

(2016) 06 MP CK 0021
In the Madhya Pradesh High Court
Case No : W.P. No. 9630 of 2016

O.P. Yadav

APPELLANT

Vs

Election Commission of India and others

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 MPLJ 155

Hon'ble Judges : Shri Rajendra Menon, Acting C.J. and Shri Anurag Shrivastava, J.

Bench : Division Bench

Advocate : Shri Ravindra Kumar Gupta, learned Counsel, for the Appellant; Shri Siddharth Seth, learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner claiming to be a practising advocate and president of Democratic Lawyers' Forum, Jabalpur, an unregistered group of Advocates, has filed this writ petition in public interest and the relief claimed in the petition reads as under :-

"1. To direct the respondent No. 1 to make arrangements and proper measure to stop illegal cross voting horse trading in election being held on 11.6.16.

2. To direct the respondent 1 to appoint another returning Officer and team for coming election on 11.6.16 and to scrutiny again his nomination papers as R-3 has acted biased and illegally and if found illegal to reject his nomination form.

3. To direct the respondent No. 3 to all postal voting under the law if require which is rejected wrongly and illegally and to conduct and make arrangements for fair and free election.

4. To direct the R-2 to submit the status report to R-1 and send the copy before this Hon'ble Court, so this Hon'ble Court may pass appropriate order in future regarding illegality in election as given in Hand book in Form B-A.

5. To issue a writ, order or direction in an appropriate nature to the respondents election commission to make the proper rules if not in existence or to implement the rules and regulations already vested with them and to use proper machinery (Police/CBI/Lokayukt Police through State of Central Government to watch and control and to stop cross voting and horse trading and corruption in the election of House of States.

6. To make proper law or to regulate the rules in existence to stop this corrupt practise for contesting the election as independent candidate who are the members of any political party or leaders of political party in future elections of M.P. and MLA, so fair and free election may held in the country.

7. To pass such other or further order(s) as this Hon"ble Court may deem fit and proper in the interest of justice."

2. The petitioner has made various allegations and grievance of the petitioner pertains to Rajya Sabha elections which were held on 11th of this month in the five States of Madhya Pradesh, Rajasthan, Uttar Pradesh, Uttarakhand and Haryana. However, with regard to elections to three seats in the State of M.P., various irregularities said to have been caused at the time of election have been pointed out and it is stated that cross voting horse trading and various illegal activities were undertaken in the election which was held in three seats of Madhya Pradesh and seeking fixing of a guide line and policy to prevent these in future and making various allegations with regard to the manner in which a independent candidate participated in the election with the support of a National Political Party, this writ petition has been filed in public interest making allegations into the illegalities committed in the election. However, the fact remain that the candidate in whose case the allegations are made, has lost the election.

3. As far as relief No. 1, 2, 3 and 4 are concerned, they pertain to the specific election that was held on 11.6.2016. Now the elections are over, results have also been declared. That being so, with regard to irregularities as alleged to have committed in the said election, petitioner has to take recourse of the remedy available of filing a Election Petition and this petition in this regard is not permissible. That apart, various allegations are made to highlight the evil of cross voting, horse trading etc. and prayer No. 5 and 6 are to issue necessary guidelines and mandamus to the Election Commission of India for preventing all these activities in future election. Taking us through various observations made in text book of Lord Denning on the subject "What Next In the Law" and "Constitutional Miscellany" it is tried to indicate that in a democratic set up free and fair election is constitutional mandate and Election Commission of India is required to issue necessary guidelines and frame policies for the conduct of the free and fair elections and as the election commission has failed in its duty to do so, a mandamus is sought for.

4. Except for making various allegations of cross voting, horse trading etc. and

the alleged illegalities committed in the election and filing reports of Newspaper, no cogent evidence or material is available before us to say that in the election in question, illegalities as alleged have been committed. That apart, now once the elections are over, it is not appropriate for us to go into all these questions at the instance of petitioner who is neither a voter nor a candidate for the election in question. That apart, as far as the general prayer made with regard to issuing guidelines and formulating policies and rules and regulations are concerned, these are all policy matters within the domain of executive authority and we see no reason to issue any mandamus for the same. It is for the petitioner to take up the issue with the Election Commission and it is for the Election Commission a Constitutional body to consider such grievance and take such steps as may be permissible under law in this regard.

5. Accordingly, finding no case for any further indulgence into the matter, petition is disposed of.