

Kailash Chand And Ors. vs H.N. Agarwala And Ors. on 26 October, 1953

Equivalent citations: AIR1954ALL219, AIR 1954 ALLAHABAD 219

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution which arises in the following circumstances :

2. The petitioners and respondents Nos. 2 to 18 are candidates at an election for membership of the Municipal Board, Roorkee. The petitioners and these respondents filed their nomination papers on 5-10-1953. On the 7th October, which was the date fixed for the scrutiny of the nomination papers, the Returning Officer rejected the nomination papers of the respondents on the ground that they were not presented within the prescribed time. On the following day the respondents presented an application to the Returning Officer (who is the first respondent) asking him to review his order rejecting their nomination papers. The Returning Officer allowed this application and by an order dated the 10th October he set aside his earlier order of the 7th October and accepted the nomination papers of the respondents. The relief which the petitioners seek is the issue of a writ in the nature of 'certiorari' to quash the order of the Returning Officer made on 10-10-1953.

3. It is argued on behalf of the petitioners in this Court that the action of the Returning Officer in reviewing his earlier order and accepting the nomination papers of the respondents is not a ground which can be made the subject of an election petition, and that unless this Court interferes on their behalf in the exercise of its jurisdiction under Article 226 they have no remedy.

4. The question whether the petitioners have a remedy by way of an election petition turns upon the interpretation of Section 19, U. P. Municipalities Act, 1916. The section reads as follows :

"19. 'Power to question municipal election by petition.' -- (1) The election of any person as a member of a board may be questioned by an election petition on the ground :

(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 28;

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a

majority of lawful votes;

(c) 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.

(2) The election of any person as a member of a board shall not be questioned-

(a) on the ground that the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in, the electoral roll or rolls ;

(b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

5. It is argued on behalf of the petitioners that, in the first place, the election of any person as a member of a Municipal Board can be questioned only on one or more of the grounds specified in Sub-section (1) of this section, and that the provisions. of Sub-section (2) are by way of a qualification or restriction on the rights conferred by Sub-section (1). Secondly, it is contended that the conduct of the Returning Officer in reviewing his former order does not amount to an error or irregularity within the meaning of Clause (b) of Sub-section (2).

6. Section 19 is not an easy section to construe. The structure of the section is such as would be adopted if it were the intention of the legislature that the provisions of Sub-section (2) were to be by way of restriction on the rights conferred by Sub-section (1); but we are satisfied that the terms of cl. (b) of Sub-section (2) show that this is not the case.

7. Clause (b), in substance, embodies two provisions; a negative provision that non-compliance with the Act or any rule or any mistake in the forms required thereby or any error, irregularity or informality on the part of the Officer or Officers charged with carrying out the Act shall not be a ground upon which the election of any person as member of a Board can be challenged, and a positive provision that any such non-compliance, mistake, error, irregularity or informality shall constitute a ground upon which the election of a person as a member of a Board may be challenged if it has materially affected the result of the election. The only way, therefore, in which effect can be given to the positive provision embodied in this clause is to deem it to be a ground additional to those mentioned in Sub-section (1) of this section; and this appears to be the view which was taken by a Bench of this Court in --'Nawal Kishore v. Municipal Board, Gorakhpur, AIR 1937 All 365 (A).

It was argued that the omission in Sub-section (2) of any reference to an election petition means that even if an election may be questioned on one or more of the grounds mentioned in clause (b) if the result of the election has been materially affected, the matter cannot be agitated before the Election Tribunal. We are unable to accede to this argument. Section 13K(2) of the Act is a bar to the

exercise of jurisdiction by a civil Court in matters relating to the validity of an election, and unless the provisions of cl. (b) are to be rendered nugatory it must follow that the Election Tribunal has jurisdiction in such cases. We are, therefore, of opinion that the election of any person as a member of a Municipal Board can be questioned by an election petition on one or more of the grounds specified in Sub-section (2)(b) of Section 19 provided that the result of the election has been thereby materially affected.

8. The second question is whether the action of the Returning Officer in setting aside on review his order of the 7th October rejecting the nomination papers of the respondents can constitute an error or irregularity within the meaning of Sub-section (2)(b) of Section 19. It is not for this Court to express an opinion, as to whether the action of the Returning Officer was correct in law or not, but we are clearly of opinion that it would be open to an Election Tribunal, if satisfied that the order of the Returning Officer made on 10-10-1953, was without legal justification, to hold that it constituted an error on the part of the Officer charged with the carrying out the Act and the rules made thereunder within the meaning of Sub-section (2)(b), and if the Tribunal is further satisfied that such error materially affected the result of the election, to hold that the error constituted a ground upon which the election of a person as a member of the Board may be questioned. It was suggested in argument that, the Returning Officer became 'functus officio' as soon as he had completed his scrutiny of the nomination papers on the 7th October, and that consequently he could not on the 10th October be an Officer "charged with carrying out" the Act as required by Sub-section (2) (b).

We are of opinion that this argument has no substance, for although the Returning Officer's functions with regard to the scrutiny of nomination papers may have ended on the 7th October, he nevertheless remains charged with other duties under the Act and therefore continues to be an officer charged with carrying out the Act.

9. We are satisfied that the petitioners are not without a remedy by way of an election petition, and that their proper course is to pursue that remedy as soon as it is open to them to do so. The petition is accordingly dismissed with costs which we fix at two hundred rupees of which one hundred rupees will be paid to respondent No. 1.