

(1990) 05 CAL CK 0007
In the Calcutta High Court

In Re: O.C. Cheku and Others and Mohanlal

Date of Decision : 11-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 329, 329(b)

Citation : 94 CWN 1161

Hon'ble Judges : A.M. Bhattacharjee, J

Bench : Single Bench

Advocate : A.P. Chatterjee, Ajeya Mitra and Arabinda Chatterjee, for the Appellant; N.N. Goopta, N.N. Adhikary, B.R. Ghosal and Dipak Chakraborty, for the Respondent

Judgement

A.M. Bhattacharjee, J.—In view of Article 329(b) of the Constitution mandating that "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or under any law made by the appropriate Legislature", and the gloss put there in by the unanimous Constitution Bench of the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, the position law must be taken to be absolutely settled that there can be no challenge to any election of a candidate to Parliament or the State Legislature save under and in accordance with the provisions of law enacted for the purpose and not in any other manner, whether by a proceeding under Article 226, or, otherwise. As has been explained by Fazl Ali, J., speaking for the unanimous Court in N. P. Ponnuswami (supra, at 70). having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be conducted and concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of election should be postponed till after the election are over and the results declared, so that election process may not be unduly retarded protracted. Though the Supreme Court decision in N. P. Ponnuswami (supra) related to an election to State Legislature and the provision of Article 329 and also the relevant provisions of

the representation of the People Act fell for consideration. our High Court appears to have applied the general principles enunciated there to the elections of other local authorities also under local Acts and reference may be made to the decisions of this Court in Narayan Chandra Mukherjee and Another Vs. District Magistrate, Hooghly and Others, in Promode Lal Moitra Vs. Additional District Magistrate, 24 Parganas and Others, in Joy Chandra v. State of West Bengal (61 Calcutta weekly Notes 341) and also in Narendra Nath Chatterjee Vs. Commissioners of Bally Municipality, But whatsoever doubts might have been raised against this view of applicability of the principles enunciated by the Supreme Court in N. P. Ponnuswami (supra). in view of the provisions of Article 329 not governing these elections to local authorities under the local Acts which obviously cannot affect the jurisdiction of this Court under Article 226, a later three-judge Bench decision of the Supreme Court in S. Harnam Singh Vs. The State (Delhi Admn.), has clinched the issue by holding (at 2143), in conformity with the view of this Court as noted above, that in the absence of any provision in the concerned Local acts to the contrary, "these principles are applicable equally to cases of elections to local bodies also". This view in Nanhoo Mal (supra) has thereafter been endorsed by the Supreme Court in later decisions and reference, among others, may be made to the two three-Judge Bench decisions of the Supreme Court in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, and in Bar Council of Delhi and Others Vs. Surjeet Singh and Others,

2. The foundation of these two Writ Petitions before me, disposed of by this common judgment, rests mainly on the alleged illegalities or irregularities in the elections held in several Wards of the Port Blair Municipal Board under the Andaman & Nicobar Islands (Municipal boards) Regulation, 1957 and the Municipal Elections Rules, 1957 framed under the said regulation. The ground of attack is that the candidates of the Janata D1 were not allowed the recognised symbol of that Party and were allotted some other symbol which WAS not among the free symbols recognised under the relevant provisions. It has been pointed out by the learned Advocate-General appearing for some of the contesting candidates added as Respondents and also by Mr. Ghosal, the learned Counsel for the Andaman & Nicobar Administration, that the recognised symbol of the Janata Dal could not be allotted to them as the party high command of the Janata Dal decided not to contest the election with any official candidate and the Party authorities intimated the Election Authorities not to allot the registered symbol of the Party to any of the candidates professing to contest as Janata Dal candidates. Mr. Chatterjee, the learned Counsel for the petitioners could not dispute this, but has urged that the symbol allotted to their candidates in the concerned wards was not one of the free symbols recognised by the Authorities as listed in the Notification published in a News Paper published by the Administration. Mr. Ghosal has, however, produced before me a Gazette notification dated 10th April, 1990 wherein the symbol allotted appears to be duly recognised as a free symbol.

3. Section 31 of the Andaman & Nicobar Election Regulation provides for challenge to an election and u/s 31(2)(b), "the election of any person as a member shall not be questioned on the ground of any non-compliance with this Regulation or any Rule, or of any mistake in the forms required thereby, or of any error, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Regulation or any Rule, unless such non-compliance, mistake,, error, irregularity or informality has materially affected the result of the election". These provisions are similar to the provisions in almost all the enactments relating to elections. It is true that the provisions ex facie envisage challenge to the election of a person returned. But merely because the challenged is to a plurality of returns of elections, Article 226 will not spring into action. There is also no foundation for thinking that when the challenge is not confined to the election of one Ward or one constituency, but to "an entire election", the writ Jurisdiction can be invoked as a matter of course. The decision of the Supreme Court in K. K. Srivastava (supra, at 1704) is a clear authority for this view.

4. It is true that in K. K. Srivastava (supra), Krishna Iyer, J., speaking for the three-Judge Bench, has indicated that though the principles laid down in N. P. Ponnuswami (supra) in relation to election to Legislatures have been applied to elections of local, bodies also in Nanhoo Mal (supra), and the same has been endorsed by the Bench in K. K. Srivastava 9supra), it has not (at 1704) gone to the extent of stating that "if there are exceptional or extraordinary circumstances, the Court should still refuse to entertain a Writ Petition".

5. But on the record as at present, no such exceptional or extraordinary circumstance appears to show its head. Mr. Chatterjee has urged that the Gazette Notification of 10th April listing the symbol allotted to the candidates is a spurious one. I am afraid that the presumption of authenticity of a Government Gazette cannot be out-weighted by such ipse dixit. The fact remains that the symbol was allotted to the concerned candidates with their knowledge and consent and no infraction of or non-compliance with any of the relevant laws appears to have taken place. The candidates participated and contested the elections with these symbols and cannot now be allowed to turn round and attack the election on the specious ground that such symbol, accepted by them, was not duly listed in the relevant Notification. There is also nothing to show that the result of the election was likely to be or has been materially or even in any manner affected by such allotment of symbol, even assuming that the allotment thereof was in any way erroneous, illegal or irregular. The case, therefore, does not come within the category of "extraordinary" or "exceptional" to satisfy the criteria laid down in K. K. Srivastava (supra) to warrant interference in the exercise of Writ jurisdiction. The result, therefore, is that both the petitions stand rejected as without substance. The interim order passed on the petition by O.C. Cheku has already been vacated by my Order dated 8th April, 1990. No costs. Let a copy of this order go down at once to the Andaman and Nicobar Islands Administration.