
(1994) 12 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8531 with 7083 of 1994

Indra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Citation : (1994) 12 PAT CK 0019

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—Since common questions of law are involved in both these writ petitions, they are being disposed of by this common judgment.

2. Heard teamed counsel for the parties in these matters.

3. After hearing learned counsel for the petitioners at length, we found that since various questions have been raised in these writ petitions, we ought to dispose of the same by a reasoned order.

4. Learned counsel for the Election Commission of India (Respondent No. 2 herein) has handed over to this Court a copy of the order dated 1st August, 1994 passed, by the Hon''ble Surpeme Court in Transfer Petition (G) Nos. 151-52 of 1994. We have perused that order carefully. The said order of the Hon''ble Supreme Court refers to two petitions, one of which was filed in Calcutta High Court and another in Kerala High Court challenging the notification issued by the Election Commission dated 29th August, 1993 and in that context the Hon''ble Supreme Court was pleased to observe that if any such petition is filed in any other High Court, it shall, after entertaining the case, transfer it to the Supreme Court.

5. As we are going to dismiss these writ petitions at the threshold and we do not propose to entertain them, we are going to do so by giving our reason as stated herein-below. Furthermore after the said notification dated 29th August, 1993 in these writ petitions several a other notifications have been challenged. It is also not disputed that the work of photo identity card is in progress. It is also

not disputed that there is a release through Press tentatively recommending the date of the Poll in this State of Bihar by the respondent No. 2. Taking all these matters into consideration, we have decided to give our reasoned judgment in dismissing these writ petitions.

6. The subjection matter of challenge in these writ petitions is a notification dated 29th August, 1993 issued by respondent No. 2 as also, various subsequent notification dated 15th December, 1993, 9th February, 1994. 29th March, 1994 and 31st May, 1994. Those notifications have been annexed with C.W. J.C. No. 8531 of 1994. Those notifications issued by respondent No. 2 have been challenged on various grounds. The first ground of challenge is that by issuing those notifications in question, the democratic set up of the country in general and the State of Bihar in particular is being threatened and as such there is a threat to the basic structure of the Constitution. The next argument is that the petitioner along with other voters in the State of Bihar have a constitutional right to cast their votes in view of Article 326 of the Constitution of India. The said constitutional right is being threatened by the respondent No. 2 by issuance of the notification in question. The third ground of challenge is that the election has been allowed to be held in the State of Andhra Pradesh, Karnataka, Sikkim and some other States without issuance of photo identity cards and, therefore, by insisting on the issuance of photo identity card before holding election in the State of Bihar, the respondent No. 2 is acting in a discriminatory manner inasmuch as the cut off date of 1-1- 1995 has been chosen arbitrarily and in that view of the matter, there is violation of the provisions of Article 14 of the Constitution of India.

7. This Court proposes to deal with those submissions one by one.

8. The first challenge is that by the action contemplated on behalf of respondent No. 2, the basic structure of the Constitution is being threatened and for that purpose a reference has been made to the judgment of the Supreme Court in the case of Kesavananda Bharati AIR 1974 SC 1461. The concept of basic structure of the Constitution has been certainly enunciated in the said landmark judgment of the Apex Court in the case of Kesavananda Bharati but the same has no application here. The said argument is far too lofty for this occasion. Here the respondent No. 2 is neither enacting nor amending any law. He is merely trying to enforce and apply the provisions of existing law. Whereas nothing short of constitutional amendment can threaten the basic structure of the Constitution of India. Kindly see the observation of the Supreme Court in the case of Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, . Those observations are set out below :-

"We fail to understand how the provisions of the Nationalisation Act can alter or damage the basic structure of the Constitution. The basic structure of the Constitution can be altered or damaged by an amendment of the provisions of the Constitution."

The argument of threat to basic structure is utterly misconceived and as such is reacted.

9. Apart from that in the instant case we find that the Election Commission in its anxiety to ensure that the election process is fudged, has issued the notifications in question for the purpose of issuance of photo identity card. The provisions relating to photo identity card are already there in the relevant laws as noted in notification. Therefore, by insisting on the issuance of the photo identity card in respect of the voters of the State of Bihar or some other States, the Election Commission, in our view has not threatened the basic structure of the Constitution.

10. To ensure the purity of the election processes a matter of national concern and by highlighting the same, in our view, the Election Commission has acted in public interest and in aid of the democratic process and not in derogation thereof. In this connection we may usefully reproduce the observation of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In the said judgment the Constitution Bench of the Supreme Court has been pleased to observe as follows :-

"The message, as we will see at the end of the decision, relates to the pervasive philosophy democratic elections which Sir Winston Churchill vivified in matchless words:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men "dressed in little, brief authority". For be you ever so high, the law is above you."

11. The next question is whether the right to vote is a constitutional right or not. In this connection reference may be made to the decision of the Supreme Court in the case of Jyoti Basu and Others Vs. Debi Ghosal and Others, . The observation of the Supreme Court in paragraph 8 at page 986 of the said judgment is set out below:-

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

12. The same position has also been reiterated by the Supreme Court in a

slightly different context in another subsequent judgment in the case of Gujarat University Vs. N.U. Rajguru and Others, . The relevant passage at page 69 is set out below :-

"While considering an election dispute, it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions.

13. In the aforesaid context of the legal position, let us examine the statutory provisions relating to right to vote. Section 61 of the Representation of People Act, 1951 (hereinafter referred to as the said Act) provided for special procedure for preventing personation of electors. The said section starts with the following words:-

"With a view to preventing personation of electors provisions may be made by rules made under this Act."

14. In Sub-section (a) of Section 61 of the said. Act a provision has been made for "the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper. In Sub-section (b) of Section 61 of the said Act further provisions is made relating to issue of identity card. Sub-section (b) of Section 61 of the said Act is set out below :-

"(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950 (43 of 1950), electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto;"

Sub-section (c) of Section 61 of the said Act makes it clear that there is a clear prohibition in the matter of delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the Presiding Officer or a Polling Officer of the polling station. Sub-section (c) of Section 61 of the said Act is set out below:-

"(c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station."

15. Now in exercise of the powers conferred under the Representation of the People Act, 1950, rules have been framed and the relevant rule here is Rule 28 of the Registration of Electors Rules, 1960. The said rule is set out below:-

"28.. Identity cards for electors in notified constituencies. - (1) The Election Commission may, with a view to preventing impersonation of electors and facilitating their identification at the time of poll, by notification in the official

Gazette of the State, direct that the provision of this rule shall apply to any such constituency or part thereof as may be specified in the notification.

(2) The registration officer for such notified constituency shall, as soon as may be, after the issue of the notification under sub-rule (1), arrange for the issue to every elector of an identity card prepared in accordance with the provisions of this rule.

(3) The identity card shall -

(a) be prepared in duplicate;

(b) contain the name, age, residence and such other particulars of the elector as may be specified by the Election Commission;

(c) have affixed to it is photograph of the elector which shall be taken at the expense of the Government; and

(d) bear the facsimile signature of the registration officer;

Provided that if the elector refuses or evades to have his photograph taken, or cannot be found at his residence by the official photographer in spite of repeated attempts, no such identity card shall be prepared for the elector and a note of such refusal or evasion or that the elector could not be found at his residence in spite of repeated attempts shall be made in the copy of the roll maintained by the registration officer.

(4) One copy of the identity card prepared under sub-rule (3) shall be retained by the registration officer and the other copy shall be delivered to the elector to be kept by him for production at the time of poll."

16. There is also further provisions in Rules 35(3) and 37(2} of the Conduct of Election Rules 1961. The said rules are set out below:-

"35(3). Where the polling station is situated in a constituency, electors of which have been supplied with identity cards under the provisions of the Registration of Electors Rules, 1960., the elector shall produce his identity card before the presiding officer or the polling officer authorised by him in this behalf."

37. (2) If any elector--

(a) refuses to allow his left forefinger to be inspected or marked in accordance with sub-rule (1) or has already such a mark on his left forefinger or does any act with a view to removing the ink mark, or

(b) fails or refuses to produce his identity card as required by sub-rule (3) of Rule 35, he shall not be supplied with any ballot paper or allowed to vote."

17. In view of the aforesaid provisions it is quite clear that the State has already made provisions for issuance of photo identity card. It is also made clear that when such provision is there and when the Election Commission has issued the

notifications under challenge for applying the said provision to an election, in that case the election will have to be conducted in accordance with those provisions and the right to vote which is statutory right will be exercised in accordance with those statutory provisions. In view of these provisions, the Court does not find any justification in the submission made by the learned counsel for the petitioner that right to vote of the petitioner has been invaded in any way.

18. The other surviving argument is that in one of those notifications, namely, in the notification dated 28th August, 1993 it has been made clear in paragraph 11 that in respect to the poll which will be held after 1-1-1995 it shall not be held unless all eligible voters have been supplied with the photo identity cards. The said notification/circular issued by respondent No. 2 is part of the notification issued by the said authority dated 29th August, 1993. It cannot be said that when on 29th August, 1993 the same notification was issued by which the appropriate authority has fixed 1-1-1995 as the cut off date, the said fixation of date is an arbitrary one. It cannot be said that the date 1-1-1995 has been "picked out from the hat" or chosen in an arbitrary manner at all. The said date has been fixed well in advance by giving adequate notice to every concerned authority. It has also been noted in the notification dated 9th February, 1994 that not a single Chief Electoral Officer has expressed, at any time, any difficulty in regard to the implementation of the Schedule. It is, therefore, rather futile to urge now when the process of preparation of photo identity card is effectively in progress, that the fixation of the date is unreasonable.

19. While considering this submission, it must be kept in mind that by fixing the date no right is taken away from a person nor any privilege is withheld, as has been done in the cases relating to fixation of cut off date, namely, by withholding an exemption clause in a taxing statute or enhancing rates of pension/benefits to the employees and so on. Here the appropriate authority under the Constitution has by notification made the statutory rule relating to the election applicable to certain election falling after a date which was declared more than a year ago. Therefore, no grievance under Article 14 of the Constitution of India can be sustained in this respect.

20. For the reasons aforesaid, this Court negatives all the points urged by the learned counsel for the petitioners. As such both these writ applications are dismissed at the stage of admission itself. There will be no order as to cost.