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Court : Kolkata

Decided On : Dec-06-1951

Reported in : AIR1953Cal98,56CWN113

Judge : Bose, J.

Acts : [Constitution of India](#) - Articles 225, 226, 227, 327 and 329; ;[Representation of the People Act, 1951](#) - Sections 80, 81, 100 and 170

Appeal No. : Civil Rule Nos. 2851, 2852, 2857, 2875, 2901 and 2936 of 1951

Appellant : Nrisinha Kumar Sinha

Respondent : The Returning Officer, for the Constituency of Barwan Khargram

Advocate for Def. : S.M. Bose, Adv. General, ;Chandra Sekhar Sen, Sr. G.P. and ;S.K. Roy Choudhury, Adv.

Advocate for Pet/Ap. : Santosh Kumar Basu and ;Nirmal Chandra Sen, Adv.

Judgement :

ORDER

Bose, J.

1. This is an application under Article 226 of the Constitution for an appropriate writ against the respondent for cancellation of an order of rejection of nomination papers of the petitioner and for a direction upon the respondent to hold the scrutiny of the nomination papers according to law.

2. The petitioner is a resident of Ballia and is a duly recorded voter in Part A of original roll of Mouza Ballia in the constituency of Barwan-Khargram for the first general election of members to the West Bengal Legislative Assembly. The petitioner who was a candidate for election from the said constituency filed three nomination papers before the respondent on the 19th November, 1951. On the 21st of November, 1951, the respondent scrutinised the nomination papers of the petitioner but rejected the same on the ground that the nomination papers described the West Bengal Legislative Assembly as the West Bengal State Legislative Assembly. The respondent was of the opinion, that the West Bengal Legislative Assembly was incorrectly described in the nomination papers. It is alleged in the petition that the respondent had passed many other nominations as valid although the nomination papers described the West Bengal Legislative Assembly as the West Bengal State Legislative Assembly. It is stated in the petition that the alleged defect was at the most a technical defect and was not a defect of a substantial character and, therefore, the rejection of the nomination papers by the respondent was improper and in the circumstances the petitioner asks for the reliefs stated above.

3. On behalf of the respondent the learned Advocate General has raised the question of jurisdiction. In fact this is the only point raised by him in this application.

4. It is submitted by the Advocate General that the disputes arising out of elections can only be tried, by election tribunals and the jurisdiction of the Civil Courts is entirely ousted by the provisions of the Constitution and of the Representation of the People Act (Act XLIII of 1951).

5. In order to examine the force of this contention, it is necessary to refer to certain Articles of the Constitution which are contained in part XV of the Constitution. The heading of this part is 'Elections'. Article 324(1) is as follows: 'The

superintendence, preparation and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every State and all elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).'

6. Thus the power of superintendence and control of preparation of electoral rolls for elections and conduct of such elections and the power of appointing election tribunals for decision of election disputes is vested in the Election Commission. This Election has been set up and it is functioning as such.

7. Article 327 is as follows:

'Subject to the provisions of this Constitution, Parliament may from time to time by law, make provision with respect to all matters relating to, or in connection with elections to either House of Parliament, or to either Houses of the Legislatures of a State, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.'

8. This gives power to Parliament to make laws with respect to election matters but this power is made subject to the provisions of this Constitution.

9. Article 328 similarly empowers the Legislature of a State to make laws in connection to the House of the Legislature of the State in so far as provision in that behalf is not made by Parliament. This power is also made subject to the provisions of this Constitution.

10. Article 329(b) provides as follows: 'Notwithstanding anything in this Constitution, no election to either House of Parliament, or to the House, or either Houses 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.'

11. The words 'Notwithstanding anything in this Constitution' make it clear that the jurisdiction vested in the High Court under Articles 225, 226 and 227 to entertain any legal proceedings calling in question any election is ousted by this provision. So far as calling in question any election is concerned, it can be done only by 'an election petition' presented to 'such authority' and 'in the manner' prescribed by a law of the appropriate Legislature.

12. Now it appears that the Indian Parliament, pursuant to the power vested in it to make laws with regard to the election matters, has enacted the Representation of the People Act, 1950 and the [Representation of the People Act, 1951](#).

13. The preamble of the Act of 1951 states that the Act provides inter alia, for conduct of elections and the decision of disputes and doubts arising out of, or in connection with such elections. Section 2(d) defines Elections. In Section 2(1) Tribunal is denned. Section 17 provides for issue of notification calling upon the Assembly Constituencies to elect members according to the provisions of the Act. This is akin to the writ of elections in English Law.

14. Section 30 deals with appointment of dates of nominations, scrutiny of nominations, date of withdrawal of candidature, the date of polls etc. This Part V is headed as Conduct of Elections.

15. Section 36, which is in this part, provides for scrutiny of nominations, how it is to take place, who are entitled to be present at such nominations, the grounds on which nominations may be rejected and the duties of the Returning Officer.

16. Section 38 provides for publication of the list of valid nominations.

17. Section 53 shows that when scrutiny is taking place, the election is proceeding, and if, upon scrutiny, it is found that the number of validly nominated candidates had not exceeded the number of seats to be filled up, -- the returning officer at once declares the candidates as duly elected. In other words, the election is over.

18. Section 66 deals with declaration of the results of election in case where votes are taken.

19. Section 67 deals with publication of the result of election.

20. Part VI deals with disputes regarding election.

21. Section 80 provides, -- no election shall be called in question except by an election petition presented in accordance with the provisions of this part.

22. This is the only method prescribed by law in which the validity of election can be impugned and in no other manner.

23. Section 81 provides that the election petition has to be 'presented to the election commission', but such presentation cannot be done at any time 'earlier' than the date of publication of the name or names of the returned candidate or candidates.

24. So the authority to whom the election petition is to be presented has been laid down by law and the time when it is to be presented has also been prescribed by the Statute.

25. Section 86 provides for appointment of Election Tribunal.

26. Section 100 provides for the grounds on which an election can be declared void. One of such grounds is that the result of the election has been materially affected by the improper acceptance or rejection of any nomination.

27. It is clear from this provision that the propriety of acceptance or rejection of the nomination and that the improper acceptance or rejection has materially affected the result of the election are matters which have to be and can be determined by the election tribunal.

28. The scheme of the various provisions makes it quite clear that Election is one continuous process consisting of various steps or stages and in my view all the steps are integral part of the election and are comprised in the connotation of the word 'Election.'

29. In English law there is divergence of opinion as to when election commences. In fact, the judges have pointed out that no definite rule can be laid down as to

when an election has begun. The question depends on the particular facts of each case. In some of the earlier cases, in England, it was held that an election commences when the writ of Election issues. Some later cases have held that that is not so. (Halsbury Vol. XII Para 493 page 237, and Parker on Election Agents, page 120, 5th Edition).

30. There are other cases in which it has been held that when a person is invited to become a candidate and he accepts the candidature then from the time of acceptance the election begins -- 'Bradshaw v. Fosten 5 O'M & H. 39'. Some of the cases lay down that when a candidate starts 'nursing' his constituency, the election must be deemed to have commenced. In other words, as soon as a candidate begins to take measures to promote his election, the election commences. --e.g. Wolseley v. J?ulford 5 O'M & H. 27'. Thus, for different purposes an election is deemed to commence at different points of time.

31. It is thus clear from the analysis of the various provisions of the [Representation of the People Act, 1951](#), and also from the trend of the English decisions that Election does not mean only the completed election or the final stage of the election, i.e. after the result of the election is declared and published. It means and includes the various steps or stages which have to be gone through in order to arrive at the final result. It means the entire process. In a decision of the Lahore High Court, to which Harries, C. J. and Mahajan J. were parties, it was held that the 'Election' embraces the whole procedure whereby an elected member is returned, whether or not it be found necessary to take a poll. It was further held that a rejection of a nomination paper is a matter in the course of an election and can furnish a ground for election petition. The learned Judges were in that case interpreting the term 'Election' as used in the Punjab Municipal Act. -- 'Sat Narain v. Hanuman Parshad, AIR 1946 Lah. 85'.

32. In my view, the intention of the framers of the Constitution as expressed in Article 329(b) is that none of the various stages in the election can be called in question except by an election petition presented to the prescribed authority in the prescribed manner.

33. Mr. Santosh Kumar Basu, the learned Advocate for the petitioner, has drawn my attention to the words 'matters relating to or in connection with election' in Articles 327 and 328 and to the words 'doubts and disputes arising out of or in connection with Elections' in Article 324 and argues that the absence of such words in Article 329(b) shows that by the word 'Election' in Article 329, only the completed election (after the declaration of the result of the election) is referred to.

34. In my opinion, this argument places too narrow a construction on the word 'election' in Article 329(b). Words such as 'matters relating to or in connection with' are common words which are used in connection with conferring of law-making powers on legislative bodies. They are words which indicate the circumstance of the Power. The framers of the Constitution did not introduce the difference in wordings in the different Articles of Part XV for the first time. They simply copied the words from previous legislations on the subject, both English and Indian. See, for example, S. 291 'of the Government of India Act, 1935, and Government of India (Provincial Elections) (Corrupt Practices and Election Petitions). Order, 1936). The clear object of the provisions in the Constitution and the provisions in the [Representation of the People Act, 1951](#), is to place the matter of decision of doubts and disputes about Election matters within the exclusive jurisdiction of the Election Tribunals. As Article 324 indicates, the whole object of setting up Election Tribunals is for decision of doubts and disputes arising out of or in connection with Elections. It could not have been the intention of the framers of the Constitution that only the completed election can be challenged by Election petition but the other stages thereof or the incidental matters can be canvassed before ordinary Courts of law and then again they can be made the grounds of an Election Petition as provided in Section 100 of the [Representation of the People Act, 1951](#). It was suggested in argument that what the petitioner is challenging is the wrongful rejection of Nomination paper and not an election and so no election is being called in question. There can be no doubt, however, that the petitioner is calling in question a particular step or stage in the process of Election.

35. Mr. R. Chaudhuri and other learned Counsel, appearing in other applications, referred to the meaning of the word 'Election' as given in the various Law dictionaries, such as Stroud, Wharton, Osborne, Ayyar, and contended that it is

only after polling that a real Election takes place and the word 'Election' in Article 329(b) should be construed in this sense and should not be given an extended meaning as comprising the various stages which lead to an Election. But this contention is, in my view, not sound. Part XV of the Constitution is headed and deals with 'Elections' and, as I have pointed out before, the word in Article 329(b) has reference to the entire procedure including the stage of Nomination of candidates.

36. Mr. Choudhury and Mr. Apurbadhan Mukherjee also drew my attention to Section 75 of the Local Government Act, 1894, (56 & 57 Victoria Ch. 73) to show that Election does not ordinarily include Nomination within its connotation, and so 'Election' was defined in the Local Government Act, 1894, as 'including both Nomination and Poll.' But this definition does not assist the argument of Mr. Chaudhuri at all. It is for the purpose of the Local Government Act that the word has been given a special meaning. According to Mr. Chaudhuri, the word 'Election' in its strict sense has reference to the stage of Polling. If that is so then why is it that in the Local Government Act 'Election' is defined as 'including Poll'. It is clear that the definition in the Local Government Act leads to nowhere, and is not of assistance to the petitioner.

37. The learned Advocate General has also placed reliance on S. 170 of the [Representation of the People Act, 1951](#), and has contended that the jurisdiction of the Courts of Civil Jurisdiction, to entertain petitions questioning the legality of the decision of Returning Officers in connection with elections, is ousted by this Section.

38. Mr. Santosh Kumar Basu has urged in answer to this point that the words 'Civil Court' in Section 170 do not include High Court but subordinate courts, which exercise civil jurisdiction. Mr. Basu relies on the decisions of this Court reported in --'Narsing Das Tansukdas v. Chogemull, 43 Cal. W.N. 613 (F.B.) and --'Khirode C. Ghose v. Narendra N. Sanyal', 44 Cal. W. N. 485 (S.B.). But the considerations which led the learned Judges in that case to decide that 'Civil Court' in the Bengal Agricultural Debtors Act did not include the High Court that if it was construed that the expression 'Civil Court' included the High Court, then the Bengal Agricultural

Debtors Act would have to be declared as ultra vires, being in contravention of Section 80A of the Government of India Act, 1915-1919, and so the expression was to be construed as not including the High Court, and as not affecting the jurisdiction of the High Court. Moreover, the expression 'Civil Court' was written in Capital letters (page 620 left hand column paragraph 3) i. e. with Capital 'C', and so it was construed as referring to courts of that particular class as distinguished from High Court. But in S. 170 of the [Representation of the People Act, 1951](#), Capital 'C' has not been used with regard to the expression 'Civil Court'. So in Section 170 the reference is to all Courts of Civil Jurisdiction including the High Court. The decision in '43 Cal. W. N. 613 (F.B.)' is, therefore, of no assistance to the petitioner.

39. It was further contended by Mr. Basu that Section 170 of the [Representation of the People Act, 1951](#), is ultra vires inasmuch as under Article 327 Parliament has powers to make laws relating to election matters only 'subject to the provisions of the Constitution', and if Section 170 has purported to affect the jurisdiction of the High Court under Article 226, the section must be declared as ultra vires to that extent. I am unable to accede to this contention. Article 327 only confers power on Parliament to make laws on electoral matters and specifies certain particular matters in respect of which it can make laws. It does not deal with power of Parliament to make laws affecting the jurisdiction of the High Court or any other Court. It is, however, clear from a reading of Article 246 and Items 72 and 95 of List I (Union List) in the Seventh Schedule to the Constitution that the Parliament has exclusive power to make laws affecting the jurisdiction of the High Court in election matters. There is nothing in Article 226 or in any other provision of the constitution to show that the High Court has power expressly conferred on it to decide doubts and disputes concerning elections. In the circumstances, Section 170 of the Representation of the People Act 1951 must be held to have been validly enacted.

40. But although Section 170 ousts the jurisdiction of the Civil Court, to deal with the matters mentioned in the section, there can be no doubt that if it can be shown that the Returning officer has not acted within the four corners of the Representation of the People Act, or has acted in excess of his jurisdiction, or

mala fide, the High Court has power to interfere under Article 226, notwithstanding the bar created by Section 170. As observed by the Judicial Committee in the case of 'Secretary of State v. Mask & Co. 67 Ind. App. 222 (P.C.)': 'It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.'

41. in the case of -- 'Soorajmull Nagarmull v. Asst. Collector of Customs', I have referred to some cases dealing with this question and it is not necessary to repeat them here. See 55 Cal W. N. 528 at p. 538.

42. It is thus clear that Section 170 does not create any absolute bar to the exercise of jurisdiction of this Court under Article 226 of the Constitution. The real bar is created by Article 329(b) of the Constitution.

43. The Travancore-Cochin High Court in --'Dr. John Mathai v. Fakhrudin Shah', has also taken the view that Article 329(b) operates as a bar to the jurisdiction of the High Court under Article 226: See Judgment, D/- 13-11-1951, delivered by Kunhi Raman C. J. and Subramonia J.

44. In conclusion, I should, however, like to point out that inasmuch as in the case of a wrongful or improper rejection of Nomination papers of candidates, the election of the Returned Candidate is liable to be set aside by the Election Tribunal, it is eminently desirable that the provisions of the [Representation of the People Act, 1951](#), be suitably amended so as to provide for the final decision of the questions relating to rejection of nomination papers before the polling begins, for otherwise the returned candidate will be deprived of the fruits of his success, after he has incurred considerable expense and suffered considerable worry in getting through the election, merely because the Returning Officer had come to an erroneous conclusion. Moreover the candidate whose nomination is rejected is also debarred from participating in the election concerned and is relegated to a future election, which may not be as advantageous to him as the present election. '

45. In the result, this petition fails and the Rule is discharged.

46. This judgment will govern Civil Revision Cases Nos. 2852 of 1951, 2875 Of 1951, 2936 Of 1951, 2857 of 1951, 2922 of 1951 and 2901 of 1951.

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