

(2001) 04 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No's. 7946 and 7947 of 2001 and W.M.P. No's. 11263 and 11265 of 2001

S. Janakiraman

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 324

Representation of the People Act, 1951 — Section 8, 8(1), 8(2), 8(3)

Citation : AIR 2002 Mad 5

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : V. Balasubramanian, for the Appellant; G. Rajagopalan for S. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

1. In W.P.No.7946 of 2001, the petitioner prays for the issue of a writ of declaration declaring Section 8 of the Representation of People Act, 1951 as ultra vires, illegal, void ab-initio and has to be struck down as unconstitutional.

2. In W.P.No.7947 of 2001 the petitioner prays for the issue of a writ of certiorari to call for the records of the second respondent, Chief Election Commissioner, dated 28.8.1997 and to quash the same.

3. The writ petitioner was a Scale-1 Officer of the State Bank of India, who had served nearly for three decades. During October, 1990 when he was stationed at the Air Port complex extension counter, State Bank of India, there was a sudden inspection by the Enforcement officials and as an outcome of the said inspection, a case was registered against, the petitioner by Enforcement officials for alleged violation of certain provisions of the Foreign Exchange Regulation Act, 1973. Pursuant to the complaint, the petitioner was convicted and a fine of Rs. 4,000 was imposed on him in C.C.No.790 of 1993.

4. According to the petitioner, he aspires to contest in the ensuing election to the Legislative Assembly of Tamil Nadu, proposed to be held on 10.5.2001 and that he intends to contest as an independent candidate.

5. According to the petitioner, the Representation of People Act, 1951 had prescribed qualifications and disqualifications of persons for election as members of the Legislative Assembly.

6. Section 8 of the Act mandates that persons convicted for certain offences were to be disqualified. u/s 8(1) of the Act, mere conviction was sufficient in respect of certain offences. But u/s 8(2) of the Act. Persons who had been sentenced for not less than six months shall be disqualified from the date of such conviction as regards certain other types of offences. There was yet another category of offences for which the minimum requirement was conviction of not less than two years u/s 8(3). Therefore, according to learned counsel for the petitioner, there was no rhyme or reason for the Parliament fixing different periods of conviction and imprisonment for determining the disqualification. In the case of the petitioner, he was only imposed with a penalty of Rs. 4,000 but being a conviction under the Foreign Exchange Regulation Act, he was disqualified u/s 8(1) of the Act and therefore, there was no reasonable basis for such discrimination as provided u/s 8(1), 8(2) and 8(3) of the Representation of the People Act, 1951 and hence the said provisions should be, declared as legal and unconstitutional.

7. Without much discussion, it can be stated that the issue is already covered by the Judgment of the Supreme Court in Raghbir Singh v. Surjit Singh, 1994 Suppl (3) S.C.C. 162. In that case, the very issue was raised for consideration and the Supreme Court held that there was no discrimination on the ground that different sub-sections provided for longer periods of conviction for disqualification. The Supreme Court held that the category of persons covered by different sub-sections were different and such a differentiation was permissible.

8. Mr. G. Rajagopalan, learned counsel appearing for the Election Commission, has also brought to my notice a judgment of a Division Bench of this Court in W.P.No.6506 of 2001 dated 20.4.2001. holding that the prayer to declare Section 8(2) of the Representation of People Act, 1951, as unconstitutional cannot be sustained.

9. Therefore, I am inclined to hold that H.P.No.7946 of 2001 is liable to be dismissed.

10. As far as W.P.No.7947 of 2001 is concerned, the petitioner seeks to quash the instructions issued by the Election Commission on 28.8.1997, The said instructions relate to a Circular issued in the Commission's Order No.509 dated 28.3.1997. The said order of the Commission had been issued in the context of the participation of, the accused persons who have been convicted for an offence, in the electoral process as candidates and as regards the effect of the bail or appeal.

11. I fail to understand as to how the said circular can have anything to do with the case of the petitioner considering that, it is not the case of the petitioner that he has either filed any appeal or bail. Nonetheless the petitioner has sought for quashing the order on the ground that it is not enforceable in law. In this context, learned counsel wants to rely on the judgment of the Supreme Court in Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, . Reliance is placed on the observation that the instructions issued by the Election Commission does not have the force of law and therefore, not binding on the other authorities who are subordinates: to the Election Commission.

12. I am unable to agree with the contentions raised by learned counsel for the petitioner, in this context/ a constitution Bench of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, had categorically held that the powers of the Election Commission under Article 324 has to be construed widely and such orders would operate in areas left unoccupied by legislation. Therefore, such directions issued by the Election Commission would be undoubtedly binding on the, Returning Officers. The reliance placed by learned counsel for the petitioner on the judgment of the Supreme Courts in Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, , is not correct. In fact the Supreme Court has observed as follows in that case itself in paragraph 22 of the judgment as follows:-

"The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out."

13.The issue as to what is the remedy in the case of violation of such instructions is a different matter and that issue is not raised before me. Learned counsel only contends that such instructions do not have the force of law and need not be obeyed. I do not agree having regard to the observations of the Supreme Court, in both the judgments cited above, Therefore, there can be no doubt over the fact that the instructions issued by the Election Commission are binding on their subordinates"

14. Therefore, in the result, I am unable to sustain the prayer as made by the writ petitioner and the writ petitions are dismissed. No costs. Connected W.M.Ps are dismissed as unnecessary.