

(1974) 12 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 817 of 1972

Raju V.B.

APPELLANT

Vs

Chief Electoral Officer, State of Gujarat and Another

RESPONDENT

Date of Decision : 19-12-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 324, 327, 328
Representation of the People Act, 1951 — Section 158, 33, 34, 35(1), 36

Citation : AIR 1976 Guj 66

Hon'ble Judges : J.B. Mehta, J;B.K. Mehta, J

Bench : Division Bench

Advocate : R.A. Mehta, for the Appellant; K.G. Vakharia, for the Respondent

Judgement

B.K. Mehta, J.—The petitioner herein anguished by the rigour of the party discipline in a Democratic State and inspired with a spirit of crusade to establish and maintain constitutional right and guarantee of having free and independent election challenges the constitutional validity of certain provisions of the Representation of the People Act, 1951, viz. Section 34(a) and Section 56 as well Sections 33, 34, 35, 36(1), 36(2)(b), 36(2)(c) and Section 39(2) of the said Act as ultra vires 84 of the Constitution of India and, therefore, void and ineffective. The challenge has been raised in the following circumstances:

2. The petitioner desired to contest the election to the Loksabha in the elections held in 1971 and for the election to the Council of States held in March 1972. The petitioner was required to deposit and in fact deposited Rs. 500/- with the Returning Officer to contest the election to the Loksabha from Ahmedabad constituency in March 1971. As he did not obtain a prescribed percentage of votes, his deposit came to be forfeited u/s 158 of the aforesaid Act. Similarly, he deposited a sum of Rs. 250/- by way of deposit for election to the Council of States held in March 1972. It is the grievance of the petitioner that even though he entreated and begged, no one was willing to nominate him on account of party discipline. The petitioner apprehended that even if he would go abegging

any person for the election to Rajyasabha would not nominate him. The statutory requirement of filing nomination would thus deprive him his constitutional right to contest election. The petitioner, as he intended to contest the election to the Council of States by the members of Gujarat Legislative Assembly without filing nomination and only by making a declaration of his intention to stand apprehended that he would not be allowed to contest the election. He, therefore, approached this Court by this petition, challenging the constitutional validity of the aforesaid provisions so as to obtain an urgent relief of permitting him to contest the election without nomination paper. However,, it appears, as averred by the petitioner in, para. 2 of his petition, that he had deposited on 29th March 1972 the requisite amount of deposit of Rs. 250/- under the relevant provisions of the aforesaid Act. The petitioner, however, apprehended at the time of filing this petition that the said deposit amount would not be returned and would be forfeited u/s 158 of the said Act.

3. After notices to the respondents the petition was admitted. None of the respondents has filed any reply to the petition.

4. At the time of hearing of this petition, Mr. R. A. Mehta, the learned advocate, appearing on behalf of the petitioner, raised the following points for our consideration:-

1. The petitioner having constitutional right to contest election under 84 of the Constitution of India, which does not prescribe any obligation to file nomination paper or to make any deposit, the provisions contained in Section 33 (1) regarding filing of valid nomination paper for a person intending to contest as a candidate in the election to the House of People or to the Council of States and making a deposit u/s 34, and the forfeiture of the deposit u/s 158 are ultra vires Art. 84 of the Constitution of India, in as much as they are beyond the legislative competence of the Parliament.

2. The provisions of deposits of Rs. 500/- for persons intending to be candidates at the elections to the House of People, and Rs. 250/- for the elections to the Council of States, and of Rs. 125/- by the members of Scheduled Caste and Tribes, violate 14 of the Constitution of India since the classification is not rational and has no reasonable nexus to the object of the Act which is to provide for the arrangement and machinery for the conduct of the election purposes.

3. The provision contained in Section 158 of the Act in so far as it permits refund of deposit to some and deprives others of the same right is clearly discriminatory and, therefore violative of 14 of the Constitution of India.

4. Sections 33(1), 34 and 158 are beyond the legislative competence of the Parliament inasmuch as Articles 324 to 328 of the Constitution would not save them because the said Articles permit the Parliament to legislate for those matters only relating to elections and the Parliament cannot legislate in the matter and insert provisions which would go contrary to 84 of the Constitution of India.

5. The consequential provisions in, Sections 33, 34, 35, 36 (1). 36 (2) (b), 36 (2). (c) and 39 (2) of the Act are also ultra vires and beyond the legislative competence of the Parliament as they are violative of 84 of the Constitution and could not be saved under Articles 324 to 328 of the Constitution of India.

5. None of the contentions urged by Mr. Mehta has any merit in it. The entire reasoning urged on behalf of the petitioner is not well founded as the petitioner erroneously proceeds on the assumption that right to stand at elections to the House of People or to the Council of States is a constitutional right in *Hari Prasad Mulshanker Trivedi Vs. V.B. Raju and Others*, , where the Court was concerned with the question of jurisdiction of the Election Tribunal to go into, the matter of validity of electoral rolls Mr. Justice Mathew, speaking for the Court observed in paragraph 23 of the judgment of the Court as under:-

"Article 327 gives full power to Parliament subject to the provisions of the Constitution to make laws with respect to all matters relating to or in connection with elections including the preparation of electoral rolls. It was, therefore open to Parliament to prescribe the mode of the preparation of the electoral roll and say that it is not liable to be challenged except in the manner provided. Parliament was, therefore, competent subject to the provisions of the Constitution to exclude the jurisdiction of the Civil Court or the tribunal trying an election petition to go into the question whether the name of any person has been entered therein illegally. The right to stand for election is a statutory right and the statute can therefore regulate the manner in which the right has to be enforced or the remedy for enforcing it. We think that the 1950 Act provides a complete code so far as the preparation and maintenance of electoral rolls are concerned . The Act enacts a complete machinery to enquire into claims and objections as regards registration as voter and for appeals from the decision of the registering officer (see Sections 21 to. 24 of the 1950 Act both inclusive). Elaborate rules have also been made for inquiry into claims to be registered as voters and for considering and disposing of objections thereto (see Rr. 12 to 24 of the Registration of Electoral Rules). The definition of the word "elector" in Section 2(1)(e) of the 1951 Act would indicate that a person whose name, is, actually entered in the electoral roll for the time being and who is not subject to any of the disqualifications in Section 16 would be an elector. Any person who is a Citizen of India and who has, attained the age as prescribed by law, subject to the minimum a provided in Article 326, is entitled to be registered as a voter in the roll of electors. This is the positive way of expressing eligibility for registration as a voter. He should not also be subject to any of the disqualifications prescribed by Parliament by law on the grounds mentioned in the article. The Parliament has prescribed in Section 16 of the 1950 Act the disqualifications."

6. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , where the appellant who was one of the candidates for elections to the Madras Legislative Assembly from Namakkal constituency in Salem district

moved the Madras High Court under Article 226 of the Constitution of India praying for a writ of certiorari to quash and set aside the order of the Returning Officer rejecting his nomination paper and for direction to the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the appellant's application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Article 329 (b) of the Constitution. The appellant, therefore, carried the matter in appeal to the Supreme Court, contending, inter alia, that the High Court was in error in refusing to exercise jurisdiction, which was not-affected by Article 329 (b) of the Constitution. Mr. Justice Fazl Ali, as he then was, speaking for the Court negated the contention urged by the appellant that if nomination is a part of election, a dispute as to the validity of nomination is a dispute relating to election and, that can be called in question only in accordance with the provisions of Article 329 (b) of the Constitution by Presentation of an Election petition to the appropriate Tribunal, and that the Returning Officer would have no jurisdiction to decide that matter, and in so far as S. 36 of the representation of the people Act. 1951, conferred on the Returning Officer a jurisdiction which Article 329 (b) conferred on a Tribunal to be appointed in accordance with the article it is ultra vires the Constitution. It was in this context that the Supreme Court observed as under:-

"The argument displays great dialectical ingenuity but it has no bearing on the result of this appeal and I think it can be very shortly answered u/s 36. Representation of the People Act. 1951 it is the duty of the Returning Officer to scrutinize the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged properly any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue. In discharging the statutory duty imposed on him the Returning Officer does not call in question any election. Scrutiny of nomination papers is only a stage though an important stage in the election process. It is one of the essential duties to be performed before the election can be completed. and anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election. The fallacy of the argument lies in treating a single step taken in furtherance of an election as equivalent to election"

Referring to the earlier decision of Privy Council in *Theberge v. Laudry* 2 (1876) AC 102. the Court summarized the position emerging from that decision and observed as under:-

"The points which emerge from this decision may be stated as follows: (1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and, must be" subject to the limitations imposed by it. (2) Strictly speaking it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members

and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special Jurisdiction should be exercised in accordance with the law which creates it."

7. In view of this settled position, it therefore, cannot be urged successfully as was sought to be done on behalf of the petitioner that he has a right guaranteed to him under 84 of the Constitution to stand and contest election. 84 prescribes qualification for membership of Parliament. The structure of the section is in a negative form. It provides that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule; or is, in the case of a seat in the Council of States, not less than thirty years of age and in the case of a seat in the House of the People, not less than twenty five years of age, and possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. We have not been able to appreciate how the contention has been raised relying on this 84 that it gives an unfettered right to a person who is a Citizen of India to contest election without complying with the obligations entailed by the Statute made in that behalf by Parliament. The first contention, therefore, that in so far as Section 33(1) , pertaining to nomination paper, and Section 34, pertaining to making of deposit, and Section 158, pertaining to forfeiture of deposit, abridge the right of a person to contest election, they are ultra vires Art. 84 of the Constitution, is completely misconceived. The said sections in so far as they prescribe a person desiring to contest election to file nomination paper or to make deposit or in case of his failure to obtain prescribed percentage of votes at the election the consequence of forfeiture of his deposit are merely procedure prescribed for the conduct of Election. They are as a matter of fact different formalities, which the Parliament has prescribed for purposes of conducting and completing the elections in an orderly manner. To urge that a person should be allowed to contest election without filing nomination paper, or without making a deposit, or without subjecting him to the liability of forfeiture of deposit in case of his failure to obtain a prescribed percentage of votes at the election, would, if accepted, result in a complete chaos. The Parliament or the Legislature has prescribed these different formalities for the elections only with a view to see that the elections are conducted in an orderly manner so as to avoid any confusion that may ensue in the process itself. Mr. Mehta the learned advocate on behalf of the petitioner, however, attempted to persuade us that the requirement of filing nomination and the right of the Returning Officer to reject nomination have created more problems than to solve them and it is not at all necessary for purposes of holding orderly elections that a person should obtain a proposer and seconder to his nomination paper. We have not been able to appreciate this contention of Mr. Mehta for the simple reason that the requirement to the filing of nomination paper or condition to the making of deposit or the obligation of forfeiture in case of failure to obtain a specified

percentage of votes at the election are on the contrary the measures inserted in the Statute by the Parliament with a view to achieve orderly conduct of elections and so as to avoid a confusion that may ensue in the process itself. The legislative intent is quite clear that a person who is not able to have a single voter to nominate his name as a proposer, or a person who is not in a position to muster, a prescribed percentage of votes should not be allowed to contest election indiscriminately and with that view in mind if the Legislature has inserted these provisions in the statute, it cannot be said that they are unreasonable or they abridge the rights of persons to contest elections since it is that very statute in which these provisions are made that has given this right to contest and run elections. We, therefore, cannot agree with Mr. Mehta that these provisions contained in Sections 33(1), 34 or 158 or the other consequential provisions made relating to scrutiny and acceptance or rejection of nomination papers under Sections 35, 36(1), 36(2)(b), 36(2)(c) and Section 39(2) of the Act are ultra vires, the Constitution.

8. In *Shri Shiv Kirpal Singh Vs. Shri V.V. Giri*, , the Court was, inter alia, concerned, with the question of validity of Section 5(2) of the Presidential and Vice-Presidential Election Act, 1952 as ultra vires Article 58 of the Constitution of India, Section 5(2) of the Presidential and Vice-Presidential Election Act, 1952 required that there must be a nomination signed by two electors as proposer and seconder. While negating a similar contention that it is ultra vires the Constitution Mr. Justice Sikri, as he then was, speaking for the Court observed as under:-

"This petition was argued by Shri Phul Singh in person, and the only argument that was advanced by him was that Section 5(2) of the Act, requiring that there must be a nomination signed by two electors as proposer and seconder, is ultra vires the Constitution. According to him he possessed all the qualifications for being a candidate laid down in Article 59. He had proved that he was an elector registered in a Parliamentary constituency by producing a certified copy of the entry relating to him in the electoral roll. He had also produced a certificate that he had resigned from Government service and was not holding an official of profit under the Government. He relied on the electoral roll to show that he was a Citizen of India, He also produced a copy of his High School certificate showing that he was not less than 35 Years of age. In these circumstances, according to him his nomination paper could not be rejected on the ground that he had not been nominated by two electors as proposer and seconder. On the face of it, his argument that Section 5(2) of the Act contravenes Article 58 or any other Article of the Constitution has no force at all. Section 5(2) of the Act was enacted by Parliament in exercise of its power of regulating all matters relating to or connected with the election of a President or Vice-President and in exercise of this power, Parliament was fully competent to lay down how a candidate, otherwise qualified, must become a candidate by seeking nomination by two electors and to prescribe the detailed subsequent procedure leading up to the polling and declaration of result. The requirement laid down by Parliament that

every person must be nominated, by two electors as proposer and seconder is a reasonable requirement relating to regulation of election to the office of President and cannot be held to be a curtailment of the right of a qualified candidate to stand as a candidate under Article 58. In these circumstances, the ground, on which the election petition has been filed, fails and, consequently, the petition is liable to be dismissed"

9. In view of the settled position it, therefore cannot be urged that the impugned provisions in this petition can be said to be such restrictions abridging the right of other qualified persons either under 84 or under any relevant Act to contest election. As has been said often on more than one occasion by the Supreme Court that these are the matters provided by Parliament under Article 327 of the Constitution for purposes of the conduct of elections and they are procedures prescribed right from the first stage of election till the holding of election itself. Mr. Mehta, therefore, attempted to impress upon us that the provisions as to making of deposit in respect of election to the House of the People or Council of States or by the members of Scheduled Castes and Tribes are discriminatory and therefore, they violate 14 of the Constitution. We have stated this contention of Mr Mehta only for rejecting it cannot be said that persons contesting elections to the Council of States or to the House of the People are of the same class or are equally situated. Therefore there is no question of any discrimination amongst such persons. The concession to the members of scheduled castes and tribes to make a deposit of Rs. 125/- only for purposes of standing as a candidate in either of the elections cannot be said to be discriminatory at all, as this concession has been granted in order to enable the members of the Scheduled Castes and Tribes who are economically backward and financially incapable to contest elections. The second contention of Mr. Mehta, therefore, should be rejected.

10. Similarly the third contention urged on behalf of the petitioner has no substance in it. In spite of our best efforts. we have not been able to appreciate how the forfeiture of deposits of those candidates who have not obtained a prescribed percentage of votes can be said to be discriminatory qua them as compared to those candidates whose deposits are returned to them as they have obtained a prescribed percentage of votes at the election. In our opinion. there is no discrimination whatsoever in this provisions It is perfectly reasonable and justified provision, in order to ensure that only those persons who have put in some service in the cause of people and who can consequently obtain a certain percentage of votes may contest the elections. To permit persons who do not enjoy , confidence of a prescribed number of voters cannot be said to be a provision which is either discriminatory or abridging right of persons to contest elections. The effort of the petitioner in this petition to obtain such a liberty for the persons who do not enjoy even this minimum confidence to run elections is, though laudable cannot be encouraged in view of the salutary requirement of keeping our elections order IV and not to make them unwieldy. The third contention of Mr. Mehta should also be rejected.

11. The 4th contention of Mr. Mehta has also no merit in it. As stated above Articles 324 to 328 empower parliament and State Legislature to provide for superintendence directions and control of elections. Article 327 particularly empowers Parliament to make provisions with respect to elections of legislature. As has been held in *Shiv Kripal singh, v. V. V. Giri* (supra) all these matters provided in the impugned provisions are for the conduct of elections and they are the bare formalities, which should be adhered to so that the elections can be held in an orderly manner and may not result into chaos. In that view of the matter, therefore, the 4th contention of Mr. Mehta should also be rejected.

12. The main challenge in this petition, as we have stated above, is to the three sections, namely. Sections 33, 34 and 158 and the challenge to the remaining sections is merely consequential. As we have held that Ss. 33, 34 and 158 are the matters pertaining to the conduct of elections, they are beyond the pale of challenge and the consequential provisions made in Sections 35, and 39 are also matters pertaining to the conduct of the elections and, therefore, they are beyond the pale of challenge under Article 329 of the Constitution. In any case, as the main provisions which have been challenged, namely, Sections 33, 34 and 158, are held by us to be valid provisions of law, we do not think that it can be successfully urged by the petitioner that the consequential provisions made in the impugned sections are beyond the legislative competence.

13. The result, therefore, is that this petition fails and is dismissed. The rule is discharged with no order as to costs having regard to the facts and circumstances of this case.

14. Mr. Mehta made an oral application that a certificate be granted under Article 133(1) of the Constitution so as to enable the petitioner to take the matter to the Supreme Court. We do not think that any substantial question of law of general importance is involved in this petition, which, in our opinion, is required to be decided by the Supreme Court, as we have followed the established principles enunciated by the Supreme Court itself. The oral application is, therefore, rejected.

15. Petition dismissed.