
(2002) 04 UK CK 0026
In the Uttarakhand High Court
Case No : Election Petition No. 1 of 2002 (D)

Shams Khwaja

APPELLANT

Vs

Election Commission of India and Another

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Constitution of India, 1950 — Article 329

Representation of the People Act, 1951 — Section 81, 81(1), 86(1)

Citation : (2003) 2 UC 941 : (2003) 1 UD 198

Hon'ble Judges : P.C. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Verma, J.—This election petition, calling in question the election to the Legislative Assembly Constituency No. 29, Kotdwara State of Uttaranchal held on 14-2-2002 came up today before me. The petitioner, voter of Kotdwar legislative constituency No. 29 of Uttaranchal State unsuccessfully contested the election held in February 2002 and lost it to the respondent No. 2. Disappointed at the result but a busy and active social worker on his own showing, he instituted this Election Petition through a "special messenger" by sending it to the Registrar of the High Court along with letter which reads as under :

"To

The Registrar,

High Court of Uttaranchal at Nainital.

Sir,

I am hereby presenting through a special messenger an Election Petition wherein I am the Petitioner-in-Person.

I undertake to cure any defects that might be found in the petition by the Registry.

Since the election results were announced on the 24th of February, the instant matter becomes time barred beyond the 10 of April 2002. Furthermore I am involved in the relief & rehabilitation work in Gujarat and thus have been unable to present this petition personally.

Kindly find enclosed herewith five copies of the said Election Petition and security for costs tendered through means of a pay order.

I would appreciate if you could direct someone in your staff to acknowledge receipt of this letter.

Thanking you & with deep regards,

Yours faithfully,

Sd/- (illegible)

10-4-2002 4.30 a.m.

I am special messenger of Shams Khwaja, Advocate.

Sd/-

Ajay Kukreti

Dhanesh Farm, Kotdwara.

10-4-2002."

2. The Registrar while placing it before the Hon"ble Chief Justice for nomination of a Judge for the trial of the election petition noted that the petitioner was not present himself before the Registrar of the High Court and the petition was presented through special messenger whose name is Ajay Kukreti S/o Sri Nand Kumar, R/o Dhanesh Farm, Kotdwara (District-Pauri). The security as per rule was to be deposited in the Account Section of the High Court but the security was deposited through Bank Draft worth Rs. 2.250/- and the affidavit has been sworn before the Oath Commissioner. Delhi High Court. The note of the Registrar and the nomination of the Hon"ble Chief Justice is as under :--

"Hon"ble the Chief Justice

The election petition under the Representation of the People Act Shams Khwaja v. Election Commission of India has been presented before me by Sri Ajai Kukreti S/o Sri Nand Kumar, R/o Dhanesh Farm, Kotdwara, District Pauri today. This is first election petition filed in this High Court. There is no other petition Under Sections 80/81 of the Representation of the People Act challenging the election of any candidate of the said constituency. The objections/defects have been pointed out in the office report as well as in the report of the Undersigned. May like to nominate a Bench for hearing of the election petition.

Sd/-

Registrar

10-4-2002

Sd/- Chief Justice

10-4-2000."

3. The question before this Court at the threshold is as to whether the present election should be dismissed under Sub-section (1) of Section 86 for non-compliance of the provisions of Section 81 of the Representation of the People Act 1951 (hereinafter referred to as the Act).

4. Article 329(b) of the Constitution of India sanctifies the peoples will to elect their own representatives to provide the governance from the country's highest law making bodies the Parliament and either House of a State Legislature, it also restricts the scope of challenge to such an election only by a formal "election petition presented to such an authority and in such manner as may be provided for by or under any law made by the appropriate legislature"

5. Thus, the right to challenge an election is a right provided under Article 329(b) of the Constitution of India which provides that 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.

6. The Parliament has enacted the Representation of the People Act, 1951 (herein- after referred as the Act) and Part VI of the Act deals with regarding election, Chapter II provides presentation of election petitions to the High Court while Chapter III for trial of election petitions. The right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(b) of the Constitution of India.

7. Chapter II of the Act begins with Section 80 which provides for Election Petitions as un-der :--

"80. Election petitions.-- No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

8. Section 81 of the Act provides for presentation of Election Petitions as under :--

"Presentation of petitions.-- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in (Sub-section (1)) of Section 100 and Section 101 to the (High Court) by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of these two dates.]

Explanation :-- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not."

9. Chapter III of Part VI of the Act deals with the trial of the election petitions and begins with Section 86 trial of election petitions. Sub-section (1) of Section 86 provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

10. Explanation appended to Sub-section (1) of Section 86 of the Act provides that an order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under Clause (a) of Section 98.

11. A conjoint reading of Section 80, Section 81(1) and Section 86(1) of the Act in the light of Article 329(b) of the Constitution of India it is clear that the provisions contained in Sub-section (1) of Section 81 of the Act is mandatory in nature as u/s 80 of the Act it has been provided that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. Section 86 of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 81 provides the presentation of the election petition and if the election petition is not presented according to provision given under Sub-section (1) the petition is liable to be dismissed.

12. The Hon"ble Apex Court in Satya Narain Vs. Dhuja Ram and Others, held as under :--

"The right to challenge an election is a special right conferred under a self-contained special law and the Court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. An election petition cannot be equated with a plaint in a civil suit."

13. Thus a strict compliance of provisions of Section 81 of the Act is mandatory and an election petition must be presented to the High Court by the election petitioner in person.

14. Legislative history of Section 81 if examined, the legal position regarding the presentation of election petition by election petitioner on person is more clear.

15. Section 81 originally stood as under :--

"Section 81(1). An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 to the Election Commission by any candidate at such election or any elector within forty five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidates at the election and the dates of their election are different the later of those two dates.

Explanation :-- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) An election petition shall be deemed to have been presented to the Election Commission.

(a) When it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf.

(i) by the person making the petition, or

(ii) by a person authorized in writing in this behalf of the person making the petition or

(b) When it is sent by registered post or is delivered to the Secretary to the Commission or the officer so appointed.

(3) Every election petition shall be accompanied by as many as copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

16. After the amendment by Act No. 47 of 1966, the Sub-section (2) has been taken away which earlier contained manner of presentation of election petition before the Election Commission. Under Sub-section (2) of Section 81 of the Act before its repeal the election petition was to be presented by election petitioner himself or by his authorized person in writing in that behalf or it could be sent through registered post but the Legislatures have deliberately withdrawn the aforesaid manner of presentation. The intention of the legislature is clear that the legislature did not intend to provide for presentation of election petition in the manner contained in Sub-section (2) before the High Court also. The legislature strictly made the presentation of election petition to be made in accordance with Sub-section (1) of Section 81 of the Act.

17. It is settled rule of interpretation that where expressed provisions are made by a statute the doctrine of implied power cannot be invoked to supply the provision which had been deliberately omitted. (See Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, .

18. There is yet an other aspect of the issue; as mentioned herein before Section 81 which enables a defeated candidate or voter to challenge the validity of an election by prescribing the mode of its presentation lays down that, "(1) an election petition calling in question..... by any candidateor any elector,....."

19. Meaning of word "by" is given in the Book Corpus Juris Secundum, Vol. 12 A that,

"In General

It has been observed that "by", in its primary, or primitive, sense, expresses relation to place, but that its import is more indefinite when used to express the relation of time, and that by various remote and obscure analogies and casual associations its meaning is variously modified, according to the context or the intention and purpose of its use. Also, as shown herein below, the word is commonly used as indicating or having reference to agency or instrumentality, authority or cause, manner, and measure or rate. As a word of exclusion, it has been defined as meaning besides. In expressions involving comparison, the term "by" is defined to mean to the amount of or indicating an amount.

Manner

In this application, the word "by" is used to indicate something that, forms a setting or condition or that constitutes a manner, often with an added sense of means",

20. The use of word "by" under Sub-section (1) of Section 81 of the Act clearly provides manner for presentation of an election petition and further indicate something that forms a setting or condition or that constitutes a manner. Here word by a candidate means, applying the aforesaid meaning quoted above, that the election petition must be presented by candidate himself.

21. A question arose before the Apex Court as to whether the election petition presented to the registry by advocate's clerk in the immediate presence of petitioner was valid presentation? In the case of Sheodan Singh v. Mohan Lal Gautam the Hon"ble Apex Court in its judgment reported in Sheo Sadan Singh Vs. Mohan Lal Gautam, held it to be substantial compliance as at the time of presentation of election petition the petitioner was present. Para 4 of the judgment reads as under :--

"The High Court has found as a fact that the election petition was presented to the registry by an advocate's clerk in the immediate presence of the petitioner. Therefore, in substance though not in form, it was presented by the petitioner himself. Hence the requirement of the law was fully satisfied."

22. The meaning of the word "by" as quoted above from the book Corpus Juris Secundum Vol. 12 A is in conformity with the view taken by the Apex Court. Therefore, compliance of Sub-section (1) of Section 81 of the Act the election petition must be presented by calling in question by petitioner himself or for substantial compliance he must be present and in his presence the petition may be passed on to the Court.

23. Taken in the totality and examined from all conceivable angles one cannot thus escape the conclusion that the Law does not permit any other mode of presentation except the one prescribed by Section 81 i.e. by the petitioner himself and certainly not through a special messenger as chosen by the petitioner in this case as the pretext of his being an active social worker. There is no gainsaying that when law prescribes a particular act to be done in a specific

and precise manner, it has to be done only in accordance with that specific and precise manner and certainly in no other way.

24. The Apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and Others, rejected the view taken by the Patna High Court and interpreted Rule 24 of Chapter XXI-E read with Rule 13(iii) of Chapter If Part I of the High Court Rules in conformity with Section 81 and held as under :

"The plain phraseology of Rule 6 read with the proviso thereto makes it abundantly clear that formal presentation of an election petition can be made only to the Designated Election Judge in the open Court and "if on any Court day the Judge is not available on account of temporary absence or otherwise, the petition may be presented before the Bench hearing civil applications and motions". Thus, the High Court Rules do not prescribe any other mode of presentation of an election petition except in the open Court either before the Designated Election Judge or before the Bench hearing civil applications and motions, where the Designated Election Judge is not available on account of temporary absence or otherwise. The presentation of an election petition to the Registrar has not been prescribed as a mode of presentation of an election petition by the rules. An election petition is not included in any of the clauses of Rule 13. The learned Designated Election Judge rightly found that presentation of election petition to the Bench Clerk on 16-5- 1995 at 4.05 p. m. was not a proper presentation under the rules. In the absence of any provision in the rules, presentation of an election petition to the Registrar would not stand at any better footing than the presentation of the petition to the Bench Clerk. An election petition being a purely statutory remedy, nothing is to be read into the rules- nothing is to be presumed-which is not provided for in the rules. Rule 24 (supra) cannot advance the case of the returned candidate any further because of the absence of mention of an election petition in Rule 13 (supra).

In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of the Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or Rules thereunder and, therefore, an election petition could, under no circumstances be presented to the Registrar to save the period of limitation. It is well-settled salutary principle that if a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in other manner (See with advantage; AIR 1936 253 (Privy Council) Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; State of Uttar Pradesh Vs. Singhara Singh and Others, . An election petition under the rules could only have been presented in the open Court upto 16-5-1995 till 5-15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation."

25. In view of the above discussed legal position and backdrop of facts noticed above, there is no escape from the conclusion that there was no presentation of

the election petition in accordance with provisions of Section 81(1) of the Act. Even today i.e. 15-4-2002, none is present before the Court when the case is listed before me.

26. Therefore, this petition is liable to be dismissed under Sub-section (1) of Section 86(b) of the Act. The petition is dismissed accordingly .