

Bhargavan Vs. Abdul Majeed

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Court : Kerala

Decided On : Nov-01-1960

Reported in : AIR1961Ker183

Judge : M.A. Ansari, C.J. and; M. Madhavan Nair, J.

Acts : [Constitution of India](#) - Articles 226 and 227; Representation of People Act, 1951 - Sections 92

Appeal No. : O.P. No. 1205 of 1960

Appellant : Bhargavan

Respondent : Abdul Majeed

Advocate for Def. : P. Govinda Menon,; P.K. Krishnankutty Menon,; P. Raman M

Advocate for Pet/Ap. : S. Easwara Iyer,; P. Subramonian Potti and; L. Gopalakri

Disposition : Petition dismissed

Judgement :

Ansari, C.J.

1. The writ petitioner is the elected member of the Kerala Legislature from the Chadayamangalam Constituency) Kottarakkara Taluk, Quilon District; and seeks to vacate the order whereby the Election Tribunal Quilon has rejected his objection

to a witness being examined in the proceedings before the Tribunal. The election was held on February 1, 1960, and the writ petitioner then succeeded in defeating Abdul Majeed the first respondent to this petition.

The unsuccessful candidate has subsequently filed an election petition seeking to set aside the petitioner's election and his being declared duly elected, under Section 101 of the Representation of the People Act, 1951. The petition had been published in the Kerala Gazette of April 26, 1960, and the Election Tribunal, Quilon, the 2nd respondent to this writ petition, had been directed to adjudicate according to law.

One of the grounds taken in the afore-said election petition is that persons below twenty-one had voted for the writ petitioner, claiming to have attained that age on January 1, 1959. The list of such persons is Annexure III to the election petition and mentions 315 such voters. The aforesaid number is material because the writ petitioner had secured 25,412 votes at the election whereas the election petitioner polled 25,290, another having obtained 4,405.

The majority of votes, which the writ petitioner had got, is a narrow one and comes to only 122 votes. One of the several objections taken to the aforesaid ground in the election petition is that the electoral roll is conclusive, and the correctness of the entries therein cannot be investigated by the Election Tribunal, so that some of the persons entered therein as voters cannot be shown to be minors. Because of the aforesaid objection the Election Tribunal has framed, Issue No. 14, which reads as follows:

'Is inclusion of any person in the electoral roll conclusive proof of his qualification to exercise franchise? Is it not to be questioned in these proceedings?'

2. The writ petitioner applied to the tribunal to decide the aforesaid issue first, because he claimed it to be the legal issue and decisive of the aforesaid important point raised by him. The Election Tribunal has, however, taken the view that Order XV, rule 3 C.P.C. does not authorise its deciding first the issue as the legal issue, because such decision would not decide other issues raised in the enquiry.

It is also common ground that the election petitioner had summoned a witness to prove his case of the persons below 21 having voted for the writ petitioner and the writ petitioner's learned advocate orally raised the objection of such evidence being admissible on the ground of the electoral roll being conclusive and its mistakes, assuming such mistakes to exist, to be beyond the jurisdiction of the Election Tribunal to investigate and that objection has also not been upheld by the Election Tribunal.

This writ petition seeks to vacate the order on the ground that the view taken by the Election Tribunal about its having jurisdiction to adjudicate on the ground of the Election Petitioner's some voters being minors is incorrect. The case has been referred to a Division Bench, because of the important legal issue raised by the writ petition; and we stand indebted to the able arguments addressed before us by the learned advocates of the parties.

3. It would be of advantage to enumerate the various grounds taken in the writ petition for the Tribunal not having jurisdiction to adjudicate on the ground raised by the election petitioner. These are that:

(1) The electoral roll, having been prepared in compliance with constitutional direction and after satisfying the requirements of the Representation of the People Act, 1950, is conclusive not only for purposes of accepting the votes, when the election is being held, but also for enquiring into the subsequent complaints of the election being void; the Election Tribunal having been thus precluded from inquiring into the correctness of the entries in the aforesaid roll;

(2) By Section 62 of the Representation of the People Act, 1950, rights are conferred on those who are electors, which rights are subject to their being disqualified, but the grounds of disqualifications under Section 16 do not cover minority; with the result that a minor on being entered in the roll becomes elector, can vote, and the question of his minority is not justiciable by the Election Tribunal; and Section 19 of the Representation of the People Act, 1950, having enumerated one of the conditions of registration, to be age not less than 21 years does not alter the position as minority is not included in Section 16 which gives the disqualifications;

(3) Any order discarding a vote on ground of the voter's minority would be deciding something behind the person interested, would be depriving the voter of a right, and would be violating principles of natural justice, and decisions in violation of such principles have been treated to be beyond jurisdiction;

(4) Even though the Order be interlocutory, it goes to the root of the case, because considerable hardship would be caused to the writ petitioner by compelling him to adduce evidence in rebuttal, and justifies interference with the decision.

4. It is clear that interference by certiorari in interlocutory orders is rare and justified under extraordinary circumstances. It is equally clear that should we decline to exercise our discretion on the ground of the order challenged by the writ petition being interlocutory, the final pronouncements, on the other issues raised by writ petition should be postponed so as to afford an approach untrammelled by previous decisions on the entire case when the case finally comes in appeal before us, and not to prejudice the decision of the appeal by obiter observations on the other grounds now raised. As regards the view of non-interference by certiorari in interlocutory matters, it would be of advantage to refer firstly to American Jurisprudence, Vol. 10, Para 16, p. 540, where it has been said:

'Generally, -- Although there is some authority to the contrary, it seems to be well settled that the writ of certiorari should not be granted until after a final determination'.

Ferris on Extraordinary Legal Remedies, Para, 162, Page 184, states the same position in these words:

'It is the general practice in this country, absent statute, to issue the writ only for the purpose of reviewing final judicial determinations of interior courts, and will not, therefore, issue to review an interlocutory order'.

So far as We are concerned, the following caution contained in Veluswami v. Raja Nainar, AIR 1959 SC 422 at p. 429 is decisive:

'As the question has also been raised as to the propriety of interfering in writ petitions under Article 226 with interlocutory orders passed in the course of an

enquiry before the Election Tribunal, we shall express our opinion thereon. The jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted: But then, it is well settled that where there is another remedy provided, the court may properly exercise its discretion in declining to interfere under Article 226. It should be remembered that under the election law as it stood prior to the amendment in 1956, election petitions were dismissed on preliminary grounds and the correctness of the decision was challenged in applications under Article 226 and in further appeals to this court, with the result that by the time the matter was finally decided, the life of the Legislatures for which the election was held would have itself very nearly come to an end, thus rendering the proceedings infructuous. A signal example of a case of this kind is to be found in the decision reported in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*, 1955-2 SCR 423: (S) AIR 1955 SC 610. It is to remedy this defect that the Legislature has now amended the law by providing a right of appeal against a decision of the Tribunal to the High Court under Section 116-A, and its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section. In this view, it would be a proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders'.

We are also fortified by *A. Sanjeevi Reddy v. G. C. Kondayya*, AIR 1960 Andh Pra 421, where an interlocutory order passed by the Election Tribunal was not interfered with and the decision on it was left over for hearing during the appeal under Section 116A of the Representation of the People Act, 1951.

5. The writ petitioner's learned counsel has relied on *Y. B. Chavari v. K. T. Mangalmurti*, AIR 1958 Bom 397, where it was held that if the objection raised were to go to the root of the matter, the Tribunal being bound to dismiss the petition, the matter can be decided at the interlocutory stage under Arts. 226 and 227. Reliance has also been placed on *K. Kamaraja Nadar v. Kunju Thevar*, AIR 1958 SC 687 and *Mallappa Basappa v. Basavaraj, Ayyappa* AIR 1958 SC 698.

The aforesaid cases establish the proposition, therefore, that should the decision in the interlocutory order be such as to affect the very root of the case, the powers

under Article 226 or 227 may well be exercised. Another exception is that should reversal of the interlocutory order be necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the case, certiorari may be issued. In this connection, we may refer to *American Construction Co. v. Jacksonville T. and K. W. R. Co* (1892) 37 Law Ed 486, where it was held that the court should not issue a writ of certiorari to review a decree of the circuit court of appeals on appeal from, an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause. We propose to ascertain whether the order challenged by the writ petition is covered by the exceptions stated above.

It is obvious that the decision on the objection by the writ petitioner before the Election Tribunal would not conclude the election petition; for, apart from the matter covered by Issue No. 14, there are other issues arising because of objections against the petitioner's election to the Legislature in the election petition and these would have to be adjudicated, upon. In these circumstances, it cannot be held that a decision on one of the grounds goes to the very root of the election petition and would decisively end the proceedings pending before lower tribunal.

6. The writ petitioner's learned advocate then urged that the order, by resulting in his client's having to adduce enormous rebuttal evidence concerning the majority of the aforesaid voters, would cause embarrassment and extraordinary inconvenience so that the question should be adjudicated now. Were we to accept the argument, it would result in certiorari being issued whenever probability arises of large evidence being adduced to meet the proof on an issue, where the burden initially be on the other party.

Issues requiring voluminous evidence for their decision are not uncommon; and when raised should be decided according to the usual judicial procedure, i.e., by evidence being recorded and sifted by the first court and later by the appellate court. Efforts to shut off evidence required to properly adjudicate disputes on legal grounds by appealable decisions often result in the disputes not being properly adjudicated; and often causes shirking of responsibility by those, who have to decide.

That apart, the burden in this case is firstly upon the first respondent, who is prepared to adduce evidence, and we do not see how the writ petitioner can at this stage complain that the rebuttal evidence would be so large as to cause him embarrassment or inconvenience. We, therefore, feel the next ground also for certiorari in interlocutory matters, does not exist; and, therefore, it should not be issued to vacate the order.

7. But the writ petitioner has also claimed prohibition, and the distinction between the two writs is obvious. Certiorari lies where the decision be vitiated by absence of jurisdiction, failure to observe principles of natural justice or legal error apparent on the face of the record; whereas prohibition is issued to prevent still incomplete proceedings of lower tribunals, where no jurisdiction exists, from being continued.

Therefore, the writ petitioner must show taking evidence by the Election Tribunal in the case to be beyond jurisdiction; and that we cannot hold to be correct. The election petitioner had raised objections and the Election Tribunal has to decide them, and, if in deciding the objections, evidence becomes necessary, that cannot be treated to be beyond the jurisdiction. Then the writ petitioner has raised objection to such evidence being taken and its rejection cannot be treated as something amounting to the decision in absence of jurisdiction.

It follows that the Election Tribunal has jurisdiction to decide what it has done in the order challenged, and can continue with the proceedings; and we, therefore, do not see how prohibition to exclude the Tribunal from deciding Election Petitions can be issued, the point raised and decided being part of such proceedings. In any case, we would not prejudice the proper adjudication of the grounds raised in the Election Petition by premature interferences with interlocutory orders. The writ petitioner has his remedy by way of appeal, and it is in the interests of both parties that the dispute as to the validity of the election be adjudicated as expeditiously as possible before the Tribunal.

8. We would, therefore, decline to interfere by exercising our discretionary powers under Article 226, and dismiss the writ petition. Having regard to the circumstances of the case, the parties will bear their costs.

