

(2000) 02 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No"s. 5453 and 5454 of 2000 connected with Writ
Petition No"s. 5467, 5496, 5517 to 5519, 5597, 5603, 5604, 5649,
5681 to 5683, 5684, 5497, 5498, 5670, 5911, 5936, 5753, 5754,
5979, 6111, 6078, 6108, 6109, 6096, 5881, 6105, 6127, 6124, 6170

S.A. Aswathanarayana and Another

APPELLANT

Vs

The Returning Officer, Somanahalli Grama Panchayat,
Bangalore Rural District and Others

RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Constitution of India, 1950 — Article 243O, 329
Karnataka Panchayat Raj Act, 1993 — Section 15, 19
Representation of the Peoples Act, 1951 — Section 80

Citation : (2000) ILR (Kar) 4229 : (2001) 1 KarLJ 108

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri. Aravind Kumar, Sri R.P. Somashekaraiah, Smt. Sumangala A. Swamy, Sri M.H. Sawkar, Sri K. Nageshwarappa, Sri D.S. Hosmath, Sri D.L. Jagadeesh, Sri K. Srinivasa Gowda, Sri F.V. Patil, Sri R.B. Deshpande, Sri B.G. Sridharan, Sri V.T. Rayareddi, Sri K. Prasad Hegde, Sri B.S. Hadimani, Sri N. Devadas, Sri K.N. Subba Reddy, Sri Kaleemulla Shariff, Sri M. Shivaprakash, Sri H.V. Rajaram, Sri Veeresh B. Patil, Sri K. appa Rao, Sri K.T. Mohan, Sri P.S. Manjunath, Sri Madanmohan M. Khannur, Sri P.H. Gotkhindi, M/s. A.C.C. Associates, for the Appellant; Sri K.N. Putte Gowda, Government Advocate, Sri Bharam Gowda, High Court Government Pleader, Sri P.G.C. Chengappa, for the Respondent

Judgement

1. The short but all important question that falls for consideration in these petitions is whether this Court can in exercise of its jurisdiction under Article 226 of the Constitution interfere with the current elections to the Grama Panchayats being held under the Karnataka Panchayat Raj Act, 1993. Nomination papers filed by the petitioners having been rejected by the Returning Officers concerned, they have questioned the correctness of the said orders and sought directions permitting them to contest the elections. Grievance is also made in some of

these petitions against what is described as improper acceptance of the nomination papers of the candidates. The burden of arguments advanced at considerable length by learned Counsel for the petitioners was that since the rejection orders were illegal, this Court could intervene to set aside the same and issue appropriate consequential directions. Reliance was placed upon a Single Bench decision of this Court in *Khatib, Irshad Ahmed, Mohammed Hussain and others Vs. The Returning Officer for Election to the Shishuvinalhal Grama Panchayat*, , in support of the contention that this Court can interfere with the election process even at an intermediate stage and before the election process is completed.

2. Article 243-O of the Constitution of India introduced by the Constitution (Seventy-third) Amendment Act, 1992 reads as under:--

"243-O. Bar to interference by Courts in electoral matters.--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 243-K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

3. The above is in pari materia with Article 329 of the Constitution, which bars interference by Courts in elections to the Parliament and State Legislatures. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , one of the questions that fell for consideration was whether a matter which had the effect of vitiating the election could be brought up before the Court at an intermediate stage. The Court summarised the scheme underlying the conduct of elections and the manner in which the validity thereof could be examined in the following words.--

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the election; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be

made the subject of a dispute before any Court while the election is in progress".

4. To the same effect is the decision of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , where their Lordships declared that since Article 329 started with a non obstante clause, the provisions of Article 226 stood pushed out in matters, where the validity of an election was the subject-matter of the challenge before the Court. The Court observed:--

"There is a non obstante clause in Article 329 and, therefore, Article 226 stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed out but left unexplored in *Ponnuswami's* case, *supra*".

5. The Court also declared that the word "election" used in Article 329(b) covered the entire process from the issue of the notification under the Representation of the People Act, till the declaration of the results u/s 66 thereof and reiterated that the scheme of elections as under the Constitution and the Representation of the People Act provided for only one remedy in the form of an election petition to be presented after the election is over and that there was really no remedy at any intermediate stage. Subsequent decisions of the Apex Court in *Lakshmi Charan Sen v A.K.M. Hassan Uzzaman and Inderjit Barua and Others Vs. Election Commission of India*, , reaffirmed the ratio of the decisions in *N.P. Ponnuswami* and *Mohinder Singh's* cases, *supra*.

6. In *Election Commission of India Vs. Shivaji and Others*, , while dealing with a similar question, their Lordships held that the non obstante clause contained in Article 329 excluded the jurisdiction of the High Court to entertain a petition under Article 226 questioning the validity of any election on whatever grounds. The following passage from the decision is apposite.--

"In view of the non obstante clause contained in Article 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Article 226 of the Constitution is taken away. The word "election" has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329(b) occurs".

7. There is therefore no gainsaid that the jurisdiction of the High Court to interfere with the ongoing election process at an intermediate stage stands excluded not only in regard to Parliamentary and Assembly elections as per Article 329, but even in regard to Panchayat Elections in terms of Article 243-O of the Constitution. The only remedy available to the aggrieved persons against

any order made at an intermediate stage or the ultimate result of the election is by way of an election petition under the Representation of People Act for Parliamentary and Assembly elections and Section 15 of the Karnataka Panchayat Raj Act read with Section 19 thereof in the case of elections to the Grama Panchayats. Improper acceptance or rejection of a nomination paper being one of the grounds on which such petition can be maintained, the petitioners can, if so advised, question the validity of the election in accordance with the provisions of the Act at the appropriate stage.

8. I must at this stage deal with two contentions that were strenuously urged before me by Mr. Aravind Kumar, Counsel appearing for some of the petitioners. It was argued that the decision of the Supreme Court in Ponnuswami's case, *supra*, itself permitted interference by the Court under Article 226 in the special circumstances. The cases of the petitioners, according to the learned Counsel, fell in that category and could therefore be dealt with on their merits regardless of the bar contained in Article 243O. The judgment in Ponnuswami's case, *supra*, does not identify the special situations, in which interference under Article 226 may be permissible. This aspect was noticed by their Lordships even in Mohinder Singh's case, *supra*, also. The decision in Mohinder Singh's case and Shivaji's case, *supra*, do not however make any exception to the rule and unequivocally declare that the jurisdiction of the High Courts under Article 226 stands excluded. In the light of the said pronouncements, it is not possible to hold that the prohibition against the interference by the Courts is subject to any exception in situations exceptional or otherwise.

9. There is in any event, nothing exceptional about the rejection of the nomination of the petitioners, which may make it necessary for this Court to interrupt the process at this advanced stage. Just because according to the petitioners, the rejection or acceptance orders are unjustified or contrary to the rules on the subject, does not make the rejection unique in any way nor does the throw up an exceptional situation. Ponnuswami, *supra*, it is noteworthy, was itself a case where the nomination papers had been rejected and a writ petition filed against the order of rejection dismissed by the Madras High Court on the ground that its jurisdiction was barred under Article 329 of the Constitution. Dismissing an appeal against the order passed by the High Court, their Lordships observed.--

"Under the election law, the only significance which the rejection of a nomination paper has, consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. It follows that necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special

Tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election Tribunal which is to be an independent body, at the stage when the matter is brought up before it. Therefore, questioning the rejection of a nomination paper is "questioning the election" within the meaning of Article 329(b) of the Constitution and Section 80 of the Representation of the People Act, 1951".

10. It was argued that judicial review of administrative or statutory orders being one of the basic features of the Constitution, the prohibition against interference by Courts under Article 226 amounted to violating the inviolable basis structure. Reliance in support was placed upon the decision of the Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, . That was a case, in which a constitution Bench of the Supreme Court was examining the Constitutional validity of clause (2)(d) of Article 323-A(3) and (3)(d) of Article 323-B of the constitution. The Court held that the said two provisions, to the extent the same excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, were unconstitutional. The jurisdiction of the High Courts under Article 226 and that of the Supreme Court under Article 32 being an inviolable basic feature of the Constitution, the same could not, declared the Court, be excluded even when other Courts and Tribunals may be constituted to perform a supplemental role. The decision does not, in my opinion, have any bearing upon the questions that arise for consideration before me. The judgments of the Supreme Court in the cases referred to by me earlier no longer leave any room for equivocation. That apart judicial review of the decision under challenge is not in reality forbidden. All that the constitutional scheme envisages is that any such review should stand deferred till after the election process is completed. It is not therefore correct to say that Article 243-O offends the basic structure theory. The argument if I may say so has been made rather non-seriously and without laying a foundation in the writ petitions for the same. The absence of a challenge to the provisions of Article 243O of the Constitution and a prayer for striking down the same bears ample testimony to that statement.

11. Reliance was also placed on behalf of the petitioners upon the decision of the Supreme Court in *K. Venkatachalam Vs. A Swamickan and Another*, , in support of the submission that the High Court could exercise its jurisdiction under Article 226 even when the validity of the election had not been challenged in terms of an election petition as required by Article 329(b) of the Constitution. A careful reading of the said decision would however show that the Court was not in that case dealing with the exclusion of the jurisdiction of the High Court in electoral matters. The Court was examining whether a person, who was not an elector in the electoral roll for a constituency but was all the same elected on account of impersonation could be allowed to continue as a member. Since no election petition was filed against his election, the question was whether such a person

who lacked the basic qualification prescribed under Article 173(c) read with Section 5 of the Representation of People Act could be allowed to remain as a member. It was in those circumstances that the High Court had interfered and restrained the member from functioning as such. The Supreme Court held that the bar contained in Article 329(b) will not apply in cases falling under Articles 191 and 193 of the Constitution when the whole election process was over. The fact situations in the instant cases are totally different. The ratio of the said decision cannot therefore be extended to the petitioners.

12. Time now to refer to the decisions of this Court in *Fakirappa Yellappa Kali v Deputy Commissioner, Dharwad and Others* and *Khatib, Irshad Ahmed's case*, supra, reliance whereupon was placed by Counsel for the petitioners. In *Fakirappa's case*, supra, a Single Bench of this Court was examining the validity of an order rejecting the nomination papers of the petitioner as a member of the Taluk Development Board under the Karnataka Village Panchayats and Local Boards Act, 1959. One of the issues that arose for consideration was whether a writ petition under Article 226 challenging rejection of nomination papers was barred on account of the availability of an alternate remedy under the Act. This Court held that the remedy available under the Act was neither adequate nor equally efficacious and that a petition challenging the rejection order was maintainable. While holding so, the Court drew a distinction between elections to the State Legislatures and Parliament and those to the local bodies under the Act. The decision of the Supreme Court in *Mohinder Singh Gill's case*, supra, was distinguished on the ground that Article 329 of the Constitution prohibited interference with the election process insofar as election to the Parliament and the Legislatures are concerned. The elections to the Parliament and Legislative Assemblies were conducted by the Election Commission which was not so in the case of local authorities. The following paragraph from the decision brings out the distinction, which the Court drew between cases where there was a Constitution prohibition and those, where there was none:

"The administration of the entire election process to the State Legislatures and Parliament is entrusted to an independent Commission constituted under Article 324 of the Constitution. Article 329 of the Constitution prohibits any and every kind of pre-election challenge including the delimitation of constituencies or post-election challenge against any step taken in connection with those elections except the method of challenge permitted by means of an election petition which can be filed only after the elections. Therefore, there can be no similarity in all respects between the election to the State Legislature and the Parliament entrusted to the Election Commission and to the elections to local authorities under the Act".

13. With the introduction of Articles 243O and 243K, the distinction between an election to the Parliament or to the State Legislature on the one hand and Panchayats or Municipalities on the other has disappeared. Like Article 324, the superintendence, direction and control of the elections to the Panchayats is now

vested in State Election Commission. Article 243O corresponding to Article 329 applicable to Parliamentary and Legislative Assembly Elections, bars interference by the Courts in the electoral process relating to Panchayats. The distinction pointed out by this Court in Fakirappa's case, supra, therefore no longer exist. The said decision cannot therefore be seen as an authority for the proposition that the Court can even in the changed scenario interfere with the ongoing election process or set aside an order rejecting the nomination papers of a candidate.

14. In Khatib, Irshad Ahmed's case, supra, Mallikarjuna, J., had an occasion to examine a similar question. The Court came to the conclusion that since there was no remedy by way of an election petition u/s 15 of the Karnataka Panchayat Raj Act at the intermediate stage, a petition under Article 226 challenging a rejection order was maintainable. The decisions of the Supreme Court in Mohinder Singh's case, supra and Election Commission of India's case, supra, do not appear to have been brought to the notice of the Court. The law declared by the Supreme Court being the law of the land, I have no option but to fall in line. Since the view expressed in Khatib, Irshad Ahmed's case, supra, does not conform to that taken in the decisions aforementioned, I can do no more than regretfully ignore the same on the doctrine of per incuriam.

15. In the result, these writ petitions fail and are hereby dismissed reserving liberty to the petitioners to seek redress in proper election petitions after the election process is taken to its logical conclusion. No costs.