
(1969) 03 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 725 of 1969

Rattan Singh

APPELLANT

Vs

The Election Commission of India and others

RESPONDENT

Date of Decision : 25-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 03 P&H CK 0028

Hon'ble Judges : Shamsheer Bahadur, J; R.S. Narula, J

Bench : Division Bench

Advocate : J.N. Kaushal with Mr. Ashok Bhan, for the Appellant; B.S. Dhilloti, Advocate-General, Punjab with Mr. B.S. Shant, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur and R.S. Narula, JJ.—This petition under Articles 226 and 227 of the Constitution of India by Rattan Singh was admitted yesterday by the Motion Bench of Chief Justice and Sarkaria J., and has been placed for disposal on account of its extreme urgency before us today.

2. The petitioner, who is a member of the Punjab Legislative Assembly, challenges two notifications both issued on March 7, 1969, by the Election Commission of India under the signature of "K. S. Rajagopalan, Secretary to the Election Commission of India" and published in the Punjab Government Gazette Extraordinary of the same date. These two notifications are issued in pursuance of subsection (1) of section 147 of the Representation of the People Act calling upon the elected members of the Legislative Assembly of the State of Punjab to fill by election two vacancies caused in the Council of States by the deaths of Shri Uttam Singh and Shri Anup Singh. In pursuance of two impugned notifications, election programme has been fixed separately in respect of the two vacancies, the only difference in the concerned dates being the date of polling which in the case of election for the vacancy of Shri Uttam Singh is 25th March, 1969 and in the case of Shri Anup Singh 26th March, 1969; the remaining dates, 14th March,

1969 for making nominations, 15th March, 1969 for Scrutiny of nominations, 17th March, 1969 as the last date for withdrawal of candidature and 28th March, 1969 before which the election "shall be completed" being identical in both cases.

3. Briefly put, the attack on the notifications is that the fixing of two different dates for poll is illegal and without jurisdiction being hit by the provisions of clause (4) of Article 80 of the Constitution of India which says :

80(4). The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote." It is suggested that if the elections for the two vacancies are held simultaneously in the Legislative Assembly the principle of proportional representation would enable the return of both the majority and minority party candidates: while two separate elections would ensure the victory of the candidates of the majority party only. The system adopted in the two notifications is stated to be destructive of the underlying motive of proportional representation by single transferable vote "and the rights of a minority party in the State Legislature to which the petitioner belongs.

4. The learned Advocate-General submits by way of preliminary objection which, in our opinion, must succeed, that the petition is barred by clause (b) of Article 329 of the Constitution which says:

no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

5. It is urged by the Advocate-General that the issuance of a notification is a part of the process of election which can only be questioned by election petition. We may state at the outset that Mr. Kaushal, the learned counsel for the petitioner, did not contest the proposition that the subject-matter of attack in this petition can also be canvassed in an election petition. The Advocate-General has invited our attention to three Supreme Court decisions which certainly support the validity of the preliminary objection, and also an unreported decision of Capoor and Jindra Lal JJ of this Court in Pritam Singh etc. v. Shiv Singh etc. C.W. 216 of 1967 Civil Writ No, 216 of 1967, decided on 20th of February, 1967.

6. The earliest decision is of the Supreme Court in N. P. Ponnuswami v. Returning Officer, Namakkal 1962 S.C.R. 218. The applicant in that case had filed nomination paper" for election to the Madras Legislative Assembly from the Namakkal Constituency and on scrutiny these were rejected by the Returning Officer. A writ petition under Article 226 of the Constitution as in the present case was brought to quash this order on the Returning Officer and the Madras High Court dismissed it by reason of the bar contained in clause (b) of Article 329. The Supreme Court dismissed the appeal and in so doing observed, through Mr. Justice Fall Ali, that the word "election" has been used in Part XV of the

Constitution in the wide sense, that is to say to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning, can also be read consistently into the other provisions which occur in Part XV including Article 329 (b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins.

7. More to the point for our purposes is the later Supreme Court decision in *The Commissioner of Income Tax and Excess Profits Tax, Madras Vs. The South India Pictures Ltd., Karaikudi*, where at page 238 Mr. Justice Venkatarama Ayyar, while discussing the scope of *Ponnuswami's* case said this:

In *N P. Ponnuswami v. Returning Officer* 1962 S C.R 218, it was held by this Court that the word "election" in Article 329(b) was used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate, and that an application under Article 226 challenging the validity of any of the acts forming part of that process would be barred.

His Lordship specifically noted that an election starts with and indeed includes the issue of notification, as in the instant case, and is consequently covered by the inhibition of Article 329 (b) of the Constitution which is both pervasive and comprehensive.

8. The last decision of the Supreme Court on the subject is *Narayan Bhaskar Khare Vs. The Election Commission of India*, which fell for reconsideration in that case was the provision of clause (1) of Article 71 of the Constitution which says:

All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

The petitioner entertained grave doubts as to the propriety of holding the Presidential election before the general elections has been completed throughout the entire territory of India and the process of election of the President was sought to be arrested under Article 71(1) of the Constitution. It cannot be denied and in fact has been conceded by Mr. Kausbal that the language of Article 71 (1) is of greater amplitude than the words employed in clause (b) of Article 329 and if the Supreme Court found that an application could not lie at the stage when it was preferred before it, there would be greater reason for the dismissal of the present petition on the ground that it is barred by the provisions of Article 329(b). There are of course a number of steps and stages in election and many of these may have an important bearing on the result of the election, but Chief Justice Das, speaking for the Court, observed at page 1039 that:

...in the view of Parliament the time for the exercise of jurisdiction by this Court to inquire into and decide doubts and disputes arising out of or in connection with the Presidential election is after the entire election process is completed.

On the same page it was further observed that the result of the election is very often affected by the non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act. Even if it is assumed for a moment that the issue of notifications is volatile of the principle embodied in clause (4) of Article 80 all that can be said is that there is non compliance or breach of an important step laid down in the constitution. But it remains all the same a step in the election process. At page 1090 it was again observed that any non-compliance with the provisions of the Constitution may legitimately be made a ground of challenging the election and "it is therefore, in consonance both with the provisions of Article 62 and with good sense to hold that the word "election" used in Article 71 means the entire process of election". It is of course not necessary for the purpose of disposing of this petition, as was observed by Chief Justice Das in Narayan Bhaskar Khare's case to express any opinion as to the validity or otherwise of the notifications and we deliberately eschew from doing so. As in Article 71(1), we think that the word "election" means the entire election process culminating in a candidate being declared elected, and includes a notification. The matter which has now been agitated in this writ of certiorari can be challenged at the proper time by the filing of an election petition. If we may say so with respect, the observation made in Naryan Bhaskar Khare's case by the Supreme Court is fully applicable to the facts of the present case.

9. The same result was reached by the Division Bench of Capoor and Jindra Lal JJ. in Pritam Singh etc. v. Shiv Singh etc, C.W. No. 216 of 1967 decided on 20th of February, 1967, though strangely enough the latest decision of the Supreme Court was not cited before the Bench which relied for its conclusion with regard to the preliminary objection which was upheld mainly on the decision of Ponuitswami's case. Ponnnswami's case, as has been noticed, was followed by two other Supreme Court decisions, both of which lend added force to the objection raised by the Advocate-General.

10. In our view, this petition must be dismissed and we do so with costs on the short ground that the issuance or notifications was a part of the election process and can be challenged only by an election petition.