hatred towards them. A provision has been inserted in sub-clause (h) of clause (2) of subsection (1) to Section 8 of the Amended Act. This clause populates that a person convicted under Section. 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988, shall be disqualified for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State for a period of six years from the date of election. Section 29- A of the Amended Act provides that any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions, shall make an application to the Election Commission for its registration as a political party for the purposes" of the Act. Sub-section (2) of Section 29-A of the Amended Act provides for the procedure for submitting the application and the documents to be appended to the application. Sub-sections (2) to (9) of Section 29-A of the Amended Act provided for the documents to be appended to the application. Sub-section (5) enjoins upon the applicant that the application for registration as a political party shall be accompanied by copy of memorandum or rules and regulations of the association or body and specific provision must be made that the association or the body shall bear true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and would uphold the sovereign unity and integrity of India. This declaration has to be filed before the Election Commission within 60 days from the publication of the Act. The Act was published in Haryana Government Gazette on 6-6-1989 and declaration has to be filed on or before August 5, 1989. The petitioner contends that clause (5) of sub-section of Section 29-A of the Amended Act and clause (h) of sub-section (1) of Section 4 amending Section 8 of the Principal Act, is ultra vires of the Constitution.

3. Before we deal with the question of validity of the Act, it is necessary to state the distinction between the civil rights or common law rights and political rights or rights created by a statute. Civil rights are recognised and guaranteed and adhered to the status of a citizen of free country. Article 19(1) of the Constitution of India guarantees certain basic rights, Of course, the State can impose restrictions on the exercise of those rights. The right to stand as a candidate and contest election is not a common law right. It is a special right created by a statute. It can only be exercised on the conditions laid down by the statute This distinction was stated in *Sakhawat Ali Vs. The State of Orissa*, . Sakhwant Ali was a legal practitioner. He wanted to contest as a Councillor in the Municipal election. Section 16(1)(ix) of Orissa Municipal Act provided that person shall be disqualified for election as a councillor of the Municipality if he is employed as a paid practitioner on behalf of the Municipality or as legal practitioner against the Municipality. The appellant was employed as a legal practitioner against the Municipality in a case u/s 198 of the Bihar and Orissa Municipal Act which was pending in the S D M."s Court. His nomination papers were rejected by the

Election Officer. He challenged the action in the High Court and sought prohibition to the State Government from holding elections to Kendrapa Municipality under the Orissa Municipal Act. It was urged that the right of the writ petitioner as enshrined in Article 19(1)(g) was violated and the submission was rejected with following observations :-

"The right of the appellant to practice the profession of law guaranteed by Article 19(1)(g) cannot be said to have been violated, because in laying down the disqualification in Section 16 (!) (ix) of the Act the Legislature does not prevent him from practising his profession of law but it only lays down that if he wants to stand as a candidate for election he shall not either be employee as a paid legal practitioner on behalf of the municipality or act as a legal practitioner against the municipality. There is no fundamental right in any person to stand as a candidate to the municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. There is no violation of the latter right in prescribing the disqualification of the type enacted in Section 16 (1) (ix) of the Act."

4. Representation of the People Act, 1951 (for short the Parent Act) was enacted to provide for the conduct of elections to the House of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or national symbol for furtherance of of the prospectus of the election of that candidate or for prejudicially affecting the election of the candidate is a corrupt practice under the Act. Indian leadership has condemned electoral campaign on the lines of caste and community as being destructive of the country's integration and the concept of secular democracy which is the basic of our democracy. It is this condemnation which is reflected in Section 123(3) of the Parent Act. This provision was enacted so as to eliminate from the electoral process appeal to these divisive factors which arouse irrational passions that run counter to the basic tenets of our Consti- tution ana any civilized political order This aspect was highlighted in Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, Beg J. who spoke for the Bench observed thus : -

"The Secular State, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is natural or impartial in extending its benefits to citizens of all castes and creeds Moitland bad pointed out that such a State has to ensure through its laws, that the existence or exercise of a political or Civil right or the right or capacity to occupy any office or position under it or to perform any public daty connected

with it does not depend upon the profession or practice of any particular religion. Therefore, candidates at an election to a legislature, which is a party of the State, cannot be allowed to tell electors that their rivals are unfit to act as their representatives on grounds of their religions professions or practices. To permit such propaganda would not be merely to permit undignified personal attacks on candidates concerned but also to allow assaults on what sustains the basic structure of our Democratic State."

5. This judgment was followed in *S. Harcharan Singh Vs. S. Sajjan Singh and Others*, . An appeal to vote for the candidate in the name of Akal Takht with all the consequences of Hukamnama of Akal Takht was highlighted before the electorate. It was held that appeals in the name of religion was made on behalf of returned candidate and he was held guilty of corrupt practice, u/s 123(3) and it was held thus :-

"The paramount and basic purpose underlying Section 123(3) of the Act is the concept of secular democracy. Section 123(3) was enacted so as to eliminate from the electoral process appeals to divisive factors such as religion, caste, etc. which give vent to irrational passions. It is essential that powerful emotions generated by religion should not be permitted to be exhibited during election and that decision and choice of the people are not coloured in any way. Condemnation of electoral campaign on lines of religion, etc, is necessarily implicit in the language of Section 123(3) of the Act. Consequently, the section must be so construed as to suppress the mischief and advance the remedied). Legislative history of this section is important from the point of view. The Statement of Object and Reasons of the Amending Act, 1961 clearly mentions the objects of the amendment. It was for curbing communal and separatist tendencies in the country. It is proposed to widen the scope of the corrupt practice mentioned in clause (3) of Section 123 of 1951 Act and to provide for a new corrupt practice. In order to determine whether certain activities come within the mischief of Section 123(3) regard must be had to the substance of the matter rather than to the mere form or phraseology. The inhibition of Section 123(3) should not be permitted to be circumvented indirectly or by circuitous or subtle devices. The Court should attach importance to the effect and impact of the acts complained of and always keep in mind the paramount purpose of Section 123(3) namely to prevent religious influence from entering the electoral field. The nature and consequence of an act may not appear on its very face but the same can be implied having regard to the language, the context, the status and position of the person issuing the statement, the appearance and known religion of the candidate, the class of persons to whom the statement or act is directed etc."

6. Constitutional validity of Sections 123(5) and 124(5) of the Parent Act, as the provision stood then was challenged in *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, . In that case the returned candidate published certain pamphlets which contained statements reflecting on the personal character and conduct of his opponent which reasonably prejudiced his prospects in the

election. The Election, tribunal set aside the election on the ground that the statements brought on record were false and those reflected on the personal conduct and character of the respondent and were reasonably calculated to prejudice his prospects in the election. In the Apex Court a question was raised that the provisions of subsection (5) of Section 123 and sub section (5) of Section 124 (as the provision stood at that time) were ultra vires Article 19(1)(a) of the Constitution. The Apex Court held that these sections do not interfere with a citizen's fundamental right to freedom of speech. They merely prescribe conditions which must be fulfilled if he wants to enter Parliament and it held thus :-

"Both these provisions, namely, Sections 123(5) and 124(5); were challenged as "ultra vires" Article 19(1)(a) of the Constitution. It was contended that Article 245(1) prohibits the making of laws which violate the Constitution and that the impugned sections interfere with a citizen's fundamental right to freedom of speech. There is nothing in this contention. These laws do not stop a man from speaking. They merely prescribe conditions which must be observed if he wants to enter Parliament.

The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are "intra vires".

7. Our Constitution Makers intended to set up Democratic Republic the binding spirit of which is summed up in the preamble of the Constitution and it contains the basic structure of the Constitution. No democratic, political and social order could endure without an agreement on the basic essentials which could unite and hold citizens together despite all differences of religion, race, caste, community, culture, creed and language. Our political history stands as a testimony to the fact that these differences can generate powerful emotions, deprive people of their powers of rational thought and action and these should not be permitted to be exploited lest the imperative conditions for preservation of democratic freedoms are destroyed: Secular means that the Constitution requires scrupulous neutrality by the State as among religions and by protecting all religions. It prefers none and dislikes none. It neither advances nor impedes religious activities. The State must confine itself to secular objectives. A candidate who is nominated to contest elections to the Council of State or the House of People is required to take oath that he will bear true faith and allegiance to the Constitution as by law established and will uphold the sovereignty, unity and integrity of India. The framers of our Constitution, as observed earlier, wanted to establish in this country a sovereign, secular democratic republic and with this

object in view, different provisions have been made in the Constitution. With this background of the Constitution and the provisions of the Parent Act and the Amended Act, Section 29-A has been added thereto so as to ensure that all political parties who want to enter political arena to bear true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. Provisions contained in Section 29-A (5) of the amended Act are clearly in accordance with the scheme set out in the preamble to the Constitution Article 51A of the Constitution and the provisions contained in Part III to the Schedule to the Constitution prescribe oath by the candidates who want to contest elections for the State legislature.

8. Section 29-A as introduced in the amended Act enjoins upon an association or body of individual citizens of India calling itself a political party and intending: to avail itself of the provisions of this part to make an application to the Election Commission for its registration as a political party for the purposes of this Act. Sub section (5) of Section 29-A makes it mandatory that the association seeking its registration as a political party for the purposes of the Act to append its memorandum or rules or regulations containing specific provisions that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty unity and integrity of India Section 29-A (7) lays down that after considering the particulars submitted by the applicant and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for this Part, or not so to register it, and the Commission will communicate its decision to the association or body. It further lays down that the decision of the Commission shall be final. The decision of the Commission under the provisions of Section 29-A(7) is a quasi judicial one. By exercising powers u/s 29-A (7) the Commission is required follow the principles of natural justice. The Election Commission thus would be a Tribunal within the meaning of Article 136 and Articles 226/227 of the Constitution of India and while exercising the powers, it would fall under the overall Jurisdiction of the High Court and the Supreme Court. These provisions do not remotely contravene the provisions of Articles 14 and 19(1) (a) and (c) of the Constitution.

9. Articles 25 to 28 in Part. III of the Constitution are placed under a sub title "Right to freedom of religion", and deal with the matter in the background of that freedom. Article 25 is made subject to "Public Order, morality and health" and also other provisions of this Part. Article 26 is only subject to public Order, morality and health. All persons are equally entitled to freedom of conscience and the right freely to profess practice and propagate religion. Bearing in mind the sensitive right in Article 19(1)(a) with reference to a citizen and Article 25(1) with reference to all persons, founders of the Constitution left no doubt in subjecting Article 25(1) to the other provisions of Part III. Sub article (2) of

Article 25 provides that nothing in this article shall affect the operation of any existing law or prevent the State from making any law regulating or irrestricting any economic financial, political or other secular activity which may be associated with religious practice. Freedom guaranteed by clause (1) is subject to powers conferred on the State by clause (2) of this article. The State can enact legislation with the purpose to advance within the State the secular goals. It would be useful to refer to the following passage from "Harrison Allentown v. Mc. Ginely (1961) 366 U.S. 582. In this decision Chief Justice Warren announcing the judgment of the Court and an opinion in which Mr. Justice Black, Mr. Justice Clark Mr. Justice Shittaker concurred said thus:-

"To strike down, without the most critical scrutiny, legislation which imposed only an indirect burden on the exercise of religion, i.e. legislation which does not make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature, xx xx xx xx xx xx. If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate indiviously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. But if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden."

10. According to the ratio of the judgment in Jamuna Parsad's case (supra), it is not open to any person who wants to contest election to challenge provisions of Section 29-A (5). as amended. It may also be pointed out that the provisions of Section" 29-A (5) again amended, do not impose any restrictions on the formation of an association. It is open to a body of persons or association to have an association formed in the form of a society. It can get itself registered under the Societies Registration Act. Any body of persons can apply to the Registrar of Societies for registration of the society in accordance with the provisions of the Societies Registration Act. Section 29-A (5) does not deal with the registration of the association,. It only regulates registration of society for the purpose of the Act. If the statute implies conditions subject to which alone recognition could be given, it does not affect freedom to form the association. Freedom of making an association u/s 19 (1) cannot include a right on a particular association to obtain recognition of the Government. Reference may be made to Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others, where it was held thus : -

"We consider this argument is without force. In the first place, the restriction imposed by Section 6 of the Act is for the purpose of recognition and no association is compelled to apply to the Government for recognition under the Act. An application for recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be

accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also. Could it be contended that there is a right in the association guaranteed by the Constitution to obtain recognition ?"

11. The learned counsel referred to the following decisions reported as:-

(i) I.C. Golak Nath and Others Vs. State of Punjab and Another,

(ii) AIR 1963 S.C. 1461, Kesavananda Bharti Sripadagalwaru v. State of Haryana
AIR 1963 S.C. 1461

(iii) Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, . These have no bearing on the facts of the instant case.

12. For the foregoing reasons, we hold that the impugned provisions are not ultra vires of any of the provisions of the Constitution and accordingly we dismiss this writ petition.