

(1951) 12 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 861 of 1951

Rudra Pratap Narian Singh

APPELLANT

Vs

Bhagwandin Misra and Others

RESPONDENT

Date of Decision : 17-12-1951

Acts Referred:

Constitution of India, 1950 — Article 226, 324, 327, 328, 329
Representation of the People Act, 1951 — Section 36, 80

Citation : AIR 1952 All 511

Hon'ble Judges : Misra, J; Kidwai, J

Bench : Division Bench

Advocate : Niamat Ullah and Naim Ullah, for the Appellant; M.P. Srivastava, (for No. 1) and B.K. Dhaon and B.N. Roy, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

1. These two applications are under Article 226 of the Constitution. They are connected in the sense that both of them arise out of nomination of candidates for election--in one case for the election to the State Legislative Assembly and in the other to the House of the People--and the constitutional point which arises for consideration is common. We propose to decide the two applications together.

2. The applicant in civil Misc. Appln. No. 861 of 1951, Sri Rudra Pratap Narain Singh was one of the six candidates for the Kaisarganj North constituency in the district of Bahraich. He is enrolled as a voter in another constituency known as Bahraich West and his case was governed by Sub-section 6 of Section 33 Representation of the People Act (XL II [43] of 1951) which provides that :

"If at the time of presentation of the nomination paper the Returning Officer finds that the name of the candidate is not, registered in the electoral roll of the constituency for which he is the returning Officer, he shall for the purpose of Sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such rolls." The copy of the entry filed by

Shri Rudra Pratap Narain Singh, was, according to the Returning Officer, not duly certified and his nomination was, therefore, rejected under the powers conferred on that officer by Section 36(6) of the Act. The candidate challenges the decision on a variety of grounds and in the application before us he has impleaded as opposite party No. 1 his rival candidate at whose instance the objection was moved, and as opposite parties 2 and 3, the Returning Officer of Kaisarganj North constituency and the election officer of Bahraich district. He prays that:

(a) This Court should issue orders or writs in the nature of mandamus, prohibition, quo warranto and certiorari or such of them as may be deemed appropriate,

(b) Issue in particular orders directing opposite, party No. 2 to refrain pending the petition to allot symbols to the candidates for election to the U. P. Legislative Assembly from the Kaisarganj North constituency and from preparing and publishing the list of valid nominations,

(c) Declare that the petitioner was duly nominated,

(d) Direct the opposite parties 2 and 3 to include the name of the petitioner in the list of validly nominated candidates, and

(e) Direct the opposite parties not to take any action prejudicial to the interest of the petitioner during the pendency of his application,

3. In civil Misc. Appln. No. 862 of 1951, the applicant Sri Hargovind Dayal Srivastava has been duly nominated for the Lucknow District Central Constituency. His grievance is that the nomination of one of his rivals, namely Srimati Vijai Lakshmi Pandit, opposite party No. 1 was in fact invalid for the reasons stated by him and was wrongly accepted in total disregard of the election rules, on a scrutiny held by the Returning Officer Opposite Party No. 2 on 27-11-1951, despite the applicant's objections pointing out the ground of invalidity. It is claimed that the order is manifestly illegal, ultra vires and without jurisdiction and it amounts to a flagrant violation of the fundamental rights of the petitioner guaranteed under the Constitution of India. It is accordingly prayed that the record of the proceedings before the Returning Officer be sent for and directions, orders or writs in nature of mandamus, prohibition and certiorari or any of them be issued, that the nomination of Srimati Pandit be adjudged void and ineffective and that the proceedings leading up to the acceptance of her nomination papers be quashed.

4. A preliminary objection to the hearing of these petitions has been taken on behalf of the opposite-parties on the basis of Article 329 of the constitution. The provision therein contained is as follows:

"Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under

Article 327 or Article 328 shall not be called in question in any Court;

(b) 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."

It is contended by Mr. Dhaon on behalf of the Returning Officers that the acceptance or rejection of nominations by his clients are acts which form part of the election and the prohibition imposed by Clause (b) of the article takes the matters complained of outside the judicial competence of the High Court or indeed of all Courts of Law excepting the Election Tribunals.

5. Part XV of the Constitution of India wherein the prohibitory provision is placed is headed ""Elections". It begins by vesting in an election commission under Article 324(1) the power of--:

(a) superintendence, direction and control of the preparation of the electoral rolls for elections to Parliament and to the State Legislatures etc.,

(b) conduct of the aforesaid elections including

(c) the power to appoint Elections Tribunals for the decision of doubts and disputes arising out of or in connection with the aforesaid elections. The other sub-articles appended to Article 324 prescribe the method for appointment of the Commission and its constitution etc. The next article declares that no adult person shall be excluded from the electoral roll on the ground merely of religion, race, caste or sex. Thereafter Article 326 establishes adult suffrage in India and under Articles 327 and 328 Parliament and the Legislatures of the States are empowered subject to the provisions of the Constitution to make laws in respect of matters relating to or in connection with elections to the House of Parliament or to the State Legislature or Legislatures. Finally Article 329

(i) protects the validity of any law so made relating to delimitation of constituencies or allotment of seats to such constituencies from judicial challenge, and

(ii) prohibits any election from being impugned otherwise than by means of an election petition.

6. The Constitution of India came into force from 26-1-1950, and within a few months of its enforcement, Parliament enacted the first Representation of the People Act (XLIII of 1950) providing for allocation of seats in and the delimitation of constituencies for the purpose of elections to the House of the People and the Legislatures of the States, the qualifications of voters and the preparation of electoral rolls and matters connected therewith. The second Representation of the People Act was passed in July 1951 for the purpose of providing for the conduct of elections, the qualifications and disqualifications for membership of Parliament and State Legislature, the corrupt and illegal practices and other

offences at or in connection with the elections and the decision of doubts and disputes arising out of or in connection with them. By Section 80 of this later Act embodied in chapter II of Part VI which is headed "Dispute regarding elections" it was laid down that:

"No election shall be called in question except by an election petition presented in accordance with the provisions of this part."

and by Section 81(1) Parliament inter alia prescribed that an election petition calling any election in question may be presented by a candidate or an elector in such form and within such time but not earlier than the date of publication in the official gazette of the name or names of the elected candidate or candidates as may be prescribed.

7. The object underlying the procedure contained in the aforementioned sections is clear and unambiguous. It is that the conduct of elections should be left unhindered in the hands of the Election commission and the working of the election machinery should up to the stage of declaration of the election results be not arrested by judicial or as far as may be by any other process. This appears to be also the purpose behind Part XV of the Constitution which vests the superintendence, direction and control of the preparation of the rolls and the conduct of the election including the appointment of Election Tribunals, solely in the Commission save in so far only as Parliament or the State Legislatures may consistently with the provisions of the Constitution direct by appropriate laws in respect of matters relating to or in connection with elections.

8. Reading Articles 329 and 324 together it would seem reasonably clear that the expression "election" used in Clause (b) of Article 329 is intended to cover comprehensively the divers steps involved in the process of selecting a representative from the issue of a notification calling upon all the constituencies (in a general election) or particular constituencies (in bye election) to elect their representatives upto the declaration of results.

9. It was contended on behalf of the petitioners that the word "election" refers only to the process of casting votes and the declaration of results and that the proceedings which precede this process are not part of the election but are matters relating to or in connection with elections. Otherwise, it was contended, the Constituent Assembly would not have resorted to such verbiage in Articles 327 and 328 and instead of saying

""Parliament may from time to time by law make provision with respect to all matters relating to, of in connection with elections to either House of Parliament."

would simply have said

"Parliament may from time to time by law make provision for elections.,"

10. This contention ignores the fact that many things have to be done in

preparation for and in connection with elections which are not part of the actual selection by the citizens of their representatives. A whole administrative machinery has to be established Officers have to be appointed and their powers defined. It has to be determined what are elections offences and what are limits of election expenses. A reference to the various provisions of the Representation of the People Act (XLIII [43] of 1951) will show the wide range that has to be covered before elections can actually take place. It was to enable Parliament and the State Legislatures to legislate with regard to all these matters that such a wide phraseology has been used in Article 327 and 328. It does not indicate that the word "election" does not cover every part of the process of the selection of representatives.

11. It can scarcely be doubted that Article 329(b) is co-related to Article 324. The same word "election" is used and, apart from the preparation of electoral rolls and the appointment of Election Tribunals, it is only the "conduct, of all elections" (and not of all matters relating to or in connection with elections") that is vested in the Election Commission. Article 329(b) only forbids that to be challenged, except by an election petition to be disposed of by Election Tribunals appointed by the Election Commission, the conduct of which has by Article 324 been vested in the Election Tribunal. If the contention of the petitioners were to be accepted and the meaning of the word "election" in part xv of the Constitution were to be confined to the process of casting votes and the declaration of results then the conduct of everything that precedes the actual casting of votes cannot be deemed to have been vested by Article 324 in the Election Commission and Parliament and the State Legislature would be at liberty to confer upon any authority or person the power of conducting all proceedings except the actual process of the recording and the counting of votes. Such an interpretation is against the whole scheme of Part XV and would render practically infructuous the elaborate provisions of Article 324 which are designed for the purpose of setting up a wholly independent body relieved of executive and, in certain matters, even of legislative control, to conduct elections, so that they may be free and impartial and not open to any objection on the ground of their having been manipulated by the party in power. We cannot accept such a contention.

12. The power which is conferred on the Commission and the Tribunals appointed by Article 324 is exclusive and it would seem obvious when the matter is looked at in the above context that the disputes which the Tribunals must decide cannot be confined to matters relating to actual polling or casting of votes. There may be and there frequently are other kinds of disputes which may go to the root of the whole election. These disputes may not necessarily relate only to the irregularities or defects in polling but also to antecedent objectionable conduct of the rival candidates during canvassing such for an example as employment of corrupt practices or irregularities in the allotment of symbols, preparation and publication of erroneous lists of nominations or declaring valid or invalid the nominations of candidates offering themselves for election. The ground for

avoiding the selection may be bribery, undue influence, coercion or intimidation of voters by or in the interest of the rival candidate or that the result of the election was materially affected by improper rejection of nominations. Reference may be made to Section 100 Representation of the People Act of 1951 in order to find a comprehensive lists of matters which might be adjudicated upon by the Tribunal. Most of the matters mentioned therein no doubt are likely to affect the eventual casting of votes which is the culminating stage of an election. However, it cannot be denied that they arise at a very much earlier stage in the process of election and would be liable to be excluded if the restricted meaning given by the applicants to the word "election" contained in Clause (b) of Article 329 were accepted. It is plain that this would militate against the entire scheme of Part XV of the Constitution. We are clear that the disputes relating to elections based upon antecedent happenings are at much included in the prohibition as the happenings on the polling day of which many of them may be the proximate cause. We accordingly hold that the bar imposed by Clause (b) covers the entire field of election and includes the steps through which the final stage of polling is reached.

13. It has not been disputed that the general power to issue high prerogative writs conferred by Article 226 of the Constitution can be controlled and limitations on its exercise can be imposed by a subsequent appropriate provision in the Constitution in that behalf.

14. The only other point which was raised against the entertainability of the applications relates to the propriety of issuing orders which the petitioners seek. It was said for example that there being a further remedy available by way of election petitions the extraordinary remedy under Article 226 should not be granted and that the petition of Sri Hargovind Dayal Srivastava was not only liable to rejection for the reason indicated above but also because it did not disclose that the question of nomination affected his fundamental or legal rights. It is hardly necessary to examine these contentions in view of the conclusion reached above on the question of jurisdiction of the High Court to interfere with the election at this stage.

15. We allow the preliminary objection and dismiss the applications. The applicants in each case will be taxed and pay two sets of costs, one set representing the costs of the rival candidates which we fix at Rs. 100 and the other of the represented official opposite party which will be taxed at Rs. 160. The stay order dated 4-12-1951 in C. M. No. 861 of 1951 is vacated.