

(2013) 10 MP CK 0312
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 486 of 2013

Narottam Mishra

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 1 MPHT 148

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : V.K. Bharadwaj and Mr. Anvesh Jain, for the Appellant; D.K. Katare, Advocate for Respondents No. 1 and 2 and Shri Vivek Khedkar, D.A.G. for Respondent No. 3/State, on Advance Notice and Shri Pratip Visoriya, Advocate for Intervenor, for the Respondent

Judgement

1. This appeal has been filed against the order dated 9/10/2013 passed in Writ Petition No. 6023/2013. Learned counsel for the respondents appeared on advance notice. The case is argued at length, hence, with the consent of counsel for the appellant as well as counsel for respondents, the appeal is disposed of finally. The Election Commission of India-Respondent No. 1 issued a notice to the appellant dated 16/8/2013. By the aforesaid notice the appellant was directed to show-cause that earlier notice dated 15/1/2013 issued to the appellant under sub-rule (5) of Rule 89 of the Conduct of Elections Rules, 1961 (hereinafter referred to as "the Rules of 1961") for falsity of account (42 cases of paid news) that why the appellant be not disqualified u/s 10A of the Representation of People Act, 1951 (for brevity "Act of 1951"). The appellant submitted reply of notice dated 15/1/2013.

2. The appellant questioned issuance of notice Annexure P/1 in regard to disqualifying the appellant in exercise of power u/s 10A of the Representation of the People Act, 1951 in a writ petition under Article 226 of the Constitution of India before this Court. The Writ Court on 29/8/2013 passed the following order on interim relief:-

Learned counsel for the petitioner submits that in similar matter in the case of Ashok Shankar Rao Chavan Vs. Madhavrao Kinhalkar & Ors the Apex Court by order dated 3.11.2011 has stayed the similar notice. Shri Bhardwaj by drawing attention of this Court on letter dated 29th April, 2011 (Annexure P/5) para 3 submits that as per this letter of Election Commission it is crystal clear that subject matter of show cause notice in Ashok Shankar Rao Chavhan (Supra) and the present case is exactly similar, yet the respondent commission has started action by issuing Annexure P/1. In addition, it is submitted that earlier by note sheet dated 17.09.2009 (page 48) the Commission decided not to proceed with the matter. He submits that there is no justification in proceeding and issuing the order dated 16th August, 2013 when the similar proceedings has been stayed by Supreme Court. In addition, it is submitted that interim relief is also granted in WP No. 3512/2011 on 30.05.2011 (Annexure P/7).

Considering the aforesaid, till next date of hearing Annexure P/1 shall remain stayed.

and also issued notice to the respondents.

3. Intervenor filed an application before the Writ Court which was registered as I.A. No. 7510/2013 for vacation of the stay order passed by the Court on 29/8/2013. The intervenor pleaded that the Hon''ble Supreme Court in the SLP (Civil) No. 29882/2011 (Ashok Shankarrao Chavan Vs. Madhavrao Kinhalkar and others) modified the earlier order dated 3/11/2011 and permitted the Election Commission of India to proceed with the complaint. The Hon''ble Supreme Court further ordered that the final order passed by the Election Commission shall not be pronounced and shall not be given effect to. It is further pleaded by the intervenor that the Apex Court passed the modified order on 2/5/2013 prior to three months of passing of the interim order by the Court dated 29/8/2013, however, this fact was not brought to the notice of the Court and the appellant had obtained the interim order by concealment of facts, hence, the interim order is liable to be vacated. The learned Writ Court observed that the appellant had misled the Court and consequently vacated the interim stay order dated 29/8/2013.

4. The learned senior counsel appearing on behalf of the appellant has contended that the question in regard to exercise of power of Election Commission u/s 10A of the Act of 1951 and Rule 89 of the Rules of 1961 in regard to disqualifying the Returned Candidate is pending for consideration before the Hon''ble Supreme Court and the Hon''ble Supreme Court has passed an interim order in the SLP that the final order of the Election Commission shall not be pronounced and shall not be given effect to, hence, it was obligatory on the part of the learned Writ Court to pass similar order in this case also. The learned senior counsel has further submitted that because the order impugned is final in nature, hence, in view of the judgment passed by the Full Bench of this Court in the case of Arvind Kumar Jain and Others Vs. State of Madhya Pradesh and Others, , this Writ Appeal is maintainable.

5. Learned counsel for the Election Commission has strongly opposed the prayer made by learned senior counsel for the appellant and has submitted that the appellant is not entitled for any relief from the Court because the appellant had deliberately concealed the vital fact in regard to modification of the interim order passed by the Hon''ble Supreme Court in the SLP and because the appellant concealed the facts and misled the Court, hence, his writ petition filed under Article 226 of the Constitution of India deserves to be dismissed and the Writ Court has rightly vacated the interim order. The same arguments have been advanced by the learned counsel for the intervenor, Mr. Pratip Visoriya.

6. The appellant challenged the jurisdiction of the Election Commission in regard to issuance of notice u/s 10A of the Act of 1951 and the appellant also challenged sub-rule (5) of the Rules of 1961. He specifically pleaded that the Election Commission had no power to issue notice in regard to disqualification. The matter is subjudice before the Hon''ble Supreme Court and as admitted by the learned counsel for the Election Commission also the Hon''ble Supreme Court passed the following order in the SLP, which is pending before the Hon''ble Supreme Court:-

UPON hearing counsel the Court made the following

ORDER

I.A. No. 1 of 2012, has been filed in the special leave petition, inter alia, for an order to vacate the stay granted on 3rd November, 2011, or to direct the Election Commission of India to proceed further in the matter and pass a final order, but the same be kept in a sealed envelope.

Mr. Bhaskar P. Gupta, learned senior counsel appearing for the respondent No. 1 and also in support of the application, submits that the Chief Election Commissioner is to retire on 10th June, 2012, and that in the event the proceedings u/s 10(A) of the Representation of Peoples Act, 1951, continues to be stayed, the hearing conducted prior to the passing of the order of stay, would be rendered meaningless.

We have heard Mr. Gopal Subramaniam, learned senior counsel appearing for the petitioner, Ashok Shankarrao Chavan, as also Ms. Meenakshi Arora, learned counsel appearing for the Election Commission of India. We have also considered the submissions made by Ms. Pinky Anand, learned senior counsel appearing for the respondent Nos. 2 and 3.

Having considered the submissions made, we are not inclined to vacate the stay order passed on 3rd November, 2011, but we modify the same by allowing the Election Commission of India to proceed with the complaint, which had been filed by the respondent Nos. 1 and 2, and to even pass a final order, which shall, however, not be pronounced and shall not be given effect to. The same shall be kept in a sealed envelope, till the SLP is heard and disposed of by this Court.

Let the special leave petition, which is appearing as Item No. 9 in today''s list, be

listed tomorrow (03.05.2012) at 2.00 p.m., for final hearing.

In addition to the above, the allegations, which have been made in the said interlocutory application against the learned senior counsel, are most inappropriate and we deprecate such intemperate pleadings. Let the same be treated as expunged wherever they appear in the application.

The parties will be at liberty to raise all contentions taken before us when the matter is taken up for hearing by the Election Commission of India.

The interlocutory application is disposed of with the aforesaid directions.

7. From the order passed by the Hon''ble Supreme Court, it is clear that the Hon''ble Supreme Court has clearly observed that the Election Commission of India had liberty to proceed with the complaint which had been filed by the respondents and even pass a final order, which shall, however, not be pronounced and shall not be given effect to. When in the similar matter the Hon''ble Supreme Court has passed an order, then, in our opinion, it would be just and proper to pass a similar order in this case also because on the basis of principle of precedents the order passed by the Hon''ble Supreme Court in the similar matter has to be followed by the High Court. The facts of the present case are almost similar and not different to the case pending before the Hon''ble Supreme Court bearing SLP (Civil) No. 29882/2011. Admittedly, the impugned order passed by the Writ Court is in the shape of final order, which may affect the rights of the appellant, hence, in view of the Full Bench decision of this Court in the case of Arvind Kumar Jain (*supra*) the present appeal is maintainable. Hence, the appeal is disposed of with the following directions:-

i- The impugned order passed by the learned Writ Court dated 9/10/2013 is modified to the extent that the proceedings before the respondents No. 1 and 2 shall continue and the respondents are at liberty to pass a final order, however, that order shall not be pronounced and shall not be given effect to. It is hereby further clarified that this order is subject to modification, if subsequently the Hon''ble Supreme Court passes any order in the aforesaid SLP pending before the Hon''ble Supreme Court. It is further clarified that this order is interim in nature and would not affect the final adjudication of the Writ Petition.

ii- The learned Writ Court is at liberty to decide the Writ Petition on merits. It is further clarified that this Court has not passed any order in regard to merits of the case. The Election Commission-respondents No. 1 and 2 are also at liberty to approach the Hon''ble Supreme Court in regard to modification of the order.

iii- No order as to costs.