

Majid Ahmad vs Asst. Returning Officer And Ors. on 24 October, 1953

Equivalent citations: AIR1954ALL234, AIR 1954 ALLAHABAD 234

JUDGMENT

Mootham, J.

1. These are petitions under Article 226 of the Constitution. In each case the petitioner desired to stand for membership of a town area committee and he duly filed his nomination paper. In each case the nomination paper was rejected by the Returning Officer. The petitioners now come to this Court and each seeks a writ in the nature of 'certiorari' to quash the order made by the Returning Officer.

2. The first question is whether the petitioners can challenge the decision of the Returning Officer by a petition under Article 226, or indeed in any manner other than by an election petition. In my opinion they cannot do so. The right to vote or to stand as a candidate for election to a town area committee is not a common law but a statutory right, and it is a well recognised rule that if in such a case the statute which creates the right provides also the means for enforcing it, the remedy of the person aggrieved is restricted to the statutory relief. This was laid down in --

'Wolverhampton New Water Works Co. v. Hawkes-ford', (1859) 6 CB (NS) 336 at p. 356 (A), a case which was approved by the Supreme Court in --'N. P. Ponnuswami v. Returning Officer Namakkal' AIR 1952 SC 64 (B).

3. Now Sub-section (2) of Section 6-I of the U. P. Town Areas Act (as amended by U. P. Act V of 1953) provides that "No election shall be called in question except by an election petition presented in accordance with the provisions of this Act", and by an order, called The U. P. Town Areas (Application of Provisions of U. P. Municipalities Act, 1916) Order, 1953, made by the State Government under the provisions of Section 6H of that Act provision has been made for the determination by an election tribunal of disputes relating to elections. A specific remedy is therefore provided by the Act, and in view of the decision in --'Ponnu-swami's case (B)', it appears to me no longer open to argument that 'election' as used in Section 6-I includes the rejection of a nomination paper. In -- 'Pormuswami's case (B)', the Supreme Court repudiated the contention that the law of elections in this country -- the Court was of course considering parliamentary elections -- contemplated two attacks on matters connected with election proceedings, the one while they were going on by invoking the extraordinary jurisdiction of the High Court under Article 226 and another after they had been completed by means of election petition. In his judgment, with which the other members of the Court concurred, Mr. Justice Fazl Ali summed up his conclusions in these words :

"Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to the schedule and all controversial matters and all disputes, arising out of elections should be postponed till after the elections are over, so that the election proceedings should not be unduly retarded or protracted.

In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not made the subject of a dispute before any Court while the election is in progress."

4. I can see no reason why any different principle should apply in the case of Town area elections. Indeed the intention of the legislature to be derived from the provisions of the Town Areas Act appears to be to assimilate the procedure in the case of a town area election as far as possible to that of a parliamentary election. Sri S. N. Kacker has argued that the right which the petitioner is now claiming is the right to contest the present election, and a remedy which may give him the right to contest a future election is no adequate remedy. In my opinion this submission states the petitioner's right in terms which are too wide; for his real complaint, his cause of action if I may use that expression, is the rejection of his nomination paper by the Returning Officer, and as Fazl Ali, J., pointed out, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call in question the election. I am therefore of opinion that the petitioners are not entitled to the relief which they ask in these petitions.

5. I would dismiss the petitions with costs.

Sapru, J.

6. I agree with the order proposed by my brother Mootham. The position as I see it is that under Section 6-I(2) of the U. P. Town Areas Act, 1914, (Act II of 1914), more conveniently referred to hereinafter as the Act, no election can be called in question except by an election petition presented in accordance with the provisions of that Act. So far as election to a membership of the committee is concerned, the authority to which and the manner in which the election petition should be presented has been provided for by an Order adopting section 19 of the Municipalities Act. The question is whether this Court should interfere at this stage with the order of the returning officer rejecting the nomination paper. I am clearly of the opinion that this Court cannot interfere at this stage at all and for this I would rely upon the observations of the Supreme Court in -- 'AIR 1952 SC 64 (B). Mr. Justice Fazl Ali who delivered the judgment of the Supreme Court made it clear that the word 'election' had 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."

He further pointed out that in conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

Section 6-I(1) (c) of the Act specifically bars the jurisdiction of the civil court to question the legality of any action taken or any decision given by the returning officer or by any other officer appointed under the Act in connection with an election. It is clear that it would not be competent for any civil court to give the relief which the petitioner is seeking from this Court. The question is whether we should, in exercise of the powers which we enjoy under Article 226 of the Constitution and bearing in mind the principle which has been laid down in Section 6-I(1) of the Act give the petitioner the relief sought by him. I am clearly of the opinion that it would not be proper for this Court to interfere with the processes of the election. The correct remedy for the petitioner is to file an election petition to the authority empowered to receive it after the elections are over. This Court can give him no relief at this stage.

7. For the reasons given above, I concur in the order proposed by my brother Mootham.