

(1957) 07 AHC CK 0018
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1877 of 1957

Sita Ram Khemaka

APPELLANT

Vs

K.K. Banerji and Others

RESPONDENT

Date of Decision : 30-07-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 225, 226, 227, 233
Representation of the People Act, 1951 — Section 116A, 86

Citation : AIR 1958 All 137

Hon'ble Judges : V. Bhargava, J; B. Dayal, J

Bench : Division Bench

Advocate : S.N. Misra and Kashi Nath, for the Appellant;

Final Decision : Dismissed

Judgement

V. Bhargava, J.—The petitioner Sri Sita Ram Khemka has prayed for the issue of a writ of prohibition under Article 226 of the Constitution restraining opposite party No. 1, Sri K. K. Banerji, constituting the Election Tribunal at Allahabad, from exercising his jurisdiction and from proceeding with the decision of the election petition presented by the petitioner. By the election petition, the petitioner challenged the election of opposite parties Nos. 2 and 3, Sri Jawahar Lal Nehru and Sri Nasuriadin.

The election petition has been entrusted by the Election Commission for decision to opposite party No. 1, appointing him as Election Tribunal for the trial of the petition of the petitioner. A copy of the notification by which the opposite party No. 1 was appointed has been filed today before us with a supplementary affidavit which has been filed by the petitioner in order to elucidate a point taken on his behalf to challenge the proceedings before opposite party No. 1.

2. The first two points that have been urged by learned counsel for the petitioner as two separate points can best be dealt with together as one single point. It has been alleged on behalf of the petitioner that three different election tribunals are

functioning at Allahabad in order to hear election petitions. The persons appointed to the three election tribunals are Sri K. K. Banerji, retired Judge of a High Court, Sri P. K. Kaul, retired Judge of a High Court, and Sri G. D. Sahgal, a District Judge, as defined in Section 86 of the Representation of the People Act, 1951, as amended upto date.

The two points which have been urged by learned counsel arising out of the above circumstance are firstly that there has been discrimination inasmuch as two of the tribunals are constituted by ex-Judges of High Courts, whereas one is constituted by a District Judge; and secondly that by appointing three different tribunals at Allahabad discrimination has been brought about between the petitioners in the various election petitions which have been entrusted to the different tribunals. The contention was that for hearing of the election petitions at one place there should have been only one single tribunal, so that there could be no discrimination between the various persons who filed election petitions triable at the same place.

3. The first point raised by learned counsel based on the fact that some tribunals are constituted by ex-Judges of High Courts whereas others by District Judges has to be examined in two different aspects. The first aspect is whether the difference in the qualifications of the individuals constituting the tribunals can at all be considered to bring about discrimination which would be hit by the provisions of Article 14 of the Constitution, and the second is whether, even if this does amount to discrimination, that discrimination is based on any reasonable classification which would be justified in view of the purpose for which the tribunals are constituted.

4. u/s 86 of the Representation of the People Act, 1951, an election tribunal is to consist of one single member who must ordinarily be appointed out of the list of District Judges maintained by the Election Commission after obtaining that list from the High Court of each State. Then there is a proviso that, if the Election Commission considers it expedient so to do, it may appoint a person who has been a Judge of a High Court as a member of the tribunal.

It is, however, to be noticed that, whoever be the individual appointed as a member of the tribunal, the powers which are exercised and the functions which are discharged by the various tribunals are identical. Whenever a number of individuals have to be appointed to discharge any particular function, the human factor that no two individuals can be exactly alike and quite identical must always intervene.

Choice of individuals involves within it the differences that are bound to arise because of the differences that exist between different human beings. No two identical individuals can be found who would have identical qualifications and identical temperament, etc. In our opinion, what Article 14 of the Constitution contemplates is merely a right that cases of exactly similar nature must be tried by Courts or tribunals exercising the same powers and discharging the same

functions but does not envisage that even the individuals appointed to function as tribunals must be exactly similar.

Even for disposal of criminal cases and suits all over India, a number of Courts exercising concurrent jurisdiction have to be appointed within the same area. No one can claim that all cases arising in the same area and of the same nature must be tried by one single presiding officer and that the cases should not be distributed between various Courts. Similarly, High Courts are constituted by a number of Judges. For disposal of work in the High Courts, Judges sit singly as well as in Benches.

Every day single Judges as well as two-Judge Benches sit for hearing of cases. But litigants in similar type of cases cannot claim that all their cases must be heard by the same single Judge or by the same Bench constituted by the same individual Judges. The right that is recognised by the Constitution merely is that all similar cases must be heard by a particular tribunal or Court exercising the same jurisdiction and the same powers and discharging the same functions.

Due to the impossibility of having identical human beings, whenever a question of discrimination is examined, all that is taken into consideration is whether cases of a particular type are done by tribunals which exercise the same powers and discharge the same functions, whereas the identity of the individuals who constitute the tribunals cannot be treated as a factor which brings about discrimination.

Consequently, in the present case the fact that the presiding officer of some of the tribunals are District Judges whereas others are retired Judges of High Courts cannot be said to bring about any discrimination which would be in violation of the provision of Article 14 of the Constitution.

5. In the alternative, the second aspect that has to be examined is whether by the appointment of District Judges for trial of some election petitions and of retired Judges of High Courts to try other election petitions, the discrimination, if any at all, which is brought about, is based on any reasonable classification. For the purpose of dealing with this question, we called upon learned counsel for the petitioner to file a supplementary affidavit indicating in what manner the election petitions had been entrusted to the different tribunals.

In the supplementary affidavit filed by learned counsel on behalf of the petitioner, it is stated that, in respect of election petitions which had been filed against non-Congress candidates challenging their election, the Election Commission has appointed an election tribunal consisting of the Additional District Judge of Allahabad; whereas in respect of petitions against the election of successful Congress candidates who are now State and Central Ministers, retired High Court Judges have been appointed as election tribunals.

This assertion in the affidavit does not give a complete picture of the manner of appointment of the election tribunals. It mentions election petitions against non-

Congress candidates and election petitions against those Congress candidates who are now State and Central Ministers. There is no mention at all of election petitions against Congress candidates who are not State or Central Ministers.

It appears to us that there could be two possible classifications in appointing District Judges and retired Judges of High Courts as members of the election tribunals. One is that, for the trial of all election petitions against non-Congress candidates, the tribunals consist of District Judges, whereas for trial of election petitions of Congress candidates the tribunals consist of retired Judges of High Courts.

The other alternative is that the election petitions against all candidates whether they belong to the Congress or to other parties were entrusted to District Judges except those candidates who have now been appointed as State or Central Ministers, in whose cases the election petitions have been entrusted to tribunals constituted by retired Judges of High Courts. From the information that was available to us as a result of scrutiny of the various notifications appointing election tribunals that could be produced before us, it appears to be likely that the second classification mentioned above has very probably been adopted by the Election Commission.

This means that the Election Commission has entrusted to election tribunals constituted by retired Judges of High Courts all election petitions against State and Central Ministers whereas all other election petitions have been entrusted to tribunals constituted by District Judges. If this be so, it appears to us that the classification made by the Election Commission is not so discriminatory in nature as to be hit by the provisions of Article 14 of the Constitution.

A discretion was granted to the Election Commission u/s 36 of the Representation of the People Act, 1951, either to appoint District Judges as members of election tribunals or retired Judges of High Courts. This discretion under the Representation of the People Act given to the Election Commission is clearly in conformity with the powers vested in the Election Commission to appoint election tribunals under Article 324 of the Constitution. This Article itself envisages appointment of more than one election tribunal and vests the power of appointing tribunals in the Election Commission without any limitation.

The Parliament, when exercising its power of legislation on the subject of elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President, as well as the subject of the Election Commission, passed the Representation of the People Act, 1951, and laid down that the power of appointment of election tribunals should vest in the Election Commission, so that the Act should be in conformity with the provisions of Article 324 of the Constitution.

All that the Legislature further did was to indicate the qualifications of individuals who can be appointed as members of the election tribunals. It was in exercise of this power that the Election Commission chose to appoint District Judges for trial

of certain election petitions and retired Judges of High Courts to try other election petitions. It seems to us that in exercising this discretion, the Election Commission kept in view the circumstance that, under Article 233 of the Constitution appointment, posting and promotion of District Judges in a State are to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to that State.

This provision of the Constitution indicates that District Judges for purposes of appointment, posting and promotion are directly within the control of the State Governments. The I State Governments work in collaboration with the Central Government and it may be that the Election Commission considered it advisable that, where an election petition was directed against a Central or State Minister it would not be expedient to appoint a District Judge as the member of the election tribunal as he would be directly under the control of the Ministers of the State Government in view of the provisions of Article 233 of the Constitution.

The Election Commission may, therefore, have considered it more expedient that election tribunals appointed for trial of election petitions against Central or State Ministers should be constituted by retired Judges of High Courts who would not be under the control of a State Government for the purpose of appointment, posting and promotion. It is, therefore, not possible to hold that in making appointments in this manner the classification adopted by the Election Tribunal was unreasonable or that it was not at all related to the purpose for which the various election tribunals were being appointed.

This aspect of the case of course need not have been considered in view of our decision above that the differences amongst the individuals appointed for the purpose of constituting the tribunals are not to be treated as bringing in any discrimination at all when all tribunals exercise the same powers and discharge the same functions in all cases. But even in the alternative this contention raised by learned counsel fails and has to be rejected.

6. The second argument that all petitions at Allahabad should have been entrusted to one single tribunal also clearly has no force. Article 324 of the Constitution, as we have mentioned above, itself contemplates the appointment of more than one election tribunal to deal with election petitions. It does not contain any indication that, in appointing election tribunals, the power of the Election Commission is limited to appointing only one election tribunal to function within one area. We have already indicated above that no citizen can claim that all cases of the same nature must be tried by one single tribunal or one single Court.

The question whether one single tribunal should or should not try all election petitions arising in the same area has to be decided not on the basis that different individuals will be constituting the different tribunals but on other considerations such as convenience of parties, expeditious disposal of election petitions, availability of duly qualified persons for appointment as members of

election tribunals and such other circumstances. This argument also, therefore, fails.

7. The third point raised by learned counsel, according to him, arises out of the provisions of Sections 86, 88 and 116A of the Representation of the People Act. u/s 86 of the Act, the petition is referred by the Election Commission to an election tribunal for trial. u/s 88 of the Act, the place where the trial is to be held is appointed by the Election Commission. u/s 116A, the right of appeal against the decision of the election tribunal is granted and it is laid down that the appeal shall lie to the High Court of the State in which the tribunal is situated.

The argument of learned counsel was that, even if an election petition related to an election held in one State, say the State of Bombay, the Election Commission, in exercise of its powers u/s 88 of the Act, could direct that the election tribunal shall try the petition at a place in another State, say at Allahabad, and the result would be that the election tribunal would thus confer appellate jurisdiction on the High Court of Allahabad which should normally have vested in the High Court of Bombay. This, according to learned counsel, was contrary to the provisions of Article 225 of the Constitution which defines the jurisdiction of a High Court constituted for a particular State.

8. So far as the present case before us is concerned, this point raised by learned counsel does not arise at all. The present writ petition relates to an election petition in respect of an election which took place in the district of Allahabad which is within the jurisdiction of this Court. The appeal would therefore lie to this High Court from the decision of the election tribunal, so that there is no question at all that, in this case, the Election Commission by directing that the election petition of the petitioner shall be tried at Allahabad has in any manner conferred any appellate jurisdiction on this Court which this Court would not exercise under Article 225 of the Constitution.

Further, even on merits, we consider that this contention has no force. The jurisdiction of a High Court is no doubt laid down in Article 225 of the Constitution and that Article read with other Articles of the Constitution indicates that the jurisdiction of a High Court is ordinarily confined to the limits of the State for which the High Court is constituted, though there are special provisions in the Constitution under which that jurisdiction can be altered. Section 116A of the Act is in conformity with Article 225 of the Constitution.

The appellate jurisdiction of a High Court does not depend on the place where a cause of action may arise. The appellate jurisdiction depends on the situation of the Court or the tribunal from which the appeal is taken to the High Court. Under Articles 226 and 227 of the Constitution, the High Court is given power of issuing writs against tribunals situated within the territories in which the High Court exercises jurisdiction and the power of superintendence over all Courts and tribunals throughout that territory.

If an election tribunal is situated in a particular State, then, in accordance with

Articles 225 to 227 of the Constitution, the appellate jurisdiction in respect of cases decided by that tribunal must be exercised by the High Court exercising jurisdiction over the place where the election tribunal is sitting, the power of issuing writs, orders or directions should vest in the High Court having jurisdiction over the place where the election tribunal is situated and the High Court exercising jurisdiction over that place should have superintendence over the tribunal.

Section 116A of the Act, which gives a right of appeal to the High Court, strictly follows the principle laid down in these Articles of the Constitution. The mere fact that the Election Commission has the power to direct that an election petition shall be tried at a particular place does not thus amount to giving a power to vary the jurisdiction of the High Court. Whenever a tribunal is to be constituted, the authority having the power to constitute it necessarily has also the power to direct where the tribunal should function and there is no provision in the Constitution or under any law which makes it compulsory that the tribunal must sit for disposal of the matter at the very place where the cause of action may have arisen.

Often enough, one single tribunal sitting at one place is constituted by law for dealing with disputes which may arise anywhere in India. The result is that the jurisdiction of the High Court under Articles 225 to 227 of the Constitution in such cases is exercised by that High Court within whose jurisdiction the tribunal is situated and there is nothing in the Constitution laying down that this automatic vesting of the jurisdiction in that High Court as a result of the situation of the tribunal is prohibited or can be held to be void on the ground that it amounts to interference with the jurisdiction of the High Courts. Consequently, there is no substance in this contention also.

9. For the above reasons we hold that this petition has no force at all and we reject it.