

(2014) 04 DEL CK 0290
In the Delhi High Court
Case No : W.P. (C) 2684/2014

Rama Kant Jindal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Representation of the People Act, 1951 — Section 123(5), 123(6), 34, 77

Citation : (2014) 04 DEL CK 0290

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Vikram Aditya Narayan, Advocates for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This petition filed in public interest finds fault with the condition laid down under Section 34 of the Representation of People Act, 1951, of deposit of Rs.25,000/- for contesting an election from a parliamentary constituency (Rs.12,500/- for a candidate who is a member of Scheduled Caste or Scheduled Tribe), as well as to the limit imposed under Section 77 of the said Act, of Rs.70,00,000/- to be spent on the election, on the ground that the same vests an economically stronger candidate with an advantage over an economically weak candidate.

2. The aforesaid provisions, of Security Deposit and Ceiling on the expenditure to be incurred on the election have been in force nearly since the inception of the elections in this country and have served the purpose well. For that reason alone the same are not to be tinkered with. Even the petitioner does not claim that there should be no requirement of any deposit or that there should be no ceiling on the expenditure. His objection is that the amount of the deposit and the amount of the maximum expenditure should be less than as has been prescribed.

3. We are of the view that it is not for this Court to determine the amount of which security deposit is to be made or the amount which should be prescribed to be spent on election. Moreover the petition does not give any reason

whatsoever as to why the amount fixed of the security deposit and of the maximum expenditure are arbitrary. It is unfortunate that the petition in public interest has been filed without any homework/ground work. We cannot also but comment that recent times have witnessed collection by individuals wanting to participate in election of large sums of monies from the public / supporters. It is thus not as if the same has been a deterrent to anyone from contesting election.

4. Rather, the petition has been filed on the premise that there is a right to contest election. The position however is otherwise. The Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, held that 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 i.e. the Representation of People Act, 1951 (which was held to be a self contained enactment) and must be subject to the limitations imposed by it. This position was reiterated in *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, in the context of challenge to Section 123(5) and 124(5) of the Act (the incurring or authorising incurring of expenditure in contravention of Section 77 is provided for in Section 123(6)) and it was held, that the said provisions merely prescribe conditions which must be observed by a person if he wants to enter Parliament; that the right to stand as a candidate and contest an election is not a common law right; it is a special right created by statute and can only be exercised on the conditions laid down by the statute. It was further held that the Fundamental Rights Chapter has no bearing on a right like this created by statute and no person has a fundamental right to be elected member of Parliament; if he wants that, he must observe the Rules. Accordingly, the challenge to the vires of Section 123(5) and 124(5) was dismissed. The Supreme Court in *Supreme Court Bar Association and Others Vs. B.D. Kaushik*, reiterated that right to vote or to contest election is neither a Fundamental Right nor a common law right, but it is purely a statutory right governed by statute/ Rules/Regulations and the right to contest an election and to vote can always be restricted or abridged, if statute/ Rules or Regulations prescribe so.

5. As far as the challenge to the requirement of making a deposit of Rs.25,000/- is concerned, reference with benefit can be made to the judgment of the Division Bench of Gujarat High Court in *Raju V.B. Vs. Chief Electoral Officer, State of Gujrat* AIR 1976 Gujarat 66 where also the challenge was to the then requirement of deposit of Rs.500/-. It was held that the provisions which require a person desiring to contest election to make deposit and which also provides that upon such person's failure to obtain prescribed percentage of votes at the election the consequence of forfeiture of deposit, are for the purpose of conducting and completing the elections in an orderly manner. It was further held that 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 Division Bench held that the Parliament has prescribed these

requirements 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. The legislative intent was held to be that a person who is not able to have a prescribed percentage of votes should not be allowed to contest election indiscriminately and that such a condition should not be held to be unreasonable or as abridging anyone's right to contest elections since such provisions are contained in the Statute which also confers the right to contest the elections. It was yet further held that these are matters provided by Parliament for purposes of the conduct of elections and the procedures prescribed right from the first stage of election till the holding of election themselves and that to permit persons who do not enjoy the confidence of a prescribed number of voters to contest elections would result in a large number of persons contesting the elections and which would be a detrimental to the conduct of elections in orderly manner and may result in chaos.

6. We find the Division Bench of the Patna High Court also, in *Ramayan Singh and Others Vs. Union of India (UOI) and Others*, , to have dismissed such a challenge to the requirement of deposit.

7. We are entirely in agreement.

8. Undoubtedly the amount of the deposit has been enhanced from time to time. However we do not find the requirement, of deposit of Rs.25,000/-, to be unreasonable as with the passage of time and in which time not only has the value/buying power of the rupee depreciated but general inflation has led to increase not only in prices but earnings across the board.

9. As far as the challenge to the expenditure ceiling is concerned, we find the matter to be no longer *res integra*. As far as back in *Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others*, , while dealing with the argument that the affluent get an unequal and unfair advantage over others, it was held that it is a stark fact of life that an independent who contests an election on his own, that is, without support of a political party, is at a considerable disadvantage as compared with the candidates supported by political parties but that does not violate the rule of equality. It was held that it is not the election law which creates such inequalities; inequalities exist apart from that law and are unfortunately implicit in the unequal positions in which the citizens find themselves. The Supreme Court held that election laws are not designed to produce economic equality amongst citizens and they can, at best, provide an equal opportunity to all sections of society to project their respective points of view on the occasion of elections. It was further held that the method, somewhat unfortunate, by which law has achieved that purpose, is by freeing all others except the candidate and his election agent from the restriction on spending, so long as the expenditure is incurred or authorised by those others; the argument, that some, by reason of paucity of funds at their command are not able to compete with others, can only be answered by observing that it is not for the Courts to lay down the policies in matters pertaining to elections and that the

Courts cannot negate a law on the ground that they do not approve of the policy which underlies it. It was expressly held that the Court cannot strike down the Rule on the ground that the limit of rupees one lakh (then) was too high in the Indian context and that the Courts own preferences and perceptions cannot be used for invalidating laws.

10. The same sentiment was expressed earlier also in *Rananjaya Singh Vs. Baijnath Singh and Others*, where it was observed that if the Rule works injustice by placing the poorer candidates at a disadvantage, the appeal must be to Parliament and not to this Court.

11. There is thus no merit in the petition which is dismissed.