Hari Shankar Prasad Gupta vs Sukhdeo Prasad And Anr. on 2 November, 1953

Equivalent citations: AIR1954ALL227, AIR 1954 ALLAHABAD 227

JUDGMENT

Malik, C.J.

1. This writ petition has been filed by Hari Shankar Prasad Gupta under Article 226 of the Constitution. The reliefs claimed by him are as follows :

> (a) A writ in the nature of quo warranto be issued against the opposite-party no. 1 calling upon him to show the authority under which he has been duly appointed a Member of the Election Tribunal and
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> (b) a writ in the nature of prohibition be not to proceed with the hearing of the Election Petition No. 224 of 1952.

2. The applicant, Hari Shankar Prasad Gupta, was elected to the House of the People of Uttar Pradesh from the North Constituency, district Gorakhpur. Shibban Lal Saksena was a rival candidate. He filed an election petition challenging the election of the applicant. The petition was numbered as Election Petition No. 224 of 1952. The Election Commission appointed an Election. Tribunal to hear this petition and Sri Brij Narain, District Judge, Gorakhpur, was appointed the Chairman of the Election Tribunal. The two members nominated by the Election Commission were,. Sri Brij Behari Lal, Retired District Judge of Uttar Pradesh, and Sri Sukhdeo Prasad, Advocate, Gorakhpur.

The Election Tribunal proceeded with the hearing of the petition and examined as many as 43 witnesses for the petitioner, Sri Shibban Lal Saksena, and, on the close of his evidence 67 witnesses for Hari Shankar Prasad Gupta, the applicant. The Tribunal has said that the statement of Hari Shankar Prasad and a few short witnesses on his behalf remained to be recorded. It was at this stage that Hari Shankar Prasad Gupta filed an application before the Election Tribunal challenging the appointment of Sri Sukhdeo Prasad on the ground that he was not an advocate of 10 years' standing. This application was dismissed by the Election Tribunal by its order dated 28th August, 1953. There was an appeal filed before the Election Commission which was dismissed on 15th September, 1953. It was while that appeal was pending before the Election Commission that this writ petition was moved on 2nd September, 1953.

3. The opposite party has raised two preliminary objections, firstly, that this Court has no

jurisdiction to entertain the application and reliance was placed on a decision of the Supreme Court in -- 'Election Commission, India v. Saka Venkata Rao', AIR 1953 SC 210 (A), and secondly, that certain necessary parties, namely, the Election Commission and the Registrar of the High Court have not been impleaded.

4. It is not necessary for me to go into the preliminary objections as I propose to dismiss the application on the merits. The Election Tribunal as also the Election Commission have characterised the objection as a belated one. The Election Tribunal has said that "respondent no. 1 is an advocate practising in Gorakhpur and he could have raised the present objection in the beginning of the trial but he did not do so. As such the present belated application can be deemed to be for harassment of the petitioner as has been contended by the learned advocate for the petitioner."

The Election Commission has said that "in any opinion, therefore, this belated application challenging the due constitution of the tribunal is without substance and it is hereby rejected."

The fact that the application is a belated application cannot be denied. It is, however, urged that the applicant did not know that Sri Sukhdeo Prasad was not an advocate of ten years' standing. This is difficult to believe as the applicant & Sri Sukhdeo Prasad both belong to the Gorakhpur Bar. Even if Sri Sukhdeo Prasad was not qualified on the date of his appointment there can be no doubt that he is qualified today and there is nothing to bar his reappointment now. On these grounds alone the petition should fail, but even on the merits. I am not satisfied that this application has any force.

5. Reliance has been placed on Section 86 of the Representation of the People Act, 1951, (Act XLIII of 1951). Section 86 provides that the Election Commission has to appoint an Election Tribunal of three persons, one of whom is to be selected out of "a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members" (see clause b) of Sub-section (2) of section 86). It is not denied that Sri Sukhdeo Prasad is an advocate of this Court and his name was recommended by the High Court, as in its opinion he was fit to be appointed a member of the Tribunal.

The objection taken, however, is that he was enrolled as an advocate on the 30th September, 1943 arid was, therefore, not an advocate of 10 years' standing. Before being enrolled as an advocate, Sri Sukhdeo Prasad had practised as a lawyer in the districts of Allahabad and Gorakhpur from 1927 to 1943. The submission of the learned counsel is that the clause must be interpreted to mean that the person should have practised 'as an advocate' of that High Court for a period of not less than ten years. This contention was overruled by the Election Tribunal as also by the Election Commission. They took the view that if a person is an advocate of the High Court and had been practising as a Lawyer for a period of not less than fen years, then he satisfied the requirements of Clause (b) of Sub-section (2) of section 86.

6. There can be no doubt that both views are possible. It is possible to read Clause (b) as meaning an advocate of that High Court who has been in practice for a period of not less than ten years or an advocate who has put in ten years' practice as an advocate. . In this connection it may be pertinent to mention that there is no substantial difference, in this state, in the qualifications of a pleader, a vakil

High Court or an advocate. They have all to be graduates in law if they have not been called to the Bars prior to the Bar Councils Act, 1926 (Act XXXVIII of 1926), lawyers practising in the High Court were divided into two classes, advocates which term included barristers and Vakils High Court, while in the districts we had advocates, Vakils High Court as also pleaders. A pleader could, however, practise only in the district where he was enrolled, while a vakil High Court or an advocate could practise in any district.

7. The question, therefore, arises whether in Section 86 of the Representation of the People Act, 1951, the legislature intended to confine the list only to advocates of the High Court who had been in practice as advocates for not less than ten years or it intended to make the list wider and to include those persons who were enrolled as advocates and had been legal practitioners of not less than ten years' practice.

8. In the Constitution the qualifications of a Judge of the Supreme Court and of a High Court are given in Article 124(3)(a), (b) and (c) and Article 217(2)(a) and (b). Article 124(3)(b) requires that a person should be an advocate of at least ten years' standing and Article 217(2)(b) is as follows:

> "A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and has for at least ten years been an advocate of a High Court in any state specified in the First Schedule or of two or more such Courts in succession."

9. There can, be no doubt that it is only advocates of 10 years' standing who can be considered for appointment to the Supreme Court or a High Court. If the legislature had intended that the same qualifications should be necessary in the case of a member of an Election Tribunal, the legislature could easily have used the same language as in the Constitution,

10. I may here point out that under the Government of India Act, 1915, section 101, and the Government of India Act, 1935, section 220(3)(d) a pleader was also eligible for appointment as a Judge of a High Court. Section 220(3)(d) is as follows:

> "A person shall not be qualified for appointment as a Judge of a High Court unless he (d) has for at least ten years been a pleader of any High Court or of two or more such Courts in succession."

The words "a pleader" of any High Court in Clause (d) must mean a person who is entitled to practise in a High Court. The language was changed in the Constitution as, after the Bar Councils Act, 1926, all persons entitled to practise in the High Court were called advocates and the previous nomenclature of barristers, advocates and vakils was changed.

11. Learned counsel for the applicant has urged that the report of the Select Committee in this connection is helpful and he has referred us to the case of -- 'A. K. Gopalan v. State of Madras', AIR 1950 SC 27 at Pp. 38, 101 (B) in support of his argument that that report can be taken into consideration for the interpretation of the section. Without going into' the question whether that report can be taken into consideration for the purpose of interpretation of the section it is difficult to

see how that report helps learned counsel for the applicant. The words used in the Select Committee Report are "advocates of ten years' standing". For some reason the words "advocates of ten years' standing" were given up and in place of those words the legislature decided to use the words "advocates of the High Court who have been in practice for a period of not less than ten years."

12. The Election Commission has pointed out that if these words are interpreted to mean an advocate of ten years' standing, then lawyers practising in a large part of this country will have to be excluded. The Commission has quoted by way of example lawyers practising in the High Courts of Assam, Orissa, Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, and Travancore-Cochin and the Judicial Commissioners' Courts of Bhopal, Himachal Pradesh and Vindhya Pradesh, where lawyers were enrolled as advocates only after the High Courts and the Judicial Commissioners' Courts came to be established. The reason behind the rule is that only persons of sufficient experience and character and integrity should be appointed as members of the Election Tribunal. The mere fact that an Advocate of a High Court has practised for a large number of years as a Vakil High Court or as a Pleader and not as an Advocate does not necessarily mean that he does not possess any of the qualities mentioned above.

13. There is another difficulty in interpreting the section in the way the learned counsel for the applicant wants it to be interpreted. If the words "who have been in practice" are to be read as governed by the words "Advocates of that High Court" not only there will be no such Advocate where the High Court established within ten years but also Advocates who have practised in other High Courts and have within ten years shifted to that High Court will not be qualified. By the amalgamation order of July 1948, the Oudh Chief Court and the Allahabad High Court were amalgamated and' a Bench of this Court has held that after the amalgamation, the amalgamated High Court was a new High Court and the fact that it was not given a new name made no difference. In that case no Advocate of the new amalgamated High Court can be held to have practised as an Advocate of this Court for ten years.

14. To my mind the section can be interpreted to mean that the person selected is an Advocate and that he has put in practice as a lawyer for a period of not less than ten years. The Election Commission having taken, that view I am not prepared to hold that they were wrong and interfere under Article 226 of the Constitution. I would, therefore, dismiss this application with costs.

Sapru, J.

15. I am in agreement with the order proposed to be passed by my Lord the Chief Justice. I would like to point out that, apart from other considerations, the petition presented to this Court is of an extremely belated nature. Sri Sukhdeo Prasad, whose appointment as a member to the Election Tribunal has been challenged in this application by asking for a writ of 'quo 'warranto', was appointed on the 22nd September 1952. It was not until late in August 1953 that objection was raised to his functioning as a member of the Election Tribunal before the Tribunal itself. The Tribunal in its order dated the 28th August 1953 pointed out that the application challenging his appointment was filed after the petitioner's evidence had been concluded, respondent No. 1 had examined about 67 witnesses and only the statement of respondent no. 1 and some short witnesses

remained to be recorded.

It is strange that it should not have occurred to the petitioner who is an advocate practising in Gorakhpur to take an objection to the appointment of Sri Sukhdeo Prasad, if he really entertained the belief that that appointment was invalid at the beginning of the trial. I am not prepared to accept the statement that the petitioner did not know or at all events could not have acquainted himself with the fact that the appointment of Sri Sukhdeo Prasad was irregular. Had he cared to look into the list of advocates of the Bar Council, he could have easily found out that Sri Sukhdeo Prasad on the date of his appointment had not completed 10 years' practice. The petition is, therefore, in any case a belated one and it strikes me that in the exercise of the powers which we enjoy under Article 226 of the Constitution we are not bound to interfere on petition of this character. For it must be emphasised that the powers which we enjoy under Article 226 are of a discretionary nature, though that discretion has to be exercised in accordance with judicial principles.

16. I should also like to point out that admittedly Sri Sukhdeo Prasad is now qualified to be appointed as a member of the Tribunal, even on the assumption that the word "practice" means practice as an Advocate. It is a well recognised principle that the Court will not grant a 'quo warranto' in a case where a mere irregularity can be cured. For this proposition I would rely on -- 'Bradley v. Sylvester', (1872) 25 L. T. 459 (C). This was a case in which the Court refused an application for a writ of 'quo warranto' against a clerk to a school board on the ground that he was improperly elected according to the provisions of a certain statute, considering that the majority of the board might, without assistance, remedy the impropriety themselves, the office being held during the pleasure of the board. Cockburn, C. J., observed:

> "Here the ground upon which we are asked to interfere is an impropriety in the election, and as the office is held at the pleasure of the board, it is competent for the board to do what might be accomplished by our interference."

On this ground too, in my opinion, this application must fail. This case is referred to with approval in -- 'Rex v. Speyer; Rex v. Cassel', (1916) 1 KB 595 (D). At page 609 Lord Reading, C. J., emphasises that "whereas formerly a quo warranto was held to lie only where there was an usurpation of a prerogative of the Crown or of a right of franchise, a proceeding by information in the nature of quo warranto has long since been extended beyond that limit and is a remedy available to private persons within the limits stated by Tindal C. J. and subject always to the discretion of the Court to refuse or grant it."

I have come to the conclusion that this is a case, having regard to the belated nature of the petition and the dubious motive with which it has been presented, in which the Court should not exercise its discretion in favour of the petitioner,

17. I now come to the question whether the interpretation which has been sought to be placed upon Section 86 of the Representation of the People Act, 1951, is a correct one. It is argued that under Section 86(2) the Election Commission was bound to nominate a person only from the list of advocates of the High Court who had been in practice for a period of not less than ten years. It is

contended that the words "in practice" mean "has practised as an advocate". Undoubtedly there are difficulties in interpreting the words "in practice" as a lawyer because that might include attorney also. At the same time, I am not prepared to exclude the possibility that the words "in practice" mean any practising practitioner qualified to plead & act in courts within the jurisdiction of a High Court, provided that at the time of appointment he has achieved the status of an advocate. To place any other interpretation might indeed amount to disqualifying lawyers in a large part of this country. As has been pointed out by my Lord the Chief Justice, there are Courts which came into existence only after the coming into force of the Constitution. For this reason the interpretation that the words "in practice" have a wide meaning is not an altogether impossible one and I am not, therefore, prepared to hold that the only interpretation to be placed on these words is "has practised as an advocate". On both these grounds the application must fall.

Chaturvedi, J.

18. I agree with the judgment delivered by my Lord the Chief Justice and have nothing to add.

BY THE COURT

19. The application is dismissed with costs which we assess at Rs. 100/-.

20. Learned counsel for the applicant has asked for a certificate under Article 132 of the Constitution. As this case does not involve any substantial question of law as to the interpretation of the Constitution we decline to grant the certificate.