

(2017) 06 CHH CK 0011
In the Chhattisgarh High Court
Case No : 200 of 2017

Indian National Congress

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-06-2017

Acts Referred:

Constitution of India, Article 226, Article 227, Article 324 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court - Superintendence, direction and control of elections to be vested in an Election Commission
Representation of the People Act, 1951, Section 29B, Section 29A, Section 29C - De-registration of political parties - Registration with the Election Commission of associations and bodies as political parties - Declaration of donation received by the political parties

Citation : (2017) 06 CHH CK 0011

Hon'ble Judges : Thottathil B. Radhakrishnan, Sharad Kumar Gupta

Bench : Division Bench

Advocate : Santosh Hegde, S.C. Verma, J.K. Gilda, Yashwant Singh Thakur, N.K. Vyas

Judgement

1. We have heard the learned Senior Counsel for the Appellant, the learned Advocate General and the learned Assistant Solicitor General.

2. This writ appeal is filed challenging the dismissal of a writ petition invoking Articles 226 and 227 of the Constitution of India seeking an order directing high level enquiry into the complaint made in the writ petition in relation to bye-election from a constituency to the Chhattisgarh State Legislature. The writ petitioner sought for constitution of a Special Investigation Team to carry out the investigation under the direct control and supervision of this Court. Incidental orders like summoning of the documents and scientific examination of different materials are also sought for, apart from an order to the State and its authorities to protect the witnesses and the evidence. The writ petitioner also sought for a

direction to have such enquiry conducted as is detailed in paragraph 10 of the writ petition.

3. A perusal of the impugned judgment shows that the learned Single Judge had taken pains to peruse the bulky documents which were attached to the writ petition and that an effort was made to sift the materials. That led ultimately to the conclusion that the writ petition did not warrant issuance of an order as sought for.

4. Impeaching the approach adopted by the learned Single Judge and the findings rendered in the impugned judgment, the learned Senior Counsel for the Appellant argued, among other things, that in the case in hand, the materials relied by the Appellant clearly disclose that the laws relating to conduct of free and fair elections have been totally breached and therefore, there was no reason why the police ought not have been directed to register a crime and investigate it. It is further argued that one of crucial materials in relation to the allegations have been ignored by the learned Single Judge inasmuch as, according to the Senior Counsel for the Appellant, there was an affidavit on record by a person who has stated that he has recorded different conversions which could form the substantive evidence in the case. Making reference to some of the findings and observations in the impugned judgment, the learned Senior Counsel for the Appellant further argued that the substantial contentions on facts have not been adverted to and considered by the learned Single Judge, resulting in the conclusion that no offence has been made out. He argued that those observations and findings are not available on record, and, at any rate, premature. Making reference to Section 29A of the Representation of the People Act, 1951 (for short the "RP Act") and the different provisions in the said enactment, as also the power of superintendence etc. of the Election Commission in terms of Article 324 in Part XV of the Constitution, the learned Senior Counsel argued that in the case in hand, at least directions ought to have been issued to the Election Commission to consider the facts on material and take appropriate decision.

5. Per contra, the learned Advocate General argued that the writ petition was dismissed at the threshold after perusing the materials placed by the Appellant and there was no reason for the learned Single judge to conclude otherwise. He pointed out that the learned Single Judge was fully justified in holding that the attempt of the Appellant is only to open of a political battle for redressal of the political grievances and the court has to guard itself from being made the field for such an exercise. It was also pointed out by the learned Advocate General that the substantial relief sought for by the writ petitioner is nothing beyond that could have been otherwise pursued for even by making a complaint to the jurisdictional police or by instituting a complaint before the competent judicial authority. It was therefore argued that no ground was made out to grant any extra-ordinary relief through jurisdiction under Article 226 of the Constitution and hence the impugned judgment does not warrant interference.

6. Before proceeding, we may record that during the course of this appeal, this Court had queried as to whether the Petitioner/Appellant could be treated as a juristic person to sustain a writ petition under Article 226 of Constitution, particularly when the matter before the learned Single Judge was not one which was sought to be prosecuted as a Public Interest Litigation. The Appellant is described as the Indian National Congress through its State Unit, Chhattisgarh Pradesh Congress Committee President, which described by name. Therefore, this Court has to take it that the writ petition was instituted by Indian National Congress which is indisputably not a natural person. That being so, the question for consideration is as to whether it is a juristic person. The learned Senior Counsel appearing for the Petitioner/Appellant, making reference to Section 29A of the RP Act, 1951, pointed out the provision for registration as well as the rights, liabilities and consequences which arise as a result of such registration. The thrust of the submission in this regard is that the Appellant should be found to have locus standi sufficient enough to sustain the writ petition of the nature in hand when it is a registered political party and is under the control of the Election Commission and other authorities in accordance with the provisions, rights and liabilities arising as a result of such registration. We see that what could be registered under Section 29A of the RP Act, 1951 is any association or body of individual citizens of India calling itself a political party. The provisions of such registration is extended to those who intend to avail itself of the provisions of PART IVA of the RP Act, 1951. "Association" and "body of individual citizens" are, by themselves, phraseology sufficient enough to underscore the fact that such group identity does not result in such cohesiveness of such a group, to be treated as a juristic person, as the group of individuals is unascertainable and the identity is always with reference to the name which is registered with the Election Commission as the name of the association or body which is granted such registration. We think that there is a fair area of distinction between the concept of such an association of persons or individual citizens on the one hand and natural and juristic persons, who could sue and be sued in law, on the other. Having regard to the expanding horizons of locus standi in writ jurisdiction, we would have been persuaded to further consider whether the Appellant could be treated as having requisite locus standi to sustain the writ petition. The learned Advocate General referred to the judgment of Hon"ble Supreme Court in Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal {AIR 1962 SC 1044}, to point out that the law laid therein is, among other, to the effect that the proceedings under Article 226 of the Constitution of India would also be govern by the principle laid down by the Hon"ble Supreme Court in Charanjit Lal Chowdhary v. The Union of India {AIR (38) 1951 SC 41} to the effect that legal right that can be enforced under Article 226 of the Constitution of India must ordinarily be the right of the petitioner himself who complains of infraction of such rights and approaches the Court for such relief and that it is implicit in exercise of extraordinary jurisdiction that the relief asked for must be one to enforce a legal right and that existence of right is the foundation of exercise of the jurisdiction of the Court under Article 226 of the Constitution as laid down in

The State of Orissa v. MadanGopal Rungta {AIR (39) 1952 SC 12}. He also referred to the judgment of the Hon"ble Supreme Court in State Trading Corporation of India Ltd. v. The Commercial Tax Officer {AIR 1963 SC 1811 (V 50 C 264)} rendered in a matter concerning the company incorporated under the Companies Act, 1956. It was noticed therein that the Company, as a new legal personality emerges from the moment of incorporation and the new person i.e. the Company begins to function as an entity though the members who form the incorporated Company do not pool their status or their personality. In the opinion penned by Hon"ble Mr. Justice M.Hidayatullah in that case, a reference is made to G.E. Railway, Co. v. Turner {(1872) 8 Ch A 149} and Salomon v. Salomon & Co. Ltd. {1897 AC 22} to point out, among other principles that it is the incorporation that brings to a Company a separate existence and that new legal personality emerges from the moment of incorporation and that on incorporation that entity, which has no physical existence, is recognized as a legal person which is abstraction of law.

7. Part IV-A of the RP Act deals with registration of political parties. Section 29-A of the RP Act prescribes the procedure for registration of a political party. Section 29-B of the RP Act enables a political party to claim certain benefits under the law such as accepting voluntary contribution. The consequences of registration under Section 29-A of the RP Act is that the association or body of individual citizens of India, which is so registered as a political party would be eligible to avail itself the provisions of Part IV-A. Such registration which is accorded by the Election Commission following due procedure in terms of Section 29-A, including the decision making process delineated in sub-section (7) of that Section does not, in any manner, amount to incorporation of that association or body of individual citizens which calls itself a political party for the purpose of Part IV-A to be reckoned as an incorporated body in terms of the law to be recognized as a juristic person that legal rights beyond those enumerated in Part IV-A or those conferred by any other statute law including the rules and orders issued under the RP Act.

8. Incorporation, in law, is constitution as a body corporate legally authorised to act as a single person. An association that has no legal personality distinct from those of its members is, in law, referred to as unincorporated body. The provisions of Section 29-A of the RP Act and the eligibility to avail provisions of Sections 29-B and 29-C of the RP Act do not constitute any character or right in law that could be recognized as providing such cohesiveness to the association of persons who get registered under Part IV-A of the RP Act, to entitle that group to be recognized as one clothed with legal personality to be treated as a juristic person eligible in law to sue. In this view of the matter, the Appellant, merely on account of it having been registered under Section 29-A of the RP Act, cannot be treated as a person in eye of law, entitled to institute a writ petition and seek relief under Article 226 of the Constitution of India.

9. Be that as it may, we may proceed to consider this writ appeal further on the

other contentions as well since no issue on the question of standing was debated before the learned Single Judge.

10. The allegations made in the writ petition are to the effect that Respondents 4 to 9 had hatched a conspiracy resulting in the Respondent No. 7 withdrawing his nomination as a candidate for the bye-election to Antagarh constituency of the Chhattisgarh Legislative Assembly and that such conspiracy is one which has all necessary ingredients of "criminal conspiracy". The plea is that as a result of the said conspiracy, the electoral process was deflected, leading to a result which could not have been obtained, if the due process of law in terms of the RP Act and the applicable rules had been carried in accordance with the avowed objectives sought to be achieved through elections in terms of the Constitution and the laws. Appellant pleads that there is tangible evidence to the effect that there were certain telephonic conversations and also offer of amounts and various other attendant facts and circumstances which, according to the Appellant, indicate that the said election was manipulated through the process of conspired withdrawal of nomination.

11. Incidentally, we may here note and record that Election Petition No. 16 of 2014 is pending consideration before this Court in relation to the said election, though at the instance of one of the candidates, who, it is stated, is not connected with the Appellant - Indian National Congress.

12. The learned Single Judge has considered the material pleadings, the documents and other materials which were produced. On the question of exercise of jurisdiction under Article 226 of the Constitution, we see that the learned Single Judge has, after considering the materials produced by the Appellant, arrived at the conclusion on the basis of the relevant principles of law including by applying ratio of the judgment of the Hon'ble Apex Court in Common Cause (A registered Society) v. Union of India, AIR 2017 SC 540 and thereby holding that the writ petition does not deserve to be entertained under Article 226 of the Constitution. We do not find our way to hold that the exercise of jurisdiction to that extent by the learned Single Judge is unjustified on the facts and circumstances. We, therefore, hold that there is no legal infirmity or jurisdictional error in the learned Single Judge having refused to exercise the discretionary jurisdiction in favour of the Appellant and grant relief under Article 226 of the Constitution.

13. Certain inferences which have been drawn and observations that were made by the learned Single Judge could have been avoided, if the writ petition was premature or if it did not, even otherwise, deserve to be entertained by the writ court under Article 226 of the Constitution. This is so because there would be other jurisdictions and arenas where the Appellant could have carried its complaint, either in the judicial sector, police sector or before other constitutional or statutory authorities, as may be duly empowered to deal with such complaints. We see that certain observations have been made by the learned Single Judge touching the facts as well as the merits or demerits of the

contentions of the Appellant vis-a-vis the materials that were placed along with the petition. Those observations were made at the stage of admission; that is to say, even before the private respondents or the State were notified of the contents of the writ petitioner. In that view of the matter, we are of the considered opinion that any observation made by the learned Single Judge in the impugned judgment touching the merits or demerits of the case of the Appellant or that of the private respondents ought to be eschewed so that any proceeding in other jurisdictions could be carried untrammelled by anything stated in the judgment of the learned Single Judge.

14. In the result :- (i) The parties to this litigation including the Appellant/Petitioner and the private respondents will not be bound by any of the inferences and observations on facts, made in the impugned judgment. All such observations and inferences in the impugned judgment are vacated.

(ii) Any authority with the jurisdiction under the criminal laws or any other law for the time being in force will deal with any complaint of the Appellant in relation to the matter in hand untrammelled by anything stated in the impugned judgment. This judgment as well as judgment of the learned Single Judge will not stand in the way of any jurisdictional police taking cognizance, in accordance with law, of any complaint which is lawfully pending before any such authority.

(iii) This judgment does not preclude the Appellant from moving any authority including Election Commission by seeking appropriate relief, if any, that could be sought for within the power of superintendence by the Election Commission in conformity with Article 324 of the Constitution.

(iv) Subject to the aforegranted reliefs, this writ appeal is dismissed.