
(2002) 03 AHC CK 0080
In the Allahabad High Court
Case No : C.M. (PIL) W.P. No. 9976 of 2002

Smt. Durga

APPELLANT

Vs

Election Commissioner, State of U.P. and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Representation of the People Act, 1951 — Section 100, 100(1), 80, 80A, 81

Citation : AIR 2002 All 274 : (2002) 2 AWC 1394

Hon'ble Judges : S.K. Sen, C.J; S.R. Alam, J

Bench : Division Bench

Advocate : Shitla Prasad Pandey, for the Appellant; Ranvijai Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sen, C.J.—Heard Sri Shitla Prasad Pandey, learned Advocate for the petitioner and Sri Ranvijai Singh, learned standing counsel for respondents.

2. In this writ petition, the petitioner has prayed for holding fresh election in two polling booth Nos. 291 and 292 in village Sisaura Kala Anshik situated in 221 Dhanapur Vidhan Sabha Constituency district Chandauli.

3. In our view, the writ petition is not maintainable in view of Article 329(b) of the Constitution of India, which is set out herein below :

"329 (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."

4. That apart, in our view, appropriate remedy is to file an election petition under Chapter II of the Representation of the People Act, 1951 thereafter referred to as the Act). The relevant sections i.e., Sections 80, 80A, 81 and 100, in the said Chapter are set out herein below :

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

80A. High Court to try election petitions.--(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such Jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose :

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

81. 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 dates of their election are different, the later of those two dates.

Explanation.--In this subsection, "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) Omitted.

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

100. Grounds for declaring election to be void.--(1) Subject to the provisions of Sub-section (2) if the High Court is of opinion :

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963) ; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(c) that any nomination has been improperly rejected ; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected :

- (i) by the improper acceptance of any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied :

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent ;

(b) omitted ;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election : and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void."

5. It is clear from the aforesaid provisions of Section 80 of the Act that no election shall be called in question except by an election petition. The High Court u/s 80A of the Act has been empowered to try an election petition. u/s 81 of the Act, not only a candidate but an elector also can present an election petition. The petitioner being elector or voter of the constituency in question can file an election petition u/s 81 of the Act. So far as the allegation made by the writ petitioner is concerned that she was not allowed to cast vote, we are of the view that Section 100(1)(d)(iv) of the Act shall apply in the facts and circumstances of the case and the petitioner has remedy by way of an election petition.

6. Learned Advocate for the petitioner has relied upon a judgment in the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, This decision relates to an election of Bar Council, Delhi, governing Advocates Act and Bar Council of Delhi Election Rules. In the facts and circumstances of the present case, this case does not have any relevance. The other decision cited by the learned Advocate for the petitioner in the case of K. Venkatachalam Vs. A Swamickan and Another, also does not apply to the facts and circumstances of the present case. It was specifically held by the Supreme Court in paragraph 19 of the said judgment that when the poll or re-poll process is on for election to the Parliament or Legislative Assembly. High Court cannot exercise its jurisdiction under Article 226 of the Constitution and that remedy of the aggrieved parties is

under the Act read with Article 329(b) of the Constitution. The Act provides for challenge to an election by filing the election petition u/s 81 on one or more grounds specified in Subsection (1) of Sections 100 and 101 of the Act.

7. We are of the view since it is well-settled by several decisions of the Apex Court that there is no scope for granting relief in such cases under Article 226 of the Constitution and proper remedy for the petitioner is to file an election petition under the Act.

8. Accordingly, the writ petition stands dismissed being not maintainable.