
(2009) 11 MP CK 0015
In the Madhya Pradesh High Court

Kashinath Sharma and Another

APPELLANT

Vs

The Chief Election Commissioner and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 MPHT 454 : (2010) 2 MPLJ 149

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.

The petitioner No. 1 is a working journalist and is associated with various National and International print and electronic media in Madhya Pradesh and the petitioner No. 2 is a practising Advocate. They have filed this writ petition as a Public Interest Litigation claiming some reliefs relating to the election of respondent No. 6 to the Madhya Pradesh Legislative Assembly from the Jabalpur Cantonment Constituency.

The petitioners have stated in the writ petition that as per the election programme, scrutiny of the nomination papers of the candidates for election from the Jabalpur Cantonment Constituency was conducted by the Returning Officer, Mr. O.P. Shrivastava, the Additional Collector, Jabalpur on 8-11 -2008 and the candidate of the Congress Party submitted a written objection to the candidature of the respondent No. 6 stating inter alia that the declaration made by the respondent No. 6 in Annexure 1 to the nomination paper that he had only 310 sq. meter of land was completely false and that actually the respondent No. 6 had a plot measuring 10,000 sq. ft. costing around 1.60 crore. In the written objection, the Congress candidate had also stated that the respondent No. 6 was the owner of the entire 10,000 sq. ft. of the area of land and yet respondent No. 6 had stated in the declaration that he had only a share as a co-owner of the

property. In the written objection, the Congress candidate had also stated that respondent No. 6 had stated in the declaration that the house was a very small house and that the cost of construction was only Rs. 9,59,136/-, but the actual cost of construction would be around Rs. 64,00,000/-. The petitioners have contended that the respondent No. 6 was liable for prosecution and his nomination paper was liable to be rejected, but the Returning Officer (respondent No. 4) by his order dated 8-11-2008 has wrongly accepted the nomination paper of the respondent No. 6.

Mr. Vasant Daniel, learned Counsel for petitioners submitted that in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , the Supreme Court had held that the Representation of People Act, 1951 (for short "the Act of 1951") provides for only one remedy in respect of election and that remedy was an election petition to be presented after the election was over. He submitted that this position of law has undergone a substantial change after the judgments of the Supreme Court in *Union of India (UOI) Vs. Association for Democratic Reforms and Another*, , and *People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another*, . He submitted that in these two later decisions, the Supreme Court has taken a view that Article 19 (1) (a) of the Constitution which provides for freedom of speech and expression would cover in its fold the right of the voter to know specified antecedents of a candidate who is contesting election and, therefore, the candidate contesting the election must make a declaration about his criminal antecedents if any and about his assets and liabilities along with the nomination paper. According to Mr. Daniel, by accepting a false declaration of a candidate about his assets and liabilities filed along with the nomination paper, the Returning Officer has violated the fundamental right of the petitioners and, therefore, the petitioners could file a writ petition under Article 226 of the Constitution to enforce their fundamental right and have the order of the Returning Officer accepting the nomination paper of the candidate set aside by the Court.

Mr. K.K. Trivedi, learned Counsel appearing for the Election Commission, on the other hand, submitted that pursuant to the orders of the Supreme Court in *Union of India v. Association for Democratic Reforms and Anr.* (supra), delivered on 2-5-2002, the Election Commission had issued an order dated 28-6-2002 under Article 324 of the Constitution, but after the order of the Hon'ble Supreme Court in *Peoples Union for Civil Liberties (PUCL) and Ors. v. Union of India and Ors.* (supra), delivered on 13-3-2003, the Election Commission issued a fresh order dated 27-7-2003 under Article 324 (1) of the Constitution of India. He submitted that in Para 17 of this fresh order of the Election Commission issued on 27-3-2003, it has been clarified that verification of assets and liabilities by means of summary enquiry and rejection of nomination paper for incorrect or false declaration made by a candidate is not to be enforced. He further submitted that the remedy of the petitioners where a false declaration of assets and liabilities are filed along with the nomination paper by a candidate is not a writ petition under Article 226 of the Constitution, but either an Election Petition u/s 100 of

the Act of 1951 or the prosecution of the candidate for filing a false affidavit which has been declared to be an offence by Section 125-A of the Act of 1951.

Mr. S.C. Datt, learned Senior Counsel appearing for the respondent No. 6 also submitted that where false declaration of assets and liabilities are filed by a candidate, the remedy of the voter is to file an Election Petition u/s 100 of the Act of 1951, but the petitioners in this case have not filed an Election Petition against the respondent No. 6 for making a false declaration. He submitted that Section 125-A of the Act of 1951 makes a candidate punishable for giving false information along with the nomination paper, but Section 195 of the Code of Criminal Procedure, 1973 provides that no Court shall take cognizance of the offences mentioned therein except on the complaint in writing of either the public servant or of the concerned Court. He submitted that cognizance of an offence punishable u/s 125-A of the Act of 1951 thus can be taken after compliance with the provisions of Section 195 of Code of Criminal Procedure, 1973.

We have considered the submissions of learned Counsel for the parties and we find that a Bench of six Judges of the Supreme Court have decided in *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency* (supra), that Part XV of the Constitution, which is titled "Elections" is a code by itself, i.e., it creates rights and provides for enforcement by a Special Tribunal to the exclusion of all Courts including the High Court and, therefore, the High Courts have no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination paper.

In *Union of India v. Association for Democratic Reforms and Anr.* (supra), a three Judges Bench of Hon"ble Supreme Court has held inter alia that as part of the freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution, a voter who expresses himself by casting his votes has a right to know the antecedents of the candidate contesting election to Parliament or to a Legislative Assembly as well as his assets and liabilities and his educational qualification. In the aforesaid judgment of the Supreme Court in *Union of India v. Association for Democratic Reforms and Anr.* (supra), the Supreme Court accordingly directed the Election Commission to issue necessary order in exercise of its power under Article 324 of the Constitution calling for information on affidavit from each candidate seeking election to Parliament or a State Legislative Assembly as a necessary part of his nomination paper on inter alia his assets (movable, immovable, bank balance etc.) and of his/her spouse and that of the dependents.

Pursuant to the order of the Supreme Court delivered on 2-5-2002 in *Union of India v. Association for Democratic Reforms and Anr.* (supra), the Election Commission issued an order dated 28-6-2002 under Article 324 of the Constitution. Para 14 of the order dated 28-6-2002 of the Election Commission, which is relevant is extracted herein below:

(1) Every candidate at the time of filing his nomination paper for any election to

the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, shall furnish full and complete information in regard to all the five matters, specified by the Hon''ble Supreme Court and quoted in Para 5 above (reproduced in Para 3 herein), in an affidavit, the format whereof is annexed hereto as Annexure 1 to his order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon''ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations u/s 36 (2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

(5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(6) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

It is clear from sub-para (4) of Para 14 of the order dated 28-6-2002 of the Election Commission extracted above that furnishing of any wrong or incomplete information or suppression of any material information by any candidate in the affidavit filed along with the nomination paper may also result in the rejection of the nomination paper where wrong or incomplete information or suppression of

material information was considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him provided that such information was capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of the nomination paper u/s 36 (2) of the Act of 1951.

This sub-para (4) of Para 14 of the order dated 28-6- 2002 of the Election Commission under Article 324 of the Constitution of India did not find favour with the three Judges of the Supreme Court in *Peoples Union for Civil Liberties (PUCL) and Ors. v. Union of India and Ors.* (supra), M.B. Shah, J., delivering the judgment for himself and D.M. Dharmadhikari, J., observed in Para 76:

While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in *Association for Democratic Reforms* case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof. Very often, in such matters, the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in *Association for Democratic Reforms* case (supra), and as provided under the Representation of the People Act and its 3rd Amendment.

Similarly, P. Venkatarama Reddi, J., while summarising his conclusions in Para 149 at Pages 2411 and 2412 of AIR 2003 observed:

The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders relating to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No. 4 of Para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

Thus, all the three Judges of the Supreme Court have taken the view in *Peoples Union for Civil Liberties (PUCL) and Ors. v. Union of India and Ors.* (supra), that in the case of assets and liabilities the direction in sub-para (4) of Para 14 of the order dated 28-6-2002 of the Election Commission saying that the Returning Officer may reject the nomination paper on the ground that wrong information

has been furnished or material information has been suppressed in respect of assets and liabilities of the candidate after making a summary enquiry should not be enforced and that the Election Commission must revise its instructions in this regard.

Pursuant to the order of the Supreme Court in *Peoples Union for Civil Liberties (PUCL) and Ors. v. Union of India and Ors.* (supra), delivered on 13-3-2003, the Election Commission has issued a fresh order dated 27-3-2003 stating therein that the nomination of a candidate concerned shall be liable to be rejected by the Returning Officer at the time of scrutiny of the nomination paper if the candidate has not furnished an affidavit in the format annexed as Annexure I to the order including details of movable and immovable assets, but in Para 17 of the order dated 27-3-2003 of the Election Commission, it has been clarified that its earlier direction in sub-para (4) of Para 14 of the order dated 28-6-2002 in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing of wrong information or suppressing material information by a candidate is not enforceable as held in the order dated 13-3-2003 of the Supreme Court. Paragraphs 16 and 17 of the order dated 27-3-2003 of the Election Commission are extracted herein below:

16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon''ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, of conduct of elections to Parliament and State Legislatures, hereby issues, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows:

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, shall furnish full and complete information in regard to the matters specified by the Hon''ble Supreme Court and quoted in Paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure 1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon''ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

For the removal of doubt, it is hereby clarified that the earlier direction contained in Para 14 (4) of the earlier order dated 28th June, 2002, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit in Annexure 1 hereto referred to in Para 16(1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People Act, 1951, as amended by the Representation of the People (Third Amendment) Act, 2002, and the Conduct of Elections Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002.

It is, thus, clear that as per the orders passed by the Election Commission on 27-3-2003, the Returning Officer could not have rejected the nomination paper of the respondent No. 6 on the ground that he had furnished wrong information or suppressed material information with regard to his assets in the declaration filed along with the nomination paper. We cannot also set aside the orders passed by the Returning Officer accepting the nomination paper of the respondent No. 6 on the ground that the Returning Officer should have rejected the same in view of the directions of the Supreme Court in Peoples Union for Civil Liberties (PUCL) and Ors. v. Union of India and Ors. (supra), discussed above. If according to the petitioners, the respondent No. 6 has made a false declaration with regard to his assets, it is open for them to institute prosecution of respondent No. 6 for the offence punishable u/s 125-A of the Act or punishable under any provision of the Indian Penal Code, in accordance with law.

The writ petition is dismissed. No order as to costs.