

In Re: Sri Subrata Chatterjee

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Court : Kolkata

Decided On : Jun-01-1983

Reported in : AIR1983Cal436

Judge : B.C. Ray, J.

Acts : [Constitution of India](#) - Articles 226 and 329; ;[Representation of the People Act, 1951](#) - Section 80

Appellant : In Re: Sri Subrata Chatterjee

Advocate for Pet/Ap. : Nimalendu Dutta Majumdar and ;Tapas Kumar Chatterjee, Advs.;S.K. Acharya, Adv. General, ;S.C. Ukil and ;B.K. Bhattacharya, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

B.C. Ray, J.

1. The subject-matter of challenge in this writ application is the validity of the rejection of the nomination paper filed by the petitioner by the Returning Officer by the purported order dated 13th May 1983, on the ground that the nomination paper was illegally rejected in utter violation if the provisions of Section 33, [Representation of the People Act, 1951](#). It has also been prayed for in the petition

that a writ of mandamus should be issued commanding the respondents to show cause as to why the bye-election should not be allowed to be held and pending disposal of the Rule interim order to that effect should not be made.

2. It has been urged by the learned counsel Mr. Dutta Majumdar that though there is a provision for filing election petition under Section 80, [Representation of the People Act, 1951](#), still then this Court is not powerless to interfere in an appropriate case like the present one by issuance of appropriate writ and interim order. It has been further contended in this connection by Mr. Dutta Majumdar that at least an interim order should be made directing the Election Commissioner not to publish the result of the election even if the bye-election is allowed to be held. Mr. Dutta Majumdar further submitted referring to Article 329(b) of the Constitution that it does not create any embargo on the part of this court to exercise its writ jurisdiction under Article 226 of the Constitution.

3. Mr. Advocate General has, on the other hand, joined issue and drew the attention of this court to the provisions of Article 329 Clause (b) of the Constitution which provides that election to either House of Parliament or to the State Legislature shall not 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. Mr. Acharya, learned Advocate General, in support of his submission has further submitted that the word 'election' as used in the said Article of the Constitution does not mean or contemplate the actual holding of election but it includes the entire election process after the scrutiny of the nomination papers and publication of the names of the candidates till the completion of election by holding election. In support of his submission the learned Advocate General has cited some decisions at the Bar. It has been submitted that as the election process has already started and the election is going to be held on coming Sunday, 5th June, 1983, this application should not be entertained. The petitioner has his relief or other appropriate relief by taking recourse to election petition as envisaged in Section 80, of the [Representation of the People Act, 1951](#).

4. After considering the respective contentions advanced on behalf of the petitioner as well as on behalf of the Chief Electoral Officer and also considering

the provisions of the [Representation of the People Act, 1951](#) I am constrained to hold that this application cannot be allowed at this stage for the reasons stated hereunder. The nomination paper filed by the petitioner was scrutinised on 11th May 1983 and thereafter in accordance with the procedure prescribed under the [Representation of the People Act, 1951](#), the names of the candidates were published. The election is scheduled to be held on 5th June, 1983, i. e. three days left. Election is a serious matter and as such it cannot be enjoined by this court because that will create serious inconvenience in the matter of formation of Government, representation to the Houses of Parliament as well as to the Legislature and thereby it will delay the formation of the Government baffling the aims and purposes of the fundamental ethics of the democratic form of Government. This has been clearly and in very succinct words embodied by the framers of the Constitution, who foresaw the situation, in Article 329 of the Constitution. It is appropriate to set out the relevant portion of the provision of Article 329(b) of the Constitution hereunder :

'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.'

On a plain reading of the provision of this Article there is no ambiguity that this provision embodies in clear terms that election to either Houses of Parliament or to the House of the Legislature of a State shall not be allowed to be questioned before a Court except by an election petition presented to such authority and in such manner as has been prescribed by the appropriate legislature. This has been done clearly to prevent the challenge of holding of election to either of Houses of Parliament or to either Houses of Legislature of the State or to the House of the Legislature of the State and this has been elaborately made clear by the Supreme Court in its earlier pronouncement in : [1952]1SCR218 (N. P. Ponnuswami v. Returning Officer, Namakkal Constituency,) where it has been stated that the law of election in India does not contemplate that there should be two attacks on matters connected with election proceedings one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the

Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Under the election law, the only significance which the rejection of a nomination paper has, consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. It follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. It has been further observed that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. This observation has been reiterated by Krishna Ayer, J. in the case of Mohinder Singh Gill v. Chief Election Commissioner reported in : [1978]2SCR272 . It has been very succinctly observed that election covers the entire process from the issue of Notification under Section 14 Representation of the People Act, to the declaration of the result under Section 66 of the Act.

5. In view of the position of law as settled by the Supreme Court, which is binding on this Court and also on a consideration of the provisions of Article 329(b) of the Constitution I am constrained to hold that this petition cannot be allowed. The petitioner has got his specific statutory remedy by way of an appropriate election petition under Section 80 [Representation of the People Act, 1951](#).

6. For the reasons as aforesaid this application fails and is therefore dismissed without any order as to costs.