

Triloki Singh vs Returning Officer, Lucknow And Ors. on 4 March, 1955

Equivalent citations: AIR1955ALL536, AIR 1955 ALLAHABAD 536

ORDER

Kidwai, J.

1. Sri Triloki Singh was a candidate for election to Lok Sabha from the Lucknow District Central Constituency. The two other candidates were Srimati Sheorajvati Nehru and Sri Atal Behari Bajpai. All the processes of the election took place up to 27-2-1955. Thereafter the counting of votes commenced from 1-3-1955. Tin's petition was filed on 2-3-1955 under Articles 226 and 227 of the Constitution of India praying for certain directions to to be issued and for a declaration to be made that the counting of votes on 1-3-1955 was invalid and inoperative in law.

The direction that was asked for was to the effect that the Returning Officer should be prohibited from following the result of, what is called, his "illegal procedure" in counting votes and should not prepare and certify the return in form No. XVI and should not cause it to be published in the Gazette. An interim order for the sealing of necessary papers was also prayed for but that order was not issued and must now be left out of consideration.

2. The question that first of all is to be considered, on a preliminary objection being raised on behalf of the Returning Officer, is whether this Court has jurisdiction to issue a writ in this matter which relates to an election, even supposing all the allegations made in the application to be correct, though this is not accepted by the Returning Officer.

The question of law which has, therefore, arisen is whether I can exercise the powers of the High Court under Article 226 of the Constitution and issue a writ either of certiorari or of mandamus in respect of the action of the Returning Officer.

3. The matter is governed by authorities. The first decision is a decision of a Bench of this Court of which I was a member. In that decision it has been laid down that Article 329, Clause (b) of the Constitution prevents an interference by the High Court by the issue of a writ in all matters relating to an election.

It was further held that the word "election" as used in that Article is wide enough to cover every part of the process of selection of a representative. It was, therefore, held that this Court could not issue a writ in the matter of the proper or improper rejection of a nomination paper.

4. It is true that in that case the question was as to the rejection of a nomination paper which occurred at a very early stage in the election. Nevertheless, it was necessary for the purpose of deciding that case to determine the meaning of the word 'election' as used in Article 329, Clause (b) of the Constitution. The decision, therefore, was a decision on the point which had really arisen in this case.

5. The next case, to which reference may be made, is the decision of the Supreme Court reported in -- 'Punnuswami v. Returning Officer, Namakkal Constituency', AIR 1952 SC 64 (A). In that case also their Lordships (per Fazl Ali J.) have laid down the law in the following words:

"As we have seen, the most important question for determination is the meaning to be given to the word "election" in Article 329, Clause (b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll.

In the wide sense, the word "election" is used to connote the entire process culminating in a candidate being declared elected. In -- 'Srinivasalu v. Kuppuswami', AIR 1928 Mad 253 (B), the learned Judges of the Madras High Court after examining the question expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby "elected member" is returned, whether or not it be found necessary to take a poll.

With this view my brother Mahajan J. expressed his agreement in -- 'Sat Narain v. Hanuman Parshad', AIR 1946 Lah 85 (C), and I also find myself in agreement with it. It seems to me that the word "election" has been used in part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature.

The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in part XV including Article 329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter one of the questions mooted is when the election begins."

The learned Judges then quoted Halsbury's Laws of England and various other authorities.

6. Mr. Chose sought to rely upon certain remarks made in this judgment in order to differentiate the present case from the case which was considered by their Lordships of the Supreme Court. He contended that their Lordships took this view in a matter relating to the nomination of a candidate and that they have made it clear that they took this view only because in such a case another remedy

was open to the applicant at the appropriate stage and in an appropriate manner.

He contends that in the present case there is HO other remedy open to him at the appropriate stage and time and in the appropriate manner.

7. The remarks upon which Mr. Ghose relies were merely remarks made in the course of the reasoning. I am bound not by the remarks made by their Lordships of the Supreme Court but by the law laid down by them in the words which I have¹ quoted above. According to, that decisions therefore, every part of the process by which a candidate is declared to be a representative of the people from the beginning to the final selection is covered by the word "election" as shown in Article 329, Clause (b) of the Constitution.

The Court is, therefore, deprived by the Constitution itself of the power to intermeddle with an election and the proper remedy is by means of an "Election Petition".

8. Of course once an election petition has been filed and some order or decision has been given by Election Tribunal, the High Court can, in exercise of its powers under Article 226 of the Constitution, direct the issue of certain orders or writs or, in exercise of its powers of supervision under Article 227 of the Constitution, proceed to consider the matter.

In the latest decision reported in -- 'Hari Vishnu v. Ahmad Ishaque', (S) AIR 1955 SC 233 (D), their Lordships of the Supreme Court have reaffirmed the view taken in the earlier decision with regard to the wide meaning to be given to the word "election" in Article 329, Clause (b) of the Constitution of India.

9. Even, however, if the differentiation which Mr. Ghose seeks to draw is considered on the merits, it must be held that it is open to a candidate to file an election petition based upon the illegalities and 'irregularities alleged by the applicant to have been committed in the present case.

Section 81 of the Representation of the People Act (XLIII of 1951), provides for the presentation of an election petition calling in question any election on the grounds specified in sub-sections (1) and (2) of Section 100 and Section 101 of the Act. Section 100, Clause 2(c) is as follows:

"that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form."

10. In the present case all the allegations that have been made are that the provisions of the Representation of the People Act XLIII of 1951 as well as of the Rules made thereunder by the Election Commission have been infringed and that is in fact the sole illegality and irregularity upon which this petition is based. Clearly under Section 81 read with Section 100, Clause 2(c) such allegations may be the basis of an election petition.

The section, therefore, gives a remedy by means of an election petition even in a case such as the present. The differentiation which Mr. Ghose seeks to make does not exist in this particular case. In these circumstances there is no valid reason why the decisions to which I have already referred should not be followed. I accordingly hold that this petition is not maintainable. The application is rejected with costs which I tax at Rs. 100/-.