

(2014) 11 TP CK 0040

In the Tripura High Court

Case No : C.M. Appl. No. 474 of 2014 in W.P. (C) No. 145 of 2014 (D/O)

Kaushik Chakraborty Vs The State of Tripura

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 TP CK 0040

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, Advocate for the Appellant; B.C. Das, Advocate General and N. Guha, Advocate for the Respondent

Judgement

S. Talapatra, J.—Heard Mr. Somik Deb, learned counsel appearing for the petitioners as well as Mr. B.C. Das, learned Advocate General, Tripura, assisted by Ms. N. Guha, learned counsel appearing for the respondents No. 1 to 4.

2. By this miscellaneous application, the petitioners have sought for the following reliefs:

"I) Issue Notice, calling upon the respondent-Ops and each one of them, as to why the leave, as sought for, by the petitioner-applicants, to pray for directions upon the respondent-Ops, to comply with the judgment & order dated 08.05.2014 (Annexure-CMA-1 supra), passed in W.P.(C) No. 145 of 2014 (D/O), shall not be allowed and to show cause as to why a Writ/Direction/Order, shall not be issued;

II) Issue Notice, calling upon the respondent-Ops and each one of them, to show cause as to why a Writ/Direction/Order, shall not be issued, directing them, to suitably modify the Final Voters' List (Annexure-CMA-7 supra), by incorporating thereunder, the respective addresses and contact details of the voters";

III) Issue Notice, calling upon the respondents and each one of them, to show cause as to why a Writ/Direction/Order, shall not be issued, directing physical casting, as the normal method, and postal ballot, as an exceptional method, of casting of votes;

IV) Issue Notice, calling upon the respondents and each one of them, to show cause as to why a Writ/Direction/Order, shall not be issued, quashing/setting aside the impugned Certificate of Scrutiny dated 03.11.2014 (Annexure-CMA-10 supra);

V) Issue Notice, calling upon the respondents and each one of them, to show cause as to why a Writ/Direction/Order, shall not be issued, directing the Returning Officer, not to open the Ballot Boxes, prior to the date of counting of votes;

VI) Issue Notice, calling upon the respondents and each one of them, to show cause as to why a Writ/Direction/Order, shall not be issued, for restraining/prohibiting them, from acting in any manner, in furtherance of the Final Voters' List (Annexure-CMA-7 supra);

VII) In the Ad-interim, and thereafter, in the Interim, an Order in terms of i. to vi. above;

VIII) After hearing the parties be pleased to make the Order absolute in terms of i. to v. above."

Except the reliefs that the respondents be asked to comply with the judgment and order dated 08.05.2014, delivered in W.P. (C) No. 145/2014, the other reliefs are relatable to the fresh cause of action, taken place in the post-disposal phase. Even the petitioners were not party to the said writ petition (disposed of). Hence they have urged for leave to agitate their grievances.

3. Mr. Somik Deb, learned counsel appearing for the petitioners has submitted that election to the Tripura State Medical Council is being carried out flouting the directions of this court, inasmuch as despite the direction given by the court that the voter list be published by the Secretary to the Govt. of Tripura, Health & Family Welfare Department, but the draft electoral list as well as the final electoral list have been published by the Returning Officer, namely Dr. Jayanta Kumar Das. According to Mr. Deb, learned counsel, the electoral list has been published without providing the particulars of the persons whose names are borne in the State Medical Register and who are residents of the State of Tripura. While dilating his submission, Mr. Deb, learned counsel has referred to the provisions made under Rule 9(c)(ii) of the Tripura State Medical Council Rules, 2014, which provides as under:

"Proceed to issue by registered post, at least forty days prior to poll date, to each elector whose name is included in the final electoral roll, one voting paper in Form IV, with one identification envelope in Form V to his address as mentioned in the final electoral rolls.

Provided that, such a voting paper with an identification envelope shall also be issued to any elector to whom a voting paper has not already been sent, on his application in writing to the Returning Officer, for the same at any time before the last date and time notified for receiving voting papers which shall be seven

days prior to poll date. In no other case shall a voting paper be issued after last date notified for sending voting papers nor shall a voting paper be reissued to voter on his return to the office of the Returning Officer."

4. Mr. Deb, learned counsel appearing for the petitioners therefore, has emphasised that unless in the voter list the residential particulars of the elector are provided the voting paper with one identification envelope cannot be sent and if the election is carried out on the basis of the final electoral roll as published by the Returning Officer wide room for manipulation in the election process would be left open. He has also pointed out that by the subsequent notification, on misconstruction of the proviso to Rule 9(c)(ii) of the Tripura State Medical Council Rules, 2014, the Returning Officer has adopted a process in violation of the schedule of the election and also indulged in a procedure which would not only be irregular but would be patently illegal. However that notification has not been challenged in this petition, nor a copy thereof has been placed in the petition.

5. On query, Mr. Deb, learned counsel appearing for the petitioners, has frankly admitted that the petitioners have not raised any objection when the draft voter list was published and both the petitioners have filed the nomination papers for contesting the election.

6. Mr. B.C. Das, learned Advocate General appearing for the official respondents, at the outset has raised a serious objection as to the maintainability of the petition, inasmuch as according to him this petition has been filed entirely on fresh causes of action, which cannot be brought within the ambit of clarification. As such, this petition has to be dismissed. Apart that, he has raised another objection that since the election process has commenced, the proceeding should not be stalled by the court, following the general principles of election as enunciated in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , where the supreme court has held that:

"In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election;" and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress."

[Emphasis added]

7. Mr. Deb, learned counsel appearing for the petitioners in rejoinder, has submitted further that the apex court in *K.A. Ansari and Another Vs. Indian Airlines Ltd.*, , has enunciated the law as under:

17. It is trite that a party is not entitled to seek a review of a judgment merely

for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (See: State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.

[Emphasis added]

Based on the said principle, Mr. Deb, learned counsel has labored enough to impress this court that even this application as filed by the petitioner is maintainable in the aftermath of the final disposal of the writ petition, being W.P. (C) No. 145/2014, for the reason that the election is being held in compliance to the direction of this court.

8. Mr. Deb, learned counsel has further relied on a decision of the apex court in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, , to demonstrate that even an election of this nature can be challenged by invoking the provisions of Article 226 of the Constitution of India and the writ petition challenging any election is maintainable. In Surjeet Singh, it has been observed that:

"We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy then the remedy of writ petition to challenge the whole election is still available."

[Emphasis added]

9. Mr. Deb, learned counsel has further referred to a decision of the Punjab & Haryana High Court in Sher Chand and others Vs. Deputy Registrar, Co-operative Societies, Ferozepur and others, where, approvingly the High Court followed the views expressed in Nachhatar Singh vs. State of Punjab, reported in AIR 1993 Punjab & Haryana 306, where it has been held that:

"It is clear that while the remedy for the purpose of challenging the result of the election by way of and election petition under Section 13B of the Act may be

available yet in the facts and circumstances of a particular case the High Court, could interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test such remedy must, in addition be adequate and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards of Gram Panchayats in the manner indicated by the Constitution under Article 329(B) with respect to elections held to the State Assemblies or Parliament and in the absence of such a restraint, the scope of Article 226 is all pervasive and wide enough to read and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of injury and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Article 226. The Court in exercising restraint must not clip its wings, though interference should be made, to use the repeated words, in the "rarest of rare", cases. We, therefore, hold that though an alternative remedy by way of election petition is available to the petitioners, yet we find that it is not an efficacious one in the facts and circumstances of the present case."

[Emphasis added]

10. The solitary issue which calls for serious consideration here is that whether in a miscellaneous application filed in reference to the writ petition, which is disposed of on due adjudication, the reliefs as sought for can be adjudicated or considered by this court. The law is well settled. In K.A. Ansari, it has been succinctly held that it needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning, having reference to the decision in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, .

11. As reproduced by this court, the reliefs as sought for themselves are pointers to that, that this miscellaneous petition has been filed on fresh causes of action. In view of this, this petition is held to be not maintainable.

However, before parting with the records it is observed that the disposal of this miscellaneous petition shall not create any bar to the petitioners for filing a fresh writ petition or to institute any other proceeding questioning the legality of any part of the election process, if permitted by law. It is further observed that this court has not made any observation on the alleged actions.

12. Having held thus, this petition stands dismissed.