
(1987) 07 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12684 of 1987

Udai Narain Sinha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 71

Citation : AIR 1988 All 30

Hon'ble Judges : K.C. Agarwal, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Udainarain Sinha, for the Appellant; Sudhakar Pandey and Saraswati Prasad, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This petition under Art 226 of the Constitution has been filed for a Mandamus directing the Election Commissioner of India to exclude votes of the Members of Parliament elected from U.P. and also of the Members of the Legislative Assembly of that State cast at the Presidential Election which took place on the 13th July, 1987. The grounds for claiming the relief mentioned above are these :

(a) Current Government of U. P. is lawless fiat and has no right to exercise the right of franchise in Presidential Election, (b) Current Members of Parliament have no constitutional sanction to cast vote in Presidential Election. The grounds taken for the relief claimed are incoherent, unintelligible and confused.

2. The petitioner urged that as the elections of Members of Parliament in the State of U. P. as well as of those who were elected for the U. P. State Assembly were illegal, they do not have a right to cast vote at the Presidential Election. The petitioner was unable to satisfy us about the grounds on which he alleged to be so. The Members from U. P. for the Parliament were elected by the General Election held in February, 1985 in the same manner as in other parts of India

after dissolution of the Lok Sabha, Election of the Members of the Legislative Assembly were held in June, 1985.

3. No illegality in either of the two elections could be brought to our notice. It is our regret that this petition was filed at 6.30 P.M. at the residence of one of us on the 15-7-1987 when 16th July had already been fixed for counting of votes and declaration of results. The petitioner claimed it to be a public interest litigation. To us, it appears that it was a publication-interest litigation.

4. The petition is misconceived and frivolous. Article 56 of the Constitution provides:--

"The President shall hold office for a term of five years from the date on which he enters upon his office."

Under Article 62 of the Constitution, an election to fill the vacancy caused by the expiration of the term is required to be completed before its expiration. As the term of the present President is expiring on the 26th July, 1987, the elections took place on the 13th June, 1987, in all the 25 States. The Election Commissioner appointed the date u/s 4 of the Presidential and Vice-Presidential Election Act, 1952 for the election. After notification, nominations were filed and elections took place in accordance with S. 10 of the Act aforesaid 16th July, 1987 was fixed by the Returning Officer for counting of votes. Section 11 of the aforesaid Act lays down. : --

"When the counting of the votes has been completed the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act."

In pursuance of this provision, result has to be declared by the Returning Officer. These two Ss. 10 and 11 of the aforesaid Act are mandatory.

5. In re Presidential Election AIR 1974 SC 1682 Supreme Court held: --

"The election to the Office of the President must be held before expiration of the term of the President notwithstanding the fact that at the time of such election....."

Article 71 provides that if there is any dispute or doubt with regard to the election, the same shall be enquired into and decided by the Supreme Court whose decision shall be final. Presidential and Vice-Presidential Elections Act, 1952 lays down that an election petition can be filed challenging the election of the President.

6. The Presidential and Vice-Presidential Elections Act, 1952 provides for the presentation of the Election petition by a candidate at the election. It is settled that an election of the President can be challenged only by means of an election petition before the Supreme Court raising doubt or dispute of its validity. A person filing the petition, as stated above, should be person entitled to apply for the same. If he is not entitled, the petition may not be entertained.

7. In Narayan Bhaskar Khare Vs. The Election Commission of India, it has been held that time for enquiry is after entire process of election. Before that there is no provision to entertain a writ petition under Art 226 and quash its proceedings as the mandate of the Constitution is that the election of the President can be challenged only by means of an election petition. This court would usurp the power if it were to interfere in the process of the same by interfering under Article 226 of the Constitution.

8. We have not been able to find any substance in this petition. As stated earlier, to us, it appears to be frivolous. It is described by the petitioner to be a public interest litigation. He said so without fully appreciating the implications of his submissions.

9. The petition is dismissed summarily with cost which is fixed at Rs. 500/- for payment of cost to the Senior Standing Counsel for Union of India, three months time is given to the petitioner.