

(2022) 05 UK CK 0105

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 881 Of 2022

Kuldeep Singh Pannu & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Societies Registration Act, 1860 — Section 25, 66A
Karnataka Cooperative Societies Act, 1959 — Section 70(2)(C)
Constitution Of India, 1950 — Article 226, 329(b)

Citation : (2022) 05 UK CK 0105

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Manisha Bhandari, Bhavya Pratap Singh

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Heard learned counsel for the parties
2. Gurudwara Prabandhak Committee, Shri Nanakmatta Sahib is registered as society under Societies Registration Act, 1860. Directors elected from 27 Halkas (Constituencies) elect the Committee of Management of Gurudwara Prabandhak Committee and this writ petition has been filed by 13 out of 27 such Directors.
3. According to the petitioners, election for constituting Committee of Management was held on 06.04.2022, in which various illegalities were committed. It is alleged that polling was conducted in an illegal manner, in order to throttle the voice of innocent members and instead of holding election through secret ballot, election was held through dubious method in which votes were procured by mighty candidates, by using corrupt practices. The reliefs sought in the writ petition, are as follows:-

"i. issue writ, order or direction in the nature of mandamus commanding the "Election Officer" the Respondent No. 6 to ensure that the election of the office

bearers of the Committee of Management of Gurudwara Sri Nanakmatta Sahib be conducted in accordance with the recognized method of polling by way of secret ballot system instead of affidavits and consequently the earlier process of convening the elections of the office bearers held on 06/04/2022 be declared null and void, to maintain the highest sanctity of our democratic setup. It is further prayed that the responsibility of monitoring the said process of election of the office bearers is liable to be bestowed upon such person/or officials, which this Hon'ble Court may deem fit and proper, in the interest of justice.

ii. issue writ, order or direction in the nature of mandamus commanding the Authorities i.e. the Respondent No. 3, 4, 5 and 6 to submit the video footage of polling of said Ward/halka no. 3 held on 21/03/2022 and action taken report on the complaint of impersonation of a voter in the election of the director of Ward/halka No. 3 and also explain the reasons for their deliberate inaction on such an vital issue, which discloses commission of serious offences and affects the Rule of law.

iii. issue writ, order or direction in the nature of mandamus commanding the Authorities i.e. the Respondent No. 6 to explain the reasons for postponing the election of the office bearers and for adopting the process of conducting the elections by way of procuring the affidavits of the voters instead of adhering to the recognized process of election by way of secret ballot system.

iv. issue writ, order or direction in the nature of mandamus commanding the Respondent No. 8, to decide the representation dated 07.04.2022 by a well-reasoned and a speaking order in the interest of justice."

4. Ms. Manisha Bhandari, learned counsel appearing for the petitioners contends that in view of illegalities committed in the election of Committee of Management of Gurudwara Prabandhak Shri Nanakmatta Sahib, the election of all the office bearers deserves to be set-aside. However, Mr. S.K. Mandal, learned counsel appearing for respondent no. 8 refutes the submission made by learned counsel for the petitioners and submits that the election was held as per norms in a free and fair manner and no illegality whatsoever was committed in the election process.

5. It is settled position in law that disputed questions of fact cannot be decided in writ jurisdiction. In the present writ petition, petitioners have questioned the election of Committee of Management of Gurudwara Prabandhak Shri Nanakmatta Sahib. Hon'ble Supreme Court in the case Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee, reported in (2006) 8 SCC 487 has held as under: :

"19. It is well-settled principle that where elections are conducted in accordance with the provisions of a statute and the statute also provides a remedy of settlement of election disputes by filing an election petition before a tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. This view has been taken in a

series of decisions rendered by this Court. The earliest decision was rendered in *N.P. Ponnuswami v. Returning Officer*¹ by a Bench of six learned Judges. In this case the nomination paper of the appellant for election to the Madras Legislative Assembly was rejected by the Returning Officer. The appellant challenged the rejection of the nomination paper by filing a writ petition in the High Court which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning Officer on account of Article 329(b) of the Constitution, which says that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. In appeal, this Court examined the question whether the writ petition would be maintainable at the initial stage against an order rejecting the nomination paper. Certain observations made in AIR para 9 of the reports are relevant and they are being reproduced below: (SCR p. 228)

"The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court."

20. In AIR para 12 it was observed:

"Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

It will be a fair inference from the provisions of the Representation of the People Act to draw that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

21. In *Mohinder Singh Gill v. Chief Election Commr.* it was held that if during the process of election, at any intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law.

22. The same view has been taken in regard to the elections held in accordance with some statutory provisions where Article 329(b) of the Constitution is not applicable and they are not governed by the Representation of the People Act. In *K.K. Shrivastava v. Bhupendra Kumar Jain* the dispute related to election to the Bar Council of Madhya Pradesh under the Advocates Act and Rule 31 of the

Election Rules framed by the Bar Council of Madhya Pradesh provided that all disputes arising under the Rule shall be decided by a tribunal to be known as an Election Tribunal. The defeated candidate approached the High Court under Article 226 of the Constitution challenging the validity of the election which was allowed by the High Court. This Court set aside the judgment of the High Court with the following observations: (SCC p. 496, para 3)

"[W]here there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms."

23. In *Gujarat University v. N.U. Rajguru* the dispute related to election to the Court of Gujarat University. Some teachers challenged the holding of elections by means of a writ petition before the High Court which was allowed. In appeal, this Court set aside the judgment of the High Court with the following observations: (SCC p. 516, para 6)

"6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental nor a common law right, instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution bypassing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify bypassing the alternative remedies.

24. There are several other decisions where the same view has been taken. *S.T. Muthusami v. K. Natarajan* is a case relating to election to the office of Chairman of a Panchayat Union under the Tamil Nadu Panchayats Act, 1958 where it was held that the parties who are aggrieved by the result of the election can question the validity of the election by an election petition which is an effective alternative remedy and it is not appropriate for the High Court to interfere with the election process.

25. *C. Subrahmanyam v. K. Ramanjaneyullu* is a case relating to election under the Andhra Pradesh Panchayat Raj Act and in a short judgment it was observed that the main question for decision being the non-compliance with a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution should not have been entertained for this purpose.

26. In *Ashok Kumar Jain v. Neetu Kathoria*⁷ a writ petition was filed under Article

226 of the Constitution challenging the election held under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972. This Court observed that Section 66-A of the said Act provided that an election under the Act could be challenged only by presenting an election petition and except in some exceptional extraordinary circumstances, normally remedy under Article 226 of the Constitution, challenging the election by filing a writ petition would not be available.

27. Umesh Shivappa Ambi v. Angadi Shekara Basappa⁸ is a case relating to election of the President, Vice-President and Chairman, etc. under the Karnataka Cooperative Societies Act, wherein the High Court in a writ petition under Article 226 of the Constitution set aside the order by which the nomination of the first respondent therein was rejected. This Court reversed the judgment of the High Court with the following observation: (SCC p. 529)

"Once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes."

28. Similar view has been taken in Harnek Singh v. Charanjit Singh which is a case relating to election of Chairman of the Gram Panchayat and the judgment of the High Court by which the order of the Returning Officer was set aside in a writ petition was reversed."

6. Similarly in the case of Umesh Shivappa Ambi and others vs. Angadi Shekara Basappa and others reported in (1998) 4 SCC 529, Hon'ble Supreme Court has held as under:-

"4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection para 3 in K.K. Shrivastava v. Bhupendra Kumar Jain .) The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law."

7. Having regard to the settled legal position that High Court, while exercising power under Article 226 of the Constitution, will not normally interfere with an election, especially when an appropriate or equally efficacious remedy is available to the petitioners regarding the election dispute, this Court is thus not inclined to entertain this writ petition.

8. Even otherwise also, the dispute raised in this writ petition cannot be resolved without going into the factual controversy and recording of evidence would also be necessary, therefore, extraordinary remedy provided under Article 226 of the Constitution, would not be appropriate for resolving the election dispute, raised in this writ petition.

9. Accordingly, writ petition is dismissed with liberty to petitioners to approach the forum provided under Section 25 of Societies Registration Act, 1860 or the Civil Court, as the case may be.