

Ravinder Kumar Vs. Election Commissioner of India and ors.

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Court : Jammu and Kashmir

Decided On : Mar-19-2002

Reported in : AIR2003J& K39

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Order 14, Rule 2; ;Representation of the People Act - Section 90

Appeal No. : C.M.P. No. 78 of 2000

Appellant : Ravinder Kumar

Respondent : Election Commissioner of India and ors.

Advocate for Def. : D.K. Khajuria, Adv.

Advocate for Pet/Ap. : C.M. Koul, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.K. Gupta, J.

1. This application has been preferred by respondent-applicant seeking indulgence of the Court in invoking the provisions of Order 14, Rule 2, C.P.C. to decide the

preliminary issue in the election petition first in prior to the disposal of the other issues in the matter.

2. It is contended by the respondent-applicant that the elections of respondents 3 to 8 have been wrongly and illegally challenged by the petitioner by filing writ petition. That the petitioner was required to file separate election petition in challenging the elections of respondents 3 to 8. After filing demurrer, issues were framed in the election petition out of which issue No. 1 reads as under :--

'Whether the petitioner has rightly challenged the election of respondents 3 to 8? If not, why?

O.P. Parties.'

According to the applicant the finding on issue No. 1 would go to the root of the matter being a bar created by law to file an election petition calling into question the elections of respondents 3 to 8 collectively. His further submission is that issue No. 1 be treated as preliminary as a petition can be disposed of on a finding given on this issue.

3. Objections to the application came to be filed by the petitioners-non-applicants on 7-9-2000 in controverting the contention of the applicant-respondent that there is no bar to file one election petition questioning the election of all the returned candidates. That the notification for holding an election to the six Legislative Council's seats was one. Since it was one election and thus one election petition questioning the election of all the returned candidates is maintainable. It was further submitted that issue No. 1 has to be decided along with other issues involving a mixed question of law and, therefore, cannot be treated as a preliminary issue to be decided first.

4. It is apt to point out at the threshold that there is no provision in the Representation of the People Act which is inconsistent with Order 14, Rule 2, C.P.C. So, Order 14, Rule 4, C.P.C. is applicable to election petitions. The judgment in election petition should, therefore, be pronounced on all issues. However, Sub-rule (2) provides that Issue of law to be tried as preliminary issue

must relate to the jurisdiction of the Court or to a bar to the suit created by any law for the time being in force. It is only then that the issue can be tried as preliminary issue. It is further meaningful to point out that the provisions of this rule, as to trying issues of law before those of facts only coming to operation at the first hearing of the suit. Where issues of law and facts arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may if it thinks fit postpone the settlement of issue of fact until issues of law have been determined.

5. The sole contention raised by Mr. C.M. Koul, learned counsel, appearing for the applicant, in this application is that a bar created by law to assail the election of returned candidates collectively in one election petition in the issue No. 1 framed in this behalf is an issue of law and required to be tried as preliminary issue and determined prior to the other issues of fact in the case. Section 90 of the Representation of the People Act pertains to the parties to the petition and reproduced hereinbelow :--

'(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been fully elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates;

AND

(b) Any other candidate against whom allegations of any corrupt practice are made in the petition.'

6. The contention of the applicant's counsel that issue No. 1 be treated as preliminary to be tried first stands completely dispelled by a plain reading of the aforesaid provision, in clear and explicit terms.

7. In the aforesaid facts and circumstances of the case, I do not find any merit in this application and is, accordingly, dismissed. C.M.P. No. 78/2000 stands

disposed of.

8. Case be listed on 9-4-2002.

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