Vishwa Mittra vs Dist. Judge, Jhansi And Ors. on 30 September, 1955

Equivalent citations: AIR1956ALL89, AIR 1956 ALLAHABAD 89

ORDER

Mehrotra, J.

1. The applicant along with Sri Jagdish Rai and Allah Rakha, who have been impleaded as opposite parties Nos. 2 and 3 to this petition, filed his nomination paper for ejection as a member to the Cantonment Board, Jhansi from Ward No. 3 in the election held in October 1954. On the date of scrutiny of nomination papers, the nomination paper of Sri Jagdish Rai, opposite party No. 2 was rejected by the Returning Officer and the applicant's and Allah Rakha's nomination papers were admitted and they were declared duly nominated.

12-10-1954 was the date fixed for the withdrawal of the nomination papers and on that date Sri Allah Rakha, opposite party No. 3 withdrew his candidature and as no other candidate was left in the field, the Returning Officer declared the applicant duly elected on the 13-10-1954 under Rule 22, Cantonment Rules. An election petition was thereafter filed by the opposite party No. 2 against the applicant on various grounds. The applicant put in his defence and filed his written statement. A number of issues were struck and issue No. 1 reads as follows:

> "Is the petition as framed not legally maintainable? Is the petitioner not entitled to make this application?

2. This issue was heard as a preliminary issue in the case and the District Judge of Jhansi held in favour of the opposite party and rejected the objection of the petitioner that the petition as framed was not maintainable. The present petition has been tiled under Article 226 of the Constitution praying that a writ of certioran be issued quashing the order of the District Judge dated 23-4-1955 by which he disposed of issue No. 3.

It wits further prayed that a writ in the nature of prohibition be issued prohibiting the District Judge. Jhansi from proceeding with the trial of "Election Petition No. 11 of 1954 -- ('Sri Jagdish Rai v. Vishwa Mittra).

3. A counter affidavit has been filed on behalf of the opposite parties and the right of the petitioner to claim a writ of certiorari is denied.

4. Two preliminary objections have been taken to the maintainabiijty of tne present writ petition on behalf of the opposite parties. Firstly, it is contended that the order complained against being an

interlocutory order and the petition not having been finally disposed of, no writ oi certiorari can be granted to the applicant. It is further contended that the order passed by the District judge is neither a decision nor an order.

It is only a finding on a particular issue which does not affect any right of the petitioner and consequently no relief, can be granted to the petitioner under Article 226 of the Constitution. It is further contended that no writ of prohibition, can be granted in the present case. The tribunal had jurisdiction to determine the issue. The issue decided by the tribunal did not affect the jurisdiction of the tribunal.

Even if the tribunal decided the case wrongly, it cannot be said to have exercised its jurisdiction illegally or has failed to exercise a jurisdiction vested in him. It is urged by the opposite parties that a writ of certiorari may issue if the subordinate tribunal has committed any error on the face of the record and a writ of prohibition can only lie if the tribunal had no jurisdiction to proceed with the trial. The purpose of a writ of prohibition is to keep the subordinate courts within their bounds and not to exceed their jurisdiction.

5. As regards the first preliminary objection raised by the opposite parties, there is no bar under Article 228 of the Constitution to the High Court interfering with any order passed by a subordinate tribunal, though a case has not beon finally disposed of, if the order is without jurisdiction or is erroneous on the lace of the record. The power, however, is discretionary and it has been held that the discretion will not be exercised in cases where an equally adequate and speedy remedy is available to the petitioner.

It has also been held that in cases where a particular order sought to be challenged can be revised by this Court under Section 115, C. P. C. or that an appeal lies against that order, such an order will not be quashed by the High Court. The opposite parties have relied on a Full Bench of this Court in the -- 'Asiatic Engineering Co. v. Achhru Ram', AIR 1951 All 746 (A).

In that case it was only decided that Courts should refuse, normally "speaking to entertain applications tor writs, directions or orders for certiorari or prohibition where the ordinary" remedy of approaching the High Court by an application in revision is available to the party concerned.

This power of prohibition or certiorari should in no case be used to interfere with interlocutory orders in eases in which it is possible for an applicant to raise the question of its correctness or illegality it the time when the final order comes to be passed by way of revision.

This decision only places two restrictions on the exercise ol power by tnis Court under Article 226 of the Constitution against an interlocutory order. Firstly, it is laid down that a direction will not be issued under Article 226 of the Constitution in cases where the order sought to be challenged is revisable by this Court under the Code of Civil Procedure and secondly, if the ultimate order can be questioned in this Court.

In the present case no revision would lie against the order of the tribunal disposing of the issue to this Court and no appeal or revision even lies against a final order passed by the tribunal. It is contended by the opposite parties that the final order, passed by the tribunal may be questioned in this Court under Article 226 of the Constitution, but to my mind, even if the final order can be questioned by means of a petition under Article 226 of the Constitution in this Court, that is no bar to the exercise of the power of this Court to interfere with the order at an interlocutory stage.

This case has been considered in a later case of this Court in--'Ravi Pratab Narain Singh v. State of U. P., AIR 1952 All 99 (B) where V. Bhargava. J., Who was also a party to the Full Bench decision, observed as follows:

> "The question of existence of a specific and adequate alternative remedy is material only when the question of issue of a writ of mandamus is under consideration and not in the case of a writ in the nature of certiorari or a prohibition.
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> In the case of -- "Hari Vishnu Kamath v. Ahmad Sayed Ishaque', (S) AIR 1955 SC 233 (C), dealing with the power of the High Court to interfere with the order of a subordinate court under Article 226 of the Constitution their Lordships of the Supreme Court remarked that "both writs of prohibition and certiorari have for their object the restraining of inferior courts from exceeding their jurisdiction and they could be issued not merely to courts but to all authorities exercising judicial or quasi-judicial functions. But there is one fundamental distinction between the two 'writs, and that is what is material for the present purpose.
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> They are issued at different stages of the proceedings. When inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior court lor a writ of prohibition, and on that, an order will issue forbidding the inferior court from continuing the proceedings. On the other hand, if the court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior court for a writ of 'certiorari' and on that, an order will be made quashing the decision on the ground of want of jurisdiction.
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> "It might happen that in a proceeding before the inferior court a decision might nave been passed, which does not completely dispose of the matter, in which case it might be necessary to apply both for certiorari and prohibition -- 'certiorari For quashing what had been decided, and prohibition for arresting the further continuance of the proceeding."

6. The Supreme Court further observed that:

> "authorities have gone to this extent that in such cases when an application is made for a writ of prohibition and there is no prayer for certiorari it would be open to the Court tg stop further proceedings which are consequential on the decision. But if the

proceedings have terminated then, it is too late to issue prohibition and certiorari' for quashing is the proper remedy to resort to".

7. It is, therefore, clear from the observations quoted above ol their Lordships of the Supreme' Court that there may be cases where it. may be necessary for a petitioner to ask for both the reliefs of certiorari and prohibition the writ of certiorari to quash the order which does not .finally dispose of the controversy between the parties and a direction in the nature of prohibition restraining the court from further proceeding with the case.

It cannot, therefore, be contended that as a universal principle no writ oi certiorari will issue against an interlocutory order. As I have already pointed out, there may be cases where an interlocutory order may be revisable by a superior court on revision or in appeal. In that case it will not be a case for the issue of a direction under Article 228 of the Constitution.

There may be a case where any alternative remedy may be available, such as an appeal against the final order of a court and in such cases ruling may not be granted but in a case where the order of a subordinate court disposes, of a preliminary issue which, if decided, may affect the jurisdiction of the court, it may be desirable to consider such an order and if other conditions are fulfilled, a proper direction may be issued by this Court.

8. The other preliminary objection raised by the opposite parties is that no right of the petitioner has been affected by the order which is sought to be quashed. The petitioner has been duly declared electee! and he has got a right to continue in office till his election has been set aside by a competent tribunal in accordance with the provisions of the statute which provides for filing of an election petition.

An election once held should not be lightly disturbed and consequently the procedure provided by a statute for an election petition has to be strictly followed and it the opposite party has been able to establish that the petition was properly filed any decision on the objection raised by the successful jandidate that the petition is not maintainable is a decision which affects the right of the unsuccessful (successful?) candidate.

It cannot, therefore, be said that the decision of the tribunal on the issue did not affect the right of the petitioner so as to disentitle him to ask for any direction under Article 226 of the Constitution. The contention that the order of the tribunal is not a decision but it is only a finding on a particular issue has no substance. It is an order passed by the tribunal which affects the rights of the petitioner and consequently it is a decision which can be the subject-matter of a direction in the nature of a writ of certiorari by this Court.

It was further contended by the opposite-parties that the tribunal had jurisdiction to decide the question whether the petition was maintainable or not, It having decided that issue, it cannot be said that the decision was without jurisdiction and consequently it cannot be interfered with by means of a writ petition, It has now been held by this Court that a writ of certiorari not only lies in cases where there is want of jurisdiction or excess of jurisdiction but even in the ground that the

order passed by a subordinate court is. erroneous on the face of it. In the case referred to above, reported in (S) AIR 1955 SC 233 (C), at p. 243 their Lordships of the Supreme Court observed as follows:

> "On these authorities, the following propositions may be taken as established;. (1) 'Certiorari' will be issued for correcting errors of jurisdiction, as when an inferior court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it, (2) 'Certiorari' will also he issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of 'Certiorari' acts in exercise of a supervisory and not appellate jurisdiction. One consequence of. tills is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.
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> This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to re-hear the case on the evidence, and substitute its own findings in 'certiorari'. These propositions are well settled and are not in dispute".

They further observed that:

> "It may, therefore, he taken as settled that a writ: of 'certiorari' could be issued to correct an error of law. But it is essential that it should be something more than a mere error, it must be one which must be manifest on the face of the record-"

9. It is, therefore clear that manifest errors of law can also be corrected by a writ' of certiorari and ihe question, therefore, is whether the error pointed out by the petitioner in the order of the tribunal is a manifest error of law on the face of the record. When does an error cease to he a mere error and becomes an error apparent on the face of the record, is a difficult question and must be decided on the facts of each case.

One of the tests winch might afford a satisfactory basis for the decision in majority of cases is that an error cannot be said to be apparent on the face of the record if it is not self-evident, and if it required an examination or argument to establish it. But, as was observed by their lordships of the Supreme Court, even this test may break down, because judicial opinions also differ and an error that might be considered by one Judge as self-evident might not be so considered by another, and the Supreme Court therefore, observed that "What is an error apparent on the face of the record cannot be defined precisely or exhaustively, and it must be left to be determined on the facts of each case".

It is, therefore, necessary to examine the facts of the present case in order to appreciate the question whether the tribunal has committed an error of law on the face of the record in the present case or not.

10. Rule 43 of the Rules framed under the Cantonments Act provides the procedure for the presentation of an election petition. It reads as follows:

> "A petition calling in question the validity of an election or the return of a particular candidate may be presented in writing to the District Judge of the district within which the election has been held (or where there is no District Judge, to such Judicial Officer as the State Government may appoint in their behalf), within seven days after the date on which the result of the election was declared either by a person who was a candidate at the election or by not less than five persons entitled to vote at the said election."

11. The contention of the petitioner is that the right to file a petition challenging the election of a returned candidate is only given to a candidate at the election" or five persons entitled to vote. In the present ease the petition was not filed by five voters. The petitioner claimed to be a candidate and on that basis he has filed the present petition.

The point raised by the petitioner is that a candidate whose nomination paper was rejected by the Returning Officer may be a candidate for an election but he cannot be held to be a candidate at the election and consequently, he had no right to file a petition under Rule 43.

The words "a candidate at the election" have a limited connotation according to the petitioner. It necessarily implies a candidate at the time of the poll and the opposite-party whose nomination paper was rejected, was not a party to the actual poll and consequently he cannot be regarded as a candidate at the election.

The argument of the petitioner is that the words "at the election" means a candidate who was a participant in the poll as has been held by a Division Bench of this Court and by the Bombay High Court.

In view of the decisions, which I shall consider hereafter, it is contended by the petitioner that the words "at the election" have acquired a settled meaning and the tribunal in considering these words contrary to these decided cases has committed a manifest error of law and it may be corrected by this Court by means of a writ of certiorari.

It is necessary to examine the cases relied upon by the petitioner. In -- 'Sheo Kumar v. V. G. Oak, AIR 1953 All 633 (D) a petition was filed challenging an election of a successful candidate in the general elections held in January 1952.

The petition was filed under the Representation of the People Act. One of the candidates, whose nomination paper had been duly accepted by the Returning Officer, subsequently withdrew his candidature and did not contest the election. In the petition fifed challenging the election of the returned candidate, he was not impleaded as an opposite-party and objection was taken by the successful candidate against the maintainability of the petition on the ground that a proper party was omitted from the array of the opposite-parties.

The tribunal decided the issue as a preliminary issue and held that under the provisions of the Representation of the People Act it was not necessary to implead a candidate as a party who had withdrawn his candidature after the scrutiny.

A petition under Article 226 of the Constitution was filed in this Court and the petition was rejected on the finding that the decision of the tribunal that a candidate, who had withdrawn his candidature, need not be Impleaded as an opposite-party was correct. It is necessary to refer to certain observations of this Court in the aforesaid case. At p. 636 of the Report it is observed as follows:

> "On a survey of the relevant provisions, the inference appears to us to be irresistible that the words at the election" have been used in Section 82 in its popular sense. We cannot understand how and why a person who completely wipes himself off so far as the election is concerned, by withdrawing himself from the contest should be regarded as vitally interested in the election in the same manner as other duly nominated candidates who contest the election.
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> His position cannot be higher than that of any voter at an election. Indeed it is possible to imagine that in the party or groups he belongs to, some persons may have, because of their standing with their group or party, a more living interest in the election than the withdrawn candidate."

The Court further observed that:

> "It is obvious that the words "any candidate" are qualified by "at such election". They cannot obviously include a person who withdrew himself from the contest before the election was over. Nomination may be an essential prerequisite to election and may be process in election but it does not constitute the whole process of election. Our interpretation of Section 81 is that the 'candidate must be a person, if the polling takes place, who continues as a candidate right up to the time that the election is held".

12. This case has followed the case reported in - 'Sitararn Hirachand v. Yograjsing', AIR 1953 Bom 293 (E) where Chagla C. J. held a similar view. After an examination of the various provisions of the Act, he has come to the conclusion that the words "at the election" have a limited and narrower meaning.

It means a candidate who continues to be a contestant at the poll. Similar view has been taken by the Rajasthan High Court in -- 'Madan Mohan v. Bankatlal', AIR 1954 Raj 145(F). A contrary view has, however, been taken by Patna High Court in the case of -- 'Shall Mohammad Umair v. Ram Charan Singh', AIR 1954 Pat 225 (G).

In a recent case, the Supreme Court had to consider this matter in the case of -- "Bhikaji Keshao v. Brijlal Nandlal', (S) AIR 1955 SC 610 (H). In that case their Lordships of the Supreme Court have

disposed of a special appeal on the ground that the failure to implead a candidate, who had withdrawn his candidature, in the array of respondents' is no ground for dismissing the petition in limine.

As regards the question whether such a candidate is a necessary party to the petition and the conflict of opinion on that question between the various High Courts, their Lordships have observed as follows at p. 614:

> "These three decisions AIR 1953 Bom 293 (E), AIR 1953 All 633 (D) and AIR 1954 Pat 225 (G) have treated the decision of the question as depending on a construction of the phrase "at the election" in Section 82 of the Act. The Bombay and Allahabad cases hold that this phrase confines the necessary parties under this section to those who were candidates for the actual poll, while the Patna High Court takes the view that the phrase "at the election" has no such limited significance.
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> "it appears to us to be unnecessary and academic to go into this judicial controversy having regard to the decision of this Court in -- 'Jagan Nath v. Jaswant Singh', AIR 1954 S.C. 210 (I). I we were called upon to settle this controversy we would prefer to base the decision not on any meticulous construction of the phrase "at the election" but on a comprehensive consideration of the relevant provisions of the Act and of the rules framed thereunder and of the purpose, if any, of the requirement under. Section 82 as to the joinder of parties other than the returned candidate".

13. The petitioner has urged that this case has not decided the controversy between the High Courts on the interpretation of the words "at the election" & in the absence of any authoritative decision of their Lordships of the Supreme Court, the Bench decision of this Court was binding on the tribunal and the tribunal should have interpreted the words "at the election" in the similar manner.

The reply to this argument of the opposite-parties is that the Supreme Court decision referred to above does not endorse the view of this Court that the words "at the election" necessarily implies that a candidate should be a contestant at the poll and it has further laid down the manner in which the words "at the election" have to be interpreted in a particular section of a statute.

It has got to be interpreted in the light of the the context, in view of the other provisions of the statute and in view of the object underlying the section. Even this Court, when interpreting the words at the election", confineu its decision to the words in the context of the section.

It did not lay down as a rule that wherever the, words "at the election" are used, they can only have one meaning namely, that it refers to the actual poll. The opposite-parties have urged that having regard to the scheme of the Rules and the provisions of Rules 43 and 47, it is clear that the words "at the election' in Rule 43 have not been used in their narrower sense.

Their Lordships of the Supreme Court in the case of -- '(S) AIR 1955 SC 610 (H), when dealing with the interpretation of the word "election" under Article 329 of the Constitution, have laid down that

the word "election" has been used in a narrower sense so as to indicate the actual poll as well as in a broader sense to include the entire process of election starting with the filing of nomination papers and ending with the declaration of the results and what particular meaning the Legislature intended to give in a particular statute to the word at the "election" will have to be determined in accordance with the provisions of that statute.

Rule 47 of the Rules framed under the Cantonments Act provides:

> "If in the opinion of the inquiring officer (a) The election has not been a free election by reason of the general employment of bribery or undue influence within the meaning of Section 171B or Section 171C, I. P. C., or the result of the election has been materially affected by (i) the commission of a corrupt practice or (ii) the improper acceptance or refusal of A nomination paper, or
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> (iii) the improper reception, or refusal of a vote, or
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> (iv) the failure to comply with any provision of the Act or of these Rules, he shall set aside the election' .

14. One of the grounds, therefore, for setting aside the election is the improper acceptance or refusal of a nomination paper. If the interpretation sought to be put by the petitioner on the words "at the election" in Rule 43 is accepted, the result will be that a person whose nomination paper has been wrongiully rejected, will have no remedy to file n petition although such a ground has been expressly mentioned as one of the grounds on which an election can be set aside.

The contention of the petitioner is that the mere fact that it will lead to certain hardships should be no ground for not giving a plain meaning to the words used in the statute. No objection can be taken to this proposition of the petitioner but when the words "at the election" have not acquired any special meaning, they have to be interpreted having regard to the context of the section and other provisions of the statute.

The fact that improper refusal of a nomination paper has been made specifically as a ground for challenging an election, is a necessary factor to be considered in interpreting the words "at the election" in Rule 43.

My attention was also invited to other provisions of the Rules in which the words "at the poll" have been used and the argument of the opposite-parties is that in the Rules wherever the framers intended that something has to be done at the time of the actual poll, the words used are "at the Poll" and not "for the election" as in the Representation of the People Act.

The petitioner then contended that if the provisions of other similar statutes are examined, it will appear that the Legislature has always given express power to a candidate, whose nomination has been rejected, to file an election petition. Reference was made to Section 20, U. P. Municipalities Act. Subsection (2) of Section 20, Municipalities Act provides that:

> "The petition may be presented by any candidate in whose favour votes nave been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality, or by a person who claims that his nomination paper was improperly rejected".

15. The words "by a person who claims that his nomination paper was improperly rejected" were added by the Amending Act 7 of 1949 and it is urged that prior to the addition of these words, a person whose nomination paper had been rejected improperly, had no right to file a petition and yet it was never held that such a candidate should be given a right to file a petition;

Section 19 along with Section 20 was also amended in the year 1949 and Clause (c) was added to Section 19 (1) of the Act. Clause (c) reads as follows:

> "That such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected".

16. The improper rejection of a nomination paper was expressly made one of the grounds for challenging an election and consequent upon ':his addition to Section 19, it became necessary, having regard to the language of Section 20, to make a specific provision giving a right to person whose nomination paper has been rejected to challenge the election.

To my mind it is a clear indication of the intention of the Legislature that wherever a wrongful rejection of a nomination has been made, one of the grounds for setting asivie the election, a person, whose nomination has been wrongfully rejected, has been given a right to tile an election petition.

The Rules under the Cantonments Act were framed subsequent to the decision of this Court and if the framers of the Rules had thought that the words "at the election" did not include persons whose nomination, bad been wrongfully rejected, an express provision would have been made to that effect.

The framers of the Rules having thought that the words "at the election" included a candidate whose nomination had been wrongfully rejected, did not further provide that a person, whose nomination has been rejected, will have a. right to file a petition. The phraseology of each section has to be interpreted in the light of the context and no assistance can be taken from reference to the provisions of other similar Acts.

The tribunal has tried to distinguish the Division Bench decision of this Court on the ground that in the present case there were no polls held and the considerations, therefore, which weighed with this. Court in deciding the case of -- 'AIR 1953 All 633 (D)', did not apply to the present case. The petitioner has strongly contended that this is not a ground on which the case should be distinguished.

From a perusal of the decision in -- 'AIR 1953 All 633 (D)', it will be clear that the decision was based on the language of Section 82, Representation of the People Act and the words "at the election" had

been given narrower interpretation in the light of the context.

it cannot, therefore, be said that the tribunal was wholly wrong in distinguishing that case on the ground that in the present case polls had not actually taken place. In my opinion therefore, the tribunal has not committed any manifest error of law.

17. There is no force in this petition and I reject it but in the circumstances of the case, I make no order as to costs.