

S. Bheemappa and anr. Vs. the Returning Officer for Election to Indian Medical Council, Bangalore and ors.

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Court : Karnataka

Decided On : Mar-22-1988

Reported in : AIR1989Kant75; ILR1988KAR1726; 1988(1)KarLJ513

Judge : K.A. Swamy, J.

Acts : [Constitution of India](#) - Articles 226 and 329; [Medical Council Act, 1956](#) - Sections 4(2) and 32; ; Medical Council Rules, 1957 - Rules 10 and 25

Appeal No. : W.P. No. 19159 of 1987

Appellant : S. Bheemappa and anr.

Respondent : The Returning Officer for Election to Indian Medical Council, Bangalore and ors.

Advocate for Def. : Shivaraj Patil, ;Aswathanarayan, ;Ravivarmakumar, ;H.N. Narayan and ;H.K. Vasudeva Reddy, Adv.

Advocate for Pet/Ap. : C.V. Subba Rao, Adv.

Judgement :

ORDER

1. In this petition under Article 226 of the Constitution, the petitioners have sought for the following reliefs :

'a) That the Hon'ble Court be pleased to quash the Annexures-A and B and the entire proceedings of the respondent-returning officer for holding of elections to Indian Medical Council, pursuant to Annexures-A and B by issuing a writ of certiorari or any other appropriate writ or direction for quashing the same and for directing the payment of costs of this proceeding by the 1st respondent to the petitioners in the ends of justice.

b) any (and?) further pray for an interim relief staying all further proceedings of the respondent-returning officer for conducting elections to Indian Medical Council, pursuant to Annexures-A and B pending disposal -of this writ petition in the ends of justice.' ,

2. 1. Annexure-A is the Notification dated 9-12-1987 issued by the Returning Officer (Respondent No. 1) under Section 3(1)(c) of the Indian [Medical Council Act, 1956](#) (hereinafter referred to as 'the Act') read with Rules 8 and 10 of the Indian Medical Council Rules, 1957 (hereinafter referred to as the Rules calling upon the persons whose names are borne on the Register of Karnataka Medical Council who possess the requisite Medical Qualification included in the I or II Schedule or in Part II of the III Schedule (of course in the Notification it is typed as Part III of the Schedule whereas it should have been Part II of the III Schedule) to elect one person as Member of the Medical Council of India with calendar of events of the election. Annexure-B is a copy of the paper publication Indian Express, English Daily, Bangalore Edition dated 19-12-1987 of the very same Notification Annexure-A.

2. 2. The election process that is called in question relates to election of one member from the State of Karnataka to the Medical Council of India to be elected from amongst themselves by persons enrolled on the State, Medical Register and who possess the medical qualifications included in the I or II Schedule or in Part II of the III Schedule to the Act.

2. 3. The 1st petitioner is one of the contesting candidates. Similarly respondents 4,5 and 6 are also contesting candidates, who have got themselves impleaded. The 2nd petitioner is a voter.

2. 4. The writ petition was presented on 28-12-1987- the date on which the election process had commenced and the second stage of the schedule of election i.e., the scrutiny and acceptance of the nomination papers was over and the election process was in the III Stage i.e., withdrawal of nomination papers. There was no interim order passed on that day. Therefore, the further process of election continued. The interim order staying all further proceedings came to be passed only on 25-1-1988. Long before that date viz., on 12-1-1988 the ballot papers had been dispatched and the last date for receipt of the ballot papers was 26-1-1988. Thus on the date the interim order was passed, only one day had remained for receipt of the ballot papers. It is not disputed that several ballot papers had been dispatched and received by the Returning Officer.

3. A preliminary objection is raised on behalf of the 2nd respondent that the petition challenging the validity of the election process is filed on 28-12-1987 after the election process has commenced and the last date for receipt of the nomination papers was over, therefore the petitioner is not entitled to any relief in this petition as it is not appropriate to exercise jurisdiction under Article 226 of the Constitution to interfere with the process of election and if the petitioners are aggrieved, they have a remedy by way of an election petition under the provisions of the Act and the Rules. -

4. Respondent-4 who is also one of the candidates at the election supports the petitioner. Respondent- 1 who is the Returning Officer opposes the petition. Respondent-3 has neither opposed nor supported the petition. It has only pointed out certain irregularities and illegalities. Respondents 5 and 6 have not advanced any argument.

5. Sri C. V. Subba Rao, learned counsel for the petitioners submits that this is one of the unusual cases in which the court should exercise its jurisdiction under Article 226 of the Constitution in spite of the fact that there is a remedy available to the petitioners after the election. He contends that the basic requirement of an

election viz., the voters' list itself is not existing, therefore, the whole thing is illegal and there is no basis for conducting the election. In addition to this, he further submits that there are several other illegalities. Therefore, it is submitted that it is in the interest of all the doctors who are entitled to vote and contest at the election and it is also in the interest of the institution and to save time and money, to interfere at the earliest point of time and set right the illegalities. By doing so, it is submitted that ends of justice are better served rather than by refusing to exercise the jurisdiction.

6. On the contrary, the Officer (R-1) and respondent-2 resist the contentions of the petitioner and submit, that; there is a valid list of voters and the election is being held on that basis and that infirmity or illegality committed in the process of election and the matter can be agitated only by way of election petition and not by way of a writ petition during the process of election

7. Both sides have advanced several contentions having a bearing on the merits of the case. But at this stage, it is not necessary to consider those contentions as the petition is set down for hearing on the preliminary objection.

8. Having regard to the fact that the petitioners have approached this court under Article 226 of the Constitution after the election process has commenced and after the stage of filing the nomination papers is over, it is necessary to consider the preliminary objection.

9. According to the Notification Annexure-A, the following was the schedule of election:

Last date for receipt of nominations 21-12-87 4 p.m. Date and hour of scrutiny of nomination papers 24-12-87 4 p.m. Last date for withdrawal of nomination papers 31-12-87 4 p.m. Despatch of ballot papers along with letter of intention . 31-12-87 4 p.m. Receipt of ballot papers. 26-1-88 5 p.m. Scrutiny and counting of votes 28-1-88 4 p.m. Declaration of Results 29-1-88 5 p.m.

10. Thus in the instant case, the petitioners have called in question the process of election after it had commenced. Therefore, it is necessary to examine the

preliminary objection raised by the 2nd respondent. Hence the question that arises for consideration is whether it is appropriate, for this court to exercise its jurisdiction under Article 226 of the Constitution to interfere with the election process at an intermediate stage?

11. Sri H. N. Narayan, learned counsel appearing for the 2nd respondent has placed reliance on Section 4(2) of the Act read with Rule 25 of the Rules. Section 4(2) of the Act provides that where any dispute arises regarding any election to the Council, it shall be referred to the Central Government whose decision shall be final. Rule 25 of the Rules provides that the Central Government may, on objection made by a candidate for any election within a period of thirty days from the date of the returned candidate or of its own motion at any time, declare the election to be void on account of bribery, undue influence or other corrupt practice which, in the opinion of the Central Government, has interfered with the free and fair conduct of the election or for any other sufficient cause and may call on the electorate to make afresh election. It further provides that the decision of the Central Government under this rule shall be final.

12. An argument is built on the contents of Rule 25 of the Rules by the learned counsel for the; petitioner that the words 'or for any other sufficient cause' occurring in Rule 25 shall have to be construed as ejusdem generis. Therefore, it is submitted that the remedy available by way of an election petition is very restricted inasmuch as it can be challenged on the grounds of bribery, undue influence or other corrupt practice. As such it is submitted that the grounds on which the election process is called in question are not available in the election petition. Hence alternative remedy cannot, in the instant case, be construed as a bar or as a ground for refusing to exercise jurisdiction under Article 226 of the Constitution. It is not possible to accept the contention. The words or for any other sufficient cause in the context in which they occur cannot at all be construed as 'ejusdem generis'. The rule of ejusdem generis is a rule of interpretation. It is not a rule of law. It means that where particular words are followed by general words, the general words are limited to the same kind as the particular words. This rule of interpretation has to be applied with caution and not pushed too far. In the instant case, the very requirement to apply this rule of interpretation is not satisfied. Rule

25 of the Rules sets out the grounds for challenging the election as follows:

'Declare the election to be void on account of bribery, undue influence or other corrupt practice which, in the opinion of the Central Government has interfered with the free and fair conduct of the election or for any other sufficient cause and may call on the electorate to make a fresh election.'

The words 'or for any other sufficient cause' are not preceded by the particular and specific words. These words are preceded by the words 'has interfered with the free and fair conduct of the election and not by the words bribery, under influence'. Therefore, it is not possible to hold as contended by Sri Subba Rao, learned counsel for the petitioner that the words 'or for any other sufficient cause' are also be referable to the grounds falling under bribery and undue influence'. On the contrary, as these words are preceded by the words 'has interfered with the free and fair conduct of the election' they can only be interpreted as indicating that any other sufficient cause other than bribery and undue influence or other corrupt practice which has interfered with the free and proper conduct of the election can also be made a ground for seeking the election to be set aside. The sound rule of interpretation is that every word in a statute ought prima facie to be considered in its primary and natural sense unless a secondary or more limited sense is required by the subject or the context. Thus the words 'or for any other sufficient causes read in the context in which they occur permit the challenge to be made to the election in an election petition on several grounds which have affected the free and fair conduct of the election.

13. It is next contended that the second petitioner is a voter and he has no right to challenge the election by way of election petition, therefore, he is entitled to invoke the jurisdiction under Art. 226 of the Constitution at any stage of the election process. When the law does not give a right to challenge the election to a voter, it is too much for the 2nd petitioner to contend that 'he has a right to challenge the same under Article 226 of the Constitution. The right to vote and contest for the election to become a member of the Medical Council of India is conferred by the statute and as such, such a right is subject to the restriction imposed by the statute. That being so, if a voter at such an election does not choose to become a

candidate, he has no right to challenge the election much less an election process as long as it does not affect his right to vote. Of course, he can approach this court provided his right to vote is affected in any way and not otherwise. After all the right to stand for election is a creature of the Act and the Rules. Thus it is a statutory right. It carries with it the limitations if any imposed by the Act and the rules. Therefore, a voter who is entitled to vote is not given a right to challenge the election under the Act and the Rules if he does not contest for the election. Therefore, it is not possible to hold that the position of the 2nd petitioner is in any way better than that of the 1st petitioner as far as the exercise of jurisdiction under Art. 226 of the Constitution to interfere in the middle of the election process.

14. The learned counsel has placed reliance on a Division Bench decision of this court in *Sangappa v. T. R. Srinivasamurthy* : AIR1981 Kant114 . That was a case in which acceptance of nomination paper was challenged. The -respondents in Sangappa's case relied upon a decision of the Supreme Court in *Nanhoo Malv. Hira Mal* : [1976]1SCR809 in support of the contention that election process should not be interfered with as there was an alternative remedy by way of an election petition. This Court while referring to Nanhoo Mars case : [1976]1SCR809 observed thus

'Shari Subramanya Jois next relied on the observations of the Supreme Court in *Nanhoo Mal v. Hira Mal* : [1976]1SCR809 to the effect that an election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by the U.P. Municipalities Act and that is, by means of an election petition presented in accordance with the provisions of that Act and in no other way. In para 5 of that judgment, the Supreme Court itself has observed, 'Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Art. 226 in relation to elections, is not now necessary to consider.' Thus there is no unqualified statement of law by the Supreme Court that an election can never be challenged in a petition under Art. 226 of the Constitution.'

In Nanhoo Mal's case, the Supreme Court observed thus:

'.....We are of the opinion that the whole approach of the learned Judges of the High Court to this problem was mistaken .After the decision of this Court in N.P Ponnuswamy v. Returning officer, Namakkal Constituency : [1952]1SCR218 , there is hardly any room for courts to entertain applications under Article 226 of the Constitution in matters relating to elections..... The Jurisdiction to decide the validity of the election of a President is an exclusive one conferred on the District Judge.. In the circumstances, there was no room for the High Court exercising its powers under Article 226 in order to set aside the election. In setting aside the election the High Court plainly erred because it did not consider whether the result of the election had been materially affected by non-compliance with the rule in question. In any case, that is a matter within the exclusive jurisdiction of the District Judge. Therefore, the election to the office of the President could be challenged only according to the procedure prescribed by that Act, and that is by means of an election petition presented in accordance with the provisions of the Act and in no other way. The Act provides only for one remedy, that remedy being an election petition be presented after the election is over and there is no remedy provided at any intermediate stage. These conclusions follow from the decision of this court in Ponnuswami's case : [1952]1SCR218 (supra) in its application to the facts of this case. But the conclusions above stated were without taking the provisions of Article 329 into account. The provisions of, Article 329 are relevant only to the extent that even the remedy under Article 226 of the Constitution is barred as a result of the provisions. But once the legal effect above set forth of the provision of law, which we- are concerned with is taken into account there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution.'

Therefore, it is clear that whenever there is an alternative remedy available by way of an election petition, it is not appropriate for this court to interfere at the intermediate stage with the process of election under Article 226 of the Constitution.

15. Reliance is also placed on another Division Bench decision of this Court in SiddappaYellappav. Election Officer : AIR1981 Kant114 . That was also a case in which the election was challenged after it was held, in a petition under Article 226

of the Constitution. The Division Bench on referring to Nanhoo Mal's case : [1976]1SCR809 observed thus

'5. The pronouncement of the Supreme Court in Nanhoo Mal's case : [1976]1SCR809 as to the jurisdiction under Art. 226 of the Constitution to decide the validity of an election after it is over, is not an unqualified pronouncement, as can be seen from the following passage in the judgment of the Supreme Court:

'Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Art. 226 in relation to elections. It is not now necessary to consider. All the considerations applied in coming to the conclusion that elections to the legislatures should not be delayed or protracted by the interference of courts at any intermediate stage before the results of the election are over apply with equal force to elections to local bodies.'

(Underlining is ours)

From the aforesaid passage it is evident that the Supreme Court has recognised that in extraordinary circumstances the High Court may, in exercise of its jurisdiction under Art. 226 decide the validity of the election, especially after the election is over and the exercise of jurisdiction would not delay the completion of the election.'

16. The decision in D. L. Suresh v. Institute of Chartered Accountants of India, : AIR1983 Kant43 is also pressed into service. That was a case wherein rejection of nomination paper was challenged. It was held that it was a fit case for interference at the stage of rejection of nomination paper even when a remedy of election petition was available to the petitioner after completion of the election.

17. Sri Subba Rao, learned counsel for the petitioner places reliance on the decision of the Supreme Court in Chief Commissioner of Ajmer v. Radhey Shyam, : [1957]1SCR68 and contends that in the absence of valid list of voters, the very basis for conducting the election will not be there, therefore, the rule laid down in Radhey Shyam's case is attracted and interference at this stage is called for. No doubt in para 12 of the said decision it has been observed that it is the essence of

the elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained, it is necessary-that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Based upon this, it is submitted that in the absence of proper electoral roll, the election that would be conducted is no election in the eye of law and, therefore, it would not acquire any validity and hence it would be liable to be set aside at the instance of the parties concerned, therefore, it is necessary to interfere at this stage itself.

18 It may be pointed out that as far as the decision in Radhey Shyam's case is concerned, what was considered was the power of the Election Commissioner in relation to electoral roll. It did not consider the exercise of power under Article 226 of the Constitution when the election process is on. In the context of the power of the Election Commissioner under the provisions of the Ajmer Merwara Municipalities Regulation and the Ajmer State Municipalities Election Rules, 1955, it was held that the electoral roll was not validly prepared and, therefore, it was necessary for the Chief Commissioner to frame rules within the ambit of the provisions of the Regulations. That being so, it is not possible to hold that the decision in Radhey Shyam's case : [1957]1SCR68 is an authority for the proposition that the election process can be interfered with at any stage. In fact as observed in para 6 of the judgment in Radhey Shyam's case, the appeal before the Supreme Court had become academic. In this regard, the relevant portion of the judgment is as follows:

'6. At the outset we pointed out to the learned counsel for the appellant that the appeal had become academic. The appellant had in fact reconstituted the Ajmer Municipal Committee by a proper notification under S. 8(1) of the Regulation and the date on which the elections and the poll to the Ajmer Municipal Committee were to be held, viz., September 9, 1955, had also passed. The learned counsel for the appellant, however, urged before us that the pronouncement of the learned Judicial Commissioner to the effect that R. 7 of the Election Rules was not in consonance with and was in contradiction to S. 30 sub-s. (2) of the Regulation and was in excess of the rule-making power conferred upon the appellant was a

stumbling block in the way of the appellant holding further elections on the basis of the electoral roll as it had been authenticated and published by him, on August 8, 1955. If that pronouncement stood it would be incumbent on the appellant to authenticate and publish another electoral roll and incur the expenses which were inevitable to that process. He, therefore, pressed upon us that we should set aside that pronouncement so that the Municipal Elections may be held hereafter without straining the attenuated finances of the Municipality.'

Therefore, the petitioners cannot receive any support for their contention from the decision in Radhey Shyam's case that interference under Article 226 of the Constitution is called for at an intermediate stage of the election.

19. In my view, the law is clearly laid down in Nanhoo Mal's case : [1976]1SCR809 stating that the jurisdiction to decide the validity of the election is the exclusive jurisdiction of the authority upon which the jurisdiction is conferred under the relevant provisions of the enactment and there is no room for the High Court to exercise its power under Article 226 of the Constitution. That being so, the several contentions raised with regard to the maintenance of the State Medical Register, publication of the notice in the Official Gazette and several other contentions need not be gone into as those contentions require determination of facts which can be made property in a petition under Section 4(2) of the Act read with Rule 25 of the Rules.

20. The above view of mine is further fortified by the recent decision of the Supreme Court in S.T. Muthusami v. K. Natarajan, : [1988]2SCR759 . In this decision the earlier decisions of the Supreme Court in N. P. Ponnuswami v. Returning Officer, Namakkal Constituency, : [1952]1SCR218 ; Nanhoo Mal v. Hira Mal, : [1976]1SCR809 and a Full Bench Decision of the High Court of Madhya Pradesh in Malam Singh v. The Collector, Sehore, : AIR 1971 MP195 are considered and approved. In fact this decision sets at naught all the contentions of the petitioners and fully supports the contention of the 2nd respondent that interference with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election is not called for in exercise of the jurisdiction under Article 226 of the

Constitution. In fact the very question is decided in this decision. The question raised for determination is as follows:

'The question for consideration in this case is whether it is appropriate for the High Court to interfere with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election held for the purpose of filling a vacancy in the office of the Chairman of a Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 (Act XXXV of 1958) on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such election.'

After referring to the relevant provisions of the Tamil Nadu Panchayats Act, 1958, the decision in N. P. Ponnuswami's case : [1952]1SCR218 is considered and in relation to the said decision it is observed thus:

'It is thus seen that in the above decision (which was rendered by the Full Court) this court first laid down as a matter of general principle that interference with an election process, between the commencement of such process and the stage of declaration of result, by a court would not ordinarily be proper and next laid down that Article 329(b) of the Constitution had the effect of taking away the jurisdiction under Article 226 of the Constitution also in respect of the disputes arising out of election during the said period.'

Thereafter Nanhoo Mal's case : [1976]1SCR809 is considered. While dealing with the decision in Nanhoo Mal's case, in para 9 of the judgment it is observed thus: -

'Following the above decision in N. P. Ponnuswami's case (supra) in Nanhoo Mal v. Hira Mal, : [1976]1SCR809 this court held that the right to vote or stand for election to the office of the President of a Municipal Board is a creature of the statute, that is the U.P. Municipalities Act and it must be subject to the limitations imposed by it. Accordingly, this court held that the election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of that Act and in no other way. The court further held that the said Act provided only for one remedy that remedy being

an election petition to be presented after the election was over and there was no remedy provided at any intermediate stage

After quoting certain portion from Nanhoo Mal's case it is further observed thus :

'In the above passage this court clarified that the conclusions in N. P. Ponnuswami's case (supra) had been arrived at without taking the provisions of Art. 329 of the Constitution into account and that the provisions of the Art. 329 of the Constitution were relevant only to the extent that even the remedy under Art. 226 of the Constitution was barred as a result of the provisions. Earlier in the course of the decision in Nanhoo Mal's case (supra) this court observed at page 811:

'After the decision of this court in N. P, Ponnuswami v. Returning Officer, Namakkal Constituency, : [1952]1SCR218 there is hardly any room for courts to entertain applications under Art. 226 of the Constitution in matters relating to elections.'

Thereafter the Full Bench decision of the Madhya Pradesh High Court in Malam Singh v. The Collector, Sehore, M.P. : AIR 1971 MP195 is referred to and ultimately it is held thus:

' 14. In the ultimate analysis, the Full Bench laid down:

'12. There is no constitutional bar to the exercise of writ jurisdiction in respect of elections to Local Bodies such as Municipalities, Panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of the discretion should always decline to invoke its writ jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So their Lordships of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah, : [1955]2SCR1 stated:

'...though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of cases.'

15. We are inclined to accept this view which lays down a salutary principle.

16. The Division Bench of the High Court, against whose decision the present appeal by special leave is filed, was of the view that the issuing of the Errata - Notification by the Returning Officer amounted to a very serious breach and interference under Art. 226 of the [Constitution of India](#) was called for. Taking into consideration all the aspects of the present case including the fact that the person who filed the writ petition before the High Court was not one of the candidates nominated by the Indian National Congress (I) and the fact that the President of the Tamil Nadu Congress (I) Committee had written that he had authorised the appellant to contest as the candidate on behalf of his party and he had not given his approval to respondent No. 6 contesting as a candidate on behalf of his party, we feel that the exercise of the jurisdiction by the High Court in this case under Art. 226 of the Constitution cannot be supported. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy

'17. We are of the view that the Division Bench of the High Court committed a serious error in issuing a writ under Article 226 of the Constitution quashing the Errata notification allotting the symbol 'hand' to the appellant by its judgment under appeal. We therefore set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. The Returning Officer shall proceed with the election in accordance with law from the stage at which it was interrupted by the order of the High Court. The appeal is accordingly allowed. No costs.

In the light of the aforesaid authoritative pronouncement of the Supreme Court which binds this court, I consider it not necessary to consider the effect of the judgments of the Division Bench and the single Judge of this Court referred to earlier. Accordingly the question raised for determination in para 10 of this order is answered in the negative.

21. For the reasons stated above, I uphold the preliminary objection, discharge the rule and decline to interfere with the process of election at the intermediate stage. Accordingly, the writ petition is dismissed. All the contentions raised by both the

sides having a bearing on the merits of the case are left open. In view of this, no order on I.A. No. III is called for.

22. The 1st respondent is directed to proceed with the further stages of the election from the stage from which the interim order dated 25-1-1988 interfered with the process of election. Since the interim order was passed before the expiry of the last date for receipt of the ballot papers, the Returning Officer has now to fix a date for receipt of the ballot papers and also the dates for scrutiny and counting of votes and declaration of results of election and complete the election process.

23. Compliance in two months.

24. Petition dismissed.

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