
(1998) 01 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 1368 of 1998

Jawahir Singh

APPELLANT

Vs

Election Commission of India and another

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2), 324

Penal Code, 1860 (IPC) — Section 302, 307, 34, 379

Representation of the People Act, 1951 — Section 3(3), 8, 8(1), 8(2), 8(3)

Citation : AIR 1999 All 18 : (1998) 2 AWC 836

Hon'ble Judges : Palok Basu, J; D.K. Seth, J

Bench : Division Bench

Advocate : P.M.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Palok Basu and D.K. Seth, JJ.—Jawahir Singh has filed this writ petition under Article 226 of the Constitution of India with the prayers that :

(i) quash order dated 28.8.97 issued by the Election Commission of India (Annexure-1).

(ii) a mandamus should go commanding respondents to issue appropriate direction to all the Returning Officer of the State to ignore the direction contained in order dated 28.8.97 (Annexure-1) while deciding objection at the time of scrutiny of nomination papers and a further direction not to reject any nomination of a candidate who has been convicted but his appeal is pending and he is enlarged on bail in the course of elections to the Lok Sabha, etc.,

(iii) declare Section 8(3) of the Representation of People Act, 1951 ultra vires the Constitution.

2. Shri Sandip Saxena has put in appearance on behalf of the respondents, namely, Election Commission of India and the Union of India.

3. Shri P. M. N. Singh, learned counsel for the petitioner, has placed the Circular, the averments made in the writ petition and two decisions in *Dhanji Ram Sharma v. Union of India* and another, AIR 1961 Punj 153 and *Manni Lal Vs. Parmai Lal and Others*, . It may be mentioned that Shri Singh has argued the matter with ability.

4. Article 324 of the Constitution of India has created the apex-election authority by the name of Election Commission. The entire chapter deals with the provisions relating to the elections that may be conducted from time to time in our country, be it for the Parliament or the State Legislature. The very first sub-Article of Article 324 begins with words that "the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections of Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

5. The Election Commission is to be headed by a Chief Election Commissioner, and, therefore, in the very nature of the things it is within the powers of the Election Commissioner to issue directions as he thinks necessary for carrying out the constitutional obligation placed upon him.

6. The aforesaid Circular dated 28.8.97, summarised only to highlight the arguments of Sri Singh, would read as under :

ORDER

Subject: Criminalisation of Politics--Participation of criminals in the electoral process as candidates--disqualification on conviction for offences--effect of appeal and bail--regarding.

Whereas, the country is facing the serious problem of criminalisation of politics in which criminals, i.e., persons convicted by courts of law for certain offences, are entering into election fray and contesting as candidates ; and

Whereas, Section 8 of the Representation of the People Act, 1951, lays down the conditions under which a person would be disqualified on grounds of conviction.....

Whereas

Whereas

(the exact wordings are omitted because in these three paragraphs the wordings of sub-sections (1), (2) and (3) of Section 8 of R. P. Act have been referred to).

Whereas, sub-section (4) of Section 8 of the Representation of the People Act, 1951 states that none of the abovementioned disqualification will take effect in case of a person who on the date of the conviction is a Member of Parliament or the Legislature of a State, till three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of

the conviction or the sentence, until that appeal or application is disposed of by the Court ; and

Whereas it has been observed that even those persons who are not the sitting members of Parliament or State Legislatures on the date of conviction, contest election if they have filed an appeal or application for revision and have been granted bail during pendency of such appeals/revision : and

Whereas, the Commission has carefully examined and considered the question whether such persons can contest elections during the period when they are released on bail

Whereas, the Commission has observed that this very question has come to be considered by several Hon''ble High Courts and they have taken the view that the release on bail does not wipe off the disqualification under the said Section 8 of the Representation of the People Act, 1951 ; and

Whereas, it has been observed that the Hon''ble Madhya Pradesh High Court, while dealing with the case of Purshottamlal Kaushik v. Vidya Charan Shukla

Whereas, the Hon''ble High Court of Judicature at Allahabad also took a similar view in the case of Shri Sachindra Nath Tripathi v. Doodnath

Whereas, the same question again came to be considered in a more recent case before the Hon''ble Himachal Pradesh Court in Vikaram Anand v. Rakesh Singh..... (in the aforesaid three paras the extracts from the three rulings referred to above have been quoted by the Election Commissioner and, therefore, it is not reproduced hereinbefore).

Whereas, it has also been observed that when the Hon''ble Supreme Court dismissed the criminal appeal filed by Shri Rakesh Singha, it also dismissed his election appeal holding that Shri Singha was disqualified ab initio for contesting election u/s 8(3) of the Representation of the People Act, 1951.

Now, therefore, the Election Commission has. after taking due note and paying due regard to the above judicial pronouncements of the Hon''ble Supreme Court and the Hon''ble High Courts, come to the considered view that the disqualification u/s 8 of the Representation of the People Act, 1951, for contesting elections to Parliament and State Legislatures, on conviction for offences mentioned therein, takes effect from the date of conviction by the trial court, irrespective of whether the convicted person is released on bail or not during the pendency of appeal (subject, of course, to the exception in the case of sitting members of Parliament and State Legislatures under sub-section (4) of the said Section 8 of the Representation of the People Act, 1951.

Accordingly, the Election Commission, in exercise of its powers of superintendence, direction and control of elections to Parliament and State Legislatures vested by Article 324 of the Constitution, hereby, directs that all the

Returning Officers, at the time of scrutiny of nominations, must take note of the above legal position and decide accordingly about the validity or otherwise of the candidature of contestants disqualified under the said Section 8 of the Representation of the People Act, 1951.

Sd/- and in the name of the Election Commission of India

7. At this juncture, it may be stated here that before proceeding further with the arguments advanced by Shri Singh, it may be desirable to refer the facts of the cases cited. In Dhrama Raj Singh's case (supra), the word "conviction" as used in Article 311(2) proviso (a) was being considered. Simultaneously, rules in the discipline and appeals Rules of the relevant Rules were being Judged side by side with the provisions contained in Article 311. The case is, therefore, wholly out of point.

8. In Manni Lals case, the question which came to be considered by the Hon"ble Supreme Court was whether a disqualification resulting from out of a conviction would be completely wiped out in case of acquittal. It has been so aptly observed by the Hon"ble Supreme Court that appellate order of acquittal takes effect retrospectively and conviction and sentence are deemed to be set aside from date they are recorded. This case also will be out of point for the reason that according to the admitted case, the appeal filed by the petitioner is pending and he is on bail.

9. This may be relevant stage where it may be mentioned that petitioner Jawahir Singh, as stated in paragraph 3 of the writ petition, stood convicted in Sessions Trial No. 33 of 1986 vide judgment and order dated September 1, 1987, being convicted of offences u/s 302 read with Section 34, I.P.C. and u/s 307 read with Section 34, I.P.C. and also u/s 379, I.P.C. and awarded the sentence of life imprisonment (under Section 302/34. I.P.C.), seven years" R.I. (under Section 307/34, I.P.C.) and one year R.I. u/s 379. Against the order of the Sessions Court convicting the aforesaid petitioner, the petitioner has preferred Criminal Appeal No. 2301 of 1987 which Is pending in this High Court and the petitioner has been enlarged in bail.

10. In view of the aforesaid factual state of affairs, the argument of Shri Singh that the petitioner cannot be deemed to be disqualified within the meaning of sub-section (3) of Section 8 of the R. P. Act is the surviving point to be considered. Fortunately, the Hon"ble Supreme Court has in one of the latest cases in Raghubir Singh v. Surjit Singh JT 1994 (5) SC 31speaking through Hon"ble Justice J. S. Verma (as Hon"ble C.J.I. then was) observed that:

"there is no dispute that in accordance with the plain language of subsection (3) of the Section 8 of the Representation of the People Act, 1951, the appellant was disqualified to be a candidate at the said election held in February, 1992 on this ground atone. The High Court has upheld this contention of the respondent-election petitioner and allowed the election petition declaring the appellant"s said election to be void. There being no controversy that according to the plain

language of sub-section (3) of Section 3 of the R. P. Act, the appellant was disqualified to be a candidate at the said election held on February. 1992.

The submission is that the period of disqualification in sub-section (3) should also be read as six years from the date of such conviction and not the longer period extending to six years from the date of release. In short, the submission is that the period of disqualification in sub-sections (1), (2) and (3) of Section 8 should be identical and there is no rational basis for providing a different period of disqualification in the different sub-sections of Section 8. We are unable to accept this argument.

The Legislature Itself has classified the offences on the basis of their nature and in the residuary provision contained in sub-section (3), the classification is made only with reference to the period of sentence being not less than two years (see Paras 2 to 5)."

11. In fact in Raghubir Singh's case (supra), it is specifically stated by the Hon"ble Supreme Court that : "Thus, the only question for consideration by us is the constitutional validity of sub-section (3) of Section 8 of the R. P. Act." In the later paragraphs their Lordships have negated the argument that sub-section (3) of Section 8 is ultra vires.

12. Sri P. M. N. Singh on noticing this case law has, of course, appreciated that it is not possible for this Court to go into the question of vires of Section 8(3) of the R. P. Act any more. He, however, insisted with his argument that subsection (4) of Section 8 of the Act is ultra-vires and, therefore, this Court may go into that issue. It may be pointed out that sub-section (4) was enacted by amending Act No. 1 of 1989 and it made a provision for a sitting member of Parliament or Legislature of State, if while so sitting, a conviction order came to be recorded against him. This factual contingency would be totally hypothetical so far as the petitioner is concerned- Consequently, this question has not to be gone into by this Court at all and in the circumstances of the present case. To repeat, the petitioner is a convict in a murder case and is on bail, therefore, his case has to be examined only by the provisions contained in Section 8(3) of the Representation of the People Act, 1951 and the provisions in sub-section (4) thereof have no applicability whatsoever.

13. Before parting, it may be mentioned that Shri Singh wanted to advance an argument that the aforesaid Circular of the Election Commission of India partakes the character of becoming a judicial pronouncement rather than an administrative instruction. In this view of the supposed fallacy. Shri Singh argued that the Election Commission has over-stepped its jurisdiction. It is for this reason that this Court has extensively referred to the entire circular above (omitting only the rulings) discussion and provisions in three sub-sections). There is nothing in the aforesaid Circular which may be said to be an attempt on the part of the Election Commission to legislate. Therefore, this argument of Shri Singh is also not acceptable.

14. The last argument advanced by Shri Singh was that such a guideline should not have been issued because whether a nomination paper is going to be accepted or rejected on the provisions as enunciated by Section 8 and its subsections may be left open to the Returning Officers while scrutinising the nomination papers u/s 36 of the Representation of People Act. It is precisely the duty of the Election Commission to Issue necessary guidelines for uninterrupted lawful and secure completion of election process. Consequently, the Court does not see any infirmity in the order of the Election Commission because it only narrates the spoken words of the Section 8 and also of the Hon''ble Supreme Court as also some of the observations of some High Courts.

15. In view of the aforesaid discussions, the writ petition fails and is summarily dismissed.

16. Before the judgment was concluded, Sri Anand Mohan made an application for being impleaded as opposite party in this writ petition. Since the arguments were already heard and the Court is rejecting the writ petition, there is no need to pass any order on the intervention application. It may be filed.