

(1957) 03 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 39 of 1957

Lal Chandra Bhan Shah

APPELLANT

Vs

Returning Officer (Deputy Commissioner) and Others

RESPONDENT

Date of Decision : 06-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Citation : AIR 1957 MP 142 : (1957) ILR (MP) 150

Hon'ble Judges : Naik, J;Choudhuri, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; S.B. Sen, (for No. 1) and R.S. Dabir, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application under Article 226 of the Constitution by Lal Chandra Bhan Shah praying for:

(i) a writ in the nature of certiorari for quashing the order passed by the Returning Officer, respondent No. 1, on 1-2-1957;

(ii) a writ in the nature of mandamus to respondent No. 1 directing him to reject the nomination papers of respondents 2 to 4;

(iii) a writ in the nature of quo warranto against respondents 2 to 4 directing them to forbear from contesting the election to the reserved seat of the Bhoma Double Member Constituency for the Legislative Assembly -of the State of Madhya Pradesh; and

(iv) such other appropriate writs, directions and orders as the Court may deem fit.

2. The petitioner who claims to be a member of a Scheduled Tribe within the meaning of the Constitution (Scheduled Tribes) Order along with respondents 2 to 4 filed nomination papers for the ensuing General Elections for the seat

reserved for Scheduled Tribes of the Bhoma Double Member Assembly Constituency. The scrutiny of the nomination papers was fixed for the 1st February 1957 when the petitioner raised objections to the nominations of respondents 2 to 4 under Sections 5(a) and 36(2)(b) of the Representation of the People Act, 1951. He contended inter alia that:

(a) the Constitution (Scheduled Tribes) Order as amended by the Constitution Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, does not include the area of the Seoni district in its Schedule and as such the respondents aforesaid could not be deemed to be members of any Scheduled Tribes. They were thus qualified to file their nomination papers for the reserved seat;

(b) the territorial limits of the Chhindwara district, as existing on the 1st day of November 1956, did not include within itself the district of Seoni. Consequently, members of the Gond and Pardhan Tribes resident in the Seoni district were not included in the category of Scheduled Tribes within the meaning of the Constitution (Scheduled Tribes) Order, 1950, as amended.

3. The Returning Officer by his order dated 1st February 1957 overruled the objections and accepted the nomination papers of the respondents. He inter alia held that the reference to the Chhindwara district in the Schedule would be deemed to include the newly formed district of Seoni.

4. The petitioner in these proceedings contends that the order of the Returning Officer is erroneous and untenable in view of the clear provisions contained in Clause (3) of the Constitution (Scheduled Tribes) Order, 1950, which provides that any reference to a district shall be construed as a reference to the district constituted as from the 1st November 1956.

He further contended that the election to the Bhoma Double Member Constituency for the Legislative Assembly of Madhya Pradesh was liable to be vitiated on account of the wrongful acceptance of the nomination papers of respondents 2 to 4; and that, as he was the only person who had filed, a valid nomination paper because he alone fulfilled the requirements of Section 5 of the Representation of the People Act, he had acquired a right of being declared elected unopposed to the seat reserved for a Scheduled Tribe from that Constituency.

5. The learned counsel for the respondent raised a preliminary objection to the maintainability of the petition under Article 226 of the Constitution on the ground that any challenge to the electoral process while the elections were in progress was barred under Art, 329 (b) of the Constitution. He further contended that the matter was no more open to any debate in view of the authoritative pronouncement of the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,

6. Article 329(b) of the Constitution provides :

"Notwithstanding anything in this Constitution

* * * * *

(b) 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."

Amplifying the connotation of the word "election" used in Part XV wherein Article 329 occurs, Fazl Ali J. who delivered the judgment of the Supreme Court in Ponnuswami's case (A), observed :

"It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature.""

We therefore take it that the word "election" in this article connotes the entire electoral process.

7. Repelling the contention that, since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution, the Supreme Court pointed out that Article 329 is preceded by the words "Notwithstanding anything in this Constitution" which "are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress."

8. The conclusions of the learned Judges of the Supreme Court, as to the principles governing the interpretation of Article 329 of the Constitution, have been summarised by Fazl Ali J, at page 234 (of SCR): (at p. 70 of AIR), in the following terms :

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

2) 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." In the result the Supreme Court held that on a proper construction of the compendious expression "no election shall be called in question" in its context and setting with due regard to the scheme of Part XV of the Constitution and the Representation

of the People Act, 1951, the High Court has no jurisdiction to interfere with the order of the Returning Officer and that 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.

8. This interpretation of Article 329(b) of the Constitution was further emphasised by their Lordships of the Supreme Court in *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, where the learned Judges state :

"As regards the decision of this Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, to which reference has been made by the learned counsel we would only desire to point out that all that this case decided was that the High Court had no jurisdiction, under Article 226 of the Constitution, to interfere by a writ of certiorari, with the order of a Returning Officer who was alleged to have wrongly rejected the nomination paper of particular candidate.

It was held that the word "Election" in Article 329(b) of the Constitution had been used in the wide sense to connote the entire process, culminating in a candidate's being declared elected and that the scheme of Part XV of the Constitution was that all matters which had the effect of vitiating election should be brought Up only after the election was over and by way of an election petition."

10. The question was reagitated in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, when the Supreme Court reiterated their earlier decision by observing at page 1111 (of SCR): (at p, 238 of AIR) :

"In 1952 SCR 318:(AIR 1852 SC 64) (A), it was held by this Court that the word "election" in Article 329(b) was used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaraton of election of a candidate, and that an application under Article 226 challenging the validity of any of the acts forming part of that process would be barred."

11. We have therefore no doubt that Article 329(b) provides a complete bar to the High Court's entertaining a writ petition which would interfere with the electoral process and that we have no power to issue any writ, order or direction which would have the consequence of interfering with the election while it is in progress. In this view of the case, we have no doubt that the writ petition filed by the petitioner is not maintainable.

12. In the view We have taken, we need not express any opinion on the merits of the controversy.

13. The petition fails and is dismissed with costs. Counsel's fee Rs. 100/-. The outstanding amount of security shall be returned to the petitioner.