
(1974) 08 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Appeal No. 892 of 1974

Peter Samuel Wallace

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-08-1974

Acts Referred:

Citation : AIR 1975 Delhi 112 : (1975) 11 DLT 155 : (1975) 1 ILR Delhi 196

Hon'ble Judges : V.S. Deshpande, J;B.C. Misra, J

Bench : Division Bench

Advocate : Arvind Kumar, F.S. Nariman, S.S. Chadha and G.V.G. Krishnamurthy, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) After the Election Commissioner had issued the notification under sub-section (1) of section 4 of the Presidential and Vice-Presidential Elections Act, 1952 (hereafter called the Act) on July 16, 1974 giving a public notice u/s 5 of the Act as amended by Act 5 of 1974 inviting nominations of candidates for the election of the President and specifying the last date for filing the nominations to be July 30, 1974 and the date of election to be August 17, 1974, the present writ petition was filed in this Court on July 29, 1974, one day before the expiry of the period fixed for filing the nominations. The petitioner Shri Peter Samuel Wallace stated that he had wanted to contest the Presidential election and was , prospective candidate. He did not make any pleading as to why he did not file a nomination of his candidature within time. He referred, however, to sections 5B and 5C of the Act as amended in 1974 whereby it was necessary that the presentation of the nomination paper of a candidate for the election shall be accompanied by at least ten electors as proposers and at least ten electors as seconders. It was also necessary there under that the candidate should deposit the sum of Rs. 2500.00 along with the nomination paper. He contended that these requirements were contrary to the provisions of Article 58 of the Constitution which made a person eligible for election as a President if he is a

citizen of India, he has completed the age of thirty-five years and is qualified for election as a member of the House of the People and, Therefore, unconstitutional. The petitioner did not, however, contend that the requirement of a candidate filing a nomination paper was itself unconstitutional. He did not also explain why the petitioner did not file the nomination paper without being proposed by ten electors and being seconded by another ten electors and without the deposit of Rs. 2500.00 if he believed that under the Constitution he was entitled to do so. He challenged the validity of the proposed election on other grounds to which no reference is necessary.

(2) The principal relief claimed by him was that the election scheduled to be held on August 17, 1974 should be prohibited and incidentally the Constitution (Eleventh Amendment) 1961 should be declared ultra virus of the Constitution and sections 5B and 5C of the Act should be declared as unconstitutional.

(3) Notices to show cause why the writ petition should not be admitted were issued to the Union of India, the Election Commission and the Returning Officer. Notice was also issued to the Attorney General in view of the allegations of unconstitutionality of the Eleventh Amendment of the Constitution and certain provisions of the Act. The respondents entered appearance through Shri F. S. Nariman, Addl. Solicitor General and Shri S. S. Chadha and a preliminary written statement on behalf of the Chief Election Commissioner was filed.

(4) In considering the admission of the writ petition, two preliminary objections have to be considered, namely, (1) the locus standi of the petitioner, and (2) the jurisdiction of this Court to entertain the writ petition.

(5) (1) Locus STANDI:- It is settled law that the word "election" used in the Constitution includes the whole process of election from the preparations preceding the holding of it till the result of it is announced after the election is held. Article 71(1) of the Constitution prescribes the forum in which any doubt or dispute arising out of or in connection with the election of a President is to be decided. That forum is the Supreme Court. Under Article 71(3) Parliament may by law regulate any matter relating to or connected with the election of a President or VicePresident. It was open to Parliament, Therefore, to enact the Act and to amend it in 1974. Such an enactment could contain the various requirements to be satisfied by the candidates contesting at the election. The basic requirement is that the candidate must file a nomination paper by which he is proposed as a candidate. The petitioner does not deny that he had to fulfill the requirements of Article 58 of the Constitution before he could stand as a candidate for election as a President, viz., whether he was a citizen of India,, whether he had completed the age of thirty-five years, and whether he was qualified for election as a member of the House of the People were the requirements under Article 58 which the petitioner had to fulfill. The petitioner made no attempt to show to the Returning Officer by filing a nomination paper that he fulfilled these requirements. The primary jurisdiction to scrutinize whether the petitioner fulfilled these requirements was in the Returning Officer.

Instead of doing so, the petitioner has filed this writ petition in this Court alleging that he fulfills the requirements of Article 58 of the Constitution. But it is not for this Court to determine whether he does so. It was for the Returning Officer to do so. The petitioner also did not dispute that he had to file a nomination paper to contest the election as a candidate. He has given absolutely no explanation why he did not file such a nomination paper. He merely alleged that he intended to be a candidate but he did not take any action to become such a candidate. Section 13(a) of the Act defines a "candidate" to mean a person who has been or claims to have been duly nominated as a candidate at an election. Even if we assume in favor of the petitioner that he did not file nomination papers because he was afraid it could be rejected by the Returning Officer as not having been accompanied by the required deposit and not having been proposed by ten electors and seconded by another ten electors, the petitioner could have acted true to his belief that these requirements were unconstitutional. According to section 5E(3) the nomination paper of a candidate may be rejected by the Returning Officer, inter alia, on the grounds that it is not accompanied by the required deposit and is not subscribed by the required number of proposers or seconders. The worst that could happen to the petitioner, Therefore, was that his nomination paper would have been rejected by the Returning Officer on these two grounds. Had that happened, the petitioner would have become a "candidate" within the meaning of section 13(a) of the Act. For, he could have been a person who claimed to have been duly nominated. For, the requirements not fulfilled by him were alleged by him as unconstitutional. He could, Therefore, still claim that he is a duly nominated candidate though the Returning Officer may take the view that his nomination did not fulfill the requirements of the law.

(6) u/s 16 of the Act the result of an election could be challenged before the Supreme Court, inter alia, on the grounds that the result of the election had been materially affected by the noncompliance with the provisions of the Constitution and that the nomination of any candidate had been wrongly rejected. The petitioner would thus have been able to file an election petition challenging the validity of the election before the Supreme Court on these grounds. u/s 14(2) of the Act, however, an election petition can be presented only by a candidate. The petitioner could have become a candidate had he filed a nomination paper even if the said nomination paper had been rejected. For, the petitioner could have claimed to have been duly nominated on his own interpretation of the Constitution and the Act. It is a willful default of the petitioner himself which has resulted in his not becoming a candidate. It is his own negligence, Therefore, which prevented him from acquiring the locus standi to contest the election of the President.

(7) It is settled law by the decisions of the Supreme Court in *Narayan Bhaskar Khare Vs. The Election Commission of India*, , read with *N. P.Ponnuswami v. Returning Officer, Namakkal Constituency*, (1951) S.C.R. 218, that the doubts and disputes in connection with an election cannot be raised by way of a writ petition before the election is held even in the Supreme Court. It is only after the

election is held and in an election petition that the Supreme Court can resolve these doubts and disputes. The locus standi for raising such doubts and disputes is possessed only by a candidate whom alone can file an election petition. No one else can do so. The petitioner never became a candidate. He could have become a candidate. It is his own willful default which is responsible for not becoming a candidate. In our view, Therefore, he does not have any locus standi to question the validity of the Presidential election scheduled to be held on August 17, 1974 irrespective of the grounds which he may wish to urge to invalidate the s,a.id election. For, all such grounds could be urged by him only in an election petition filed in the Supreme Court.

(8) (2) JURISDICTION:- The filing of an election petition by a candidate is a statutory right. The exclusive jurisdiction to try such an election petition is vested in the Supreme Court under Article 71 of the Constitution. The jurisdiction of the High Court to entertain a writ petition under Article 226 is discretionary. Matters which can be considered only by the Supreme Court under Article 71 are taken out of the jurisdiction of the High Court exercisable under Article 226. It was necessary, Therefore, for the petitioner to show that this Court had jurisdiction to hear this writ petition quite apart from the question that the petitioner did not have the locus standi to file the writ petition at all. The only effective relief claimed by the petitioner is that the Presidential election scheduled to be held on August 17, 1974 should be prohibited and should be ordered not to be held. He had also made an application for stay of the said election which application has already been dismissed by us. The other reliefs claimed by the petitioner for the declaration of the Eleventh Amendment of the Constitution and certain provisions of the Act as invalid are only incidental. These reliefs are claimed because they are necessary to be obtained before the main relief of prohibiting the election can be obtained by the petitioner. Unless this Court, Therefore, has the jurisdiction to prohibit the election of the President to be held on August 17, 1974, this Court cannot consider the grant of the other reliefs to the petitioner. The petition could not have been filed merely for the other reliefs. They would have been merely academic. No Court could have granted them unless and until the relief regarding the stoppage of the election had been claimed by the petitioner. Under Article 71(1) of the Constitution the exclusive jurisdiction to invalidate a Presidential election and that too only in an election petition filed after the election is held is vested in the Supreme Court. This Court, Therefore, does not have the jurisdiction to grant the relief claimed by the petitioner for two reasons. Firstly, no such relief can be granted even by the Supreme Court much less by this Court before the election is held. Secondly, even after the election is held the relief can be granted only by the Supreme Court in an election petition in view of Article 71(1) of the Constitution. On both these grounds, Therefore, this Court has no jurisdiction to entertain the writ petition. The mere fact that the petitioner has raised the issue of the unconstitutionality of the Eleventh Amendment of the Constitution and of certain provisions of the Act is no reason to confer jurisdiction on this Court to entertain this writ petition on this Court. For, these

are the grounds on which the validity of the election is to be challenged by the petitioner after the election is held. These grounds have, Therefore, necessarily to be considered by the Supreme Court. The jurisdiction on the Supreme Court is conferred by Article 71(1) of the Constitution. The Supreme Court has, the power to consider these grounds which the petitioner can raise u/s 18 of the Act. The Supreme Court has, Therefore, the jurisdiction, if necessary, to decide the constitutionality of the provisions of the Act. In no case, can the High Court have the jurisdiction to entertain the writ petition.

(9) The writ petition is, Therefore, dismissed on the above two grounds after hearing the learned counsel on both the sides and without any order as to costs.