
(1982) 07 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 22960 of 1982

M.S. Boraiah

APPELLANT

Vs

Sudarshan Agarwal and Others

RESPONDENT

Date of Decision : 05-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 62 (1), 71 (1)
Presidential and Vice-Presidential Elections Act, 1952 — Section 5 B (4)

Citation : AIR 1983 Kar 51

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : M.S. Boraiah, for the Appellant;

Judgement

1. The term of the present President of India is due to expire on 24-7-1982.
2. Article 62(1) of the Constitution enjoins that an election to fill a vacancy of the outgoing President of India should be completed before the expiration of his term.
3. In accordance with the provisions of the Presidential Elections Act (Central Act XXXI of 1952) (hereinafter referred to as the Act,) the Election Commission of India (herein-after referred to as the Commission) by its notification No.479/82 dated 9-6-1982 (published in the Extraordinary Karnataka Gazette of 9th June, 1982) has published the calendar of events to fill that post before 24-7-1982 by appointing the following dates for the completion of elections :
"(a) 23-6-1982 (Wednesday) as the last date for making nominations :
(b) 24-6-1962 (Thursday) as the date for the Scrutiny of nominations;
(c) 26-6-1982 (Saturday) as the last date for the withdrawal of candidatures.
and
(d) 12-7-1982 (Monday) as the date on which a poll shall, if necessary be taken".
In response to the said notification, the petitioner who is an Advocate of this

Court, Presented his nomination paper on 23-6-1982 before the returning officer-respondent No.1 - whose office is situated at Delhi with the necessary deposit of Rs.2,500/-. On the same day Respondent No.1 rejected the nomination paper of the petitioner (Annexure-A) and on the next day has accepted the nomination papers of respondents 3 and 4. In this view the poll is to take place on 12-7-1982.

4. On 1-7-1982 the petitioner has presented this petition under Article 226 of the Constitution challenging the order of respondent No.1, rejecting his nomination paper (Annexure-A) and for other consequential and interim reliefs. The material portion of the order made by respondent No.1 reads thus :

"(2). The nomination paper of this candidate has been rejected by me under sub-section (4) of Sec. 5B of the Presidential and Vice-Presidential Elections Act, 1952 for the reasons given below :- Act, 1952 for the reasons given below :- Date : 23-6-1982 Sd/- Returning Officer Presidential Election".

5. Sri. M.S. Boraiah, who is the petitioner, appeared in person and argued his case.

6. Sri. Boriah contends that though his nomination paper is valid, respondent No.1 has rejected the same without assigning reasons which is illegal.

7. Before examining the merits of the contention urged by the petitioner, it is necessary to decide whether this Court has jurisdiction to entertain this petition.

8. u/s 13 of the Act, the petitioner who has filed his nomination becomes a candidate at an election to the office of the President. The term "election" occurring in sub-Article (1) of Article 71 of the Constitution and the Act has a wider meaning and includes every process commencing from the calendar of events to the declaration of results by the Returning Officer (vide Narayan Bhaskar Khare Vs. The Election Commission of India, .

9. Article 71(1) of the Constitution confers exclusive jurisdiction on the Supreme Court of India to resolve all doubts and disputes arising out of or in connection with the election of the President. When the Constitution has conferred exclusive jurisdiction on the highest court of the land, it necessarily follows that the jurisdiction of all courts, including High Courts under Art. 226 of the Constitution of India is completely excluded. In this view, I hold that this petition under Article 226 of the Constitution is not maintainable.

10. The offices of the Election Commission and the Returning Officer are situated at Delhi which are outside the territorial jurisdiction of this court. Indisputably the nomination paper filed by the petitioner at Delhi has been rejected at Delhi. From this it follows that the whole of the cause of action has arisen within the territorial jurisdiction of Delhi Court and not this court. As no part of the cause of action has arisen within the territorial jurisdiction of this court, this petition before this court, in any event, is not maintainable. On this ground also this petition is liable to be rejected.

11. Let me assume that this petition is maintainable before this court and examine whether this is a fit case in which this court should interfere with the impugned order.

12. As noticed earlier, the office of President is required to be filled before 24-7-1982. All steps for holding elections has been taken and only the last phase of election, namely poll is to take place on 12-7-1982. On the completion of elections it is open to the petitioner to approach the Supreme Court by an election petition under Part-III of the Act and seek for the very relief sought in this writ petition and such grounds that are available to him. When the petitioner has an effective legal remedy, it is not proper for this Court to exercise the extraordinary jurisdiction, that too in an election matter to the highest office in the country at an intermediate stage.

13. On the view so far expressed, it is not proper for me to examine the merits of the case. In this view, I refrain to express my opinion on the contention urged by the petitioner.

14. In the light of my above discussion, I hold that this writ petition is liable to be rejected. I, therefore, reject this writ petition at the preliminary hearing stage without notice to the respondents.

15. Petition rejected.