Rama Kant Pandey vs Union Of India on 5 February, 1993

Equivalent citations: 1993 AIR 1766, 1993 SCR (1) 786, AIR 1993 SUPREME COURT 1766, 1993 AIR SCW 2209, 1993 (2) SCC 438, 1993 (1) UJ (SC) 578, 1993 (2) BLJR 1188, 1993 (2) ALL CJ 858, 1993 ALL CJ 2 858, (1993) 1 SCR 786 (SC), (1993) 1 JT 440 (SC), 1993 BLJR 2 1188, 1993 UJ(SC) 1 578, (1993) 2 PAT LJR 30, (1994) 2 SCJ 481, (1994) 2 CIVLJ 572

Author: L.M. Sharma

Bench: L.M. Sharma, S. Mohan, S.P Bharucha

PETITIONER:
RAMA KANT PANDEY

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT05/02/1993

BENCH:
SHARMA, L.M. (CJ)
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SHARMA, L.M. (CJ)
MOHAN, S. (J)
BHARUCHA S.P. (J)

CITATION:
1993 AIR 1766 1993 SCR (1) 786
1993 SCC (2) 438 JT 1993 (1) 440
1993 SCALE (1)434

ACT:
Constitution of India, 1950:
Articles 14, 19 and 21-The Representation of People (Amendment) ordinance Nos. 1 and 2 of 1992-Whether ultra vires.
The Representation of People (Amendment) Ordinances No. 1 and 2 of 1992-Whether ultra vires the Constitution of India, 1950.
Representation of the People Act, 1951:
Sections 52 and 30-Countermanding of elections-Confinement of cases where candidate of recognised political party dies-Reduction of period from 20 days to 14 days for completion of election-Whether valid and proper.

HEADNOTE:

The petitioner In his Writ Petition Under Article 32 of the Constitution of India, challenged the constitutional validity of the Representation of the People (Amendment) Ordinance, 1992 (Ordinance No. 1 of 1992), and the Representation of the People (Second Amendment) Ordinance, 1992 (Ordinance No.2 of 1992) on the grounds of violation of Articles 14, 19 and 21 of the Constitution of India.

The provisions of Section 52 of the Representation of the People Act, 1951 as they stood before amendment provided for countermanding the election In either of two contingencies: (1) If a candidate whose nomination was found valid on scrutiny under section 36 or who has not withdrawn his candidature under section 37 died and a report of his death was received before the publication of the list of contesting candidates under section 38, (II) If a contesting candidate died and a report of his death was received before the commencement of the poll. By Ordinance No. 1 of 1992, the area attracting the provisions of countermanding in section 52 had been narrowed down by confining the provisions only to such cases where a candidate of a recognized political party dies.

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Section 30 of the Representation of People Act, 1951 dealt with appointment of dates for nomination, scrutiny and the holding of poll, and in clause (d) it was provided that the date of poll shall not be earlier than the twentieth day after the last date for the withdrawal of candidatures. With a view of expedite the whole process, the words 'twentieth day' have been substituted by the words 'fourteenth day' in clause (d) of Section 30 by the Second Ordinary viz. Ordinance No. 2 of 1992.

On behalf of the petitioner it was contended that the distinction made by the impugned amendment between a candidate set up by a recognised political party and any other candidate is artificial, inconsistent with the spirit of the election law and discriminatory, that the Con-stitution does not confer on a candidate set up by a registered political party any special right, and treats all candidates similarly, and does not any categorisation, that the difference being introduced by the impugned amendment was contrary to the scheme of the Constitution and violative of the equality clause in Article 14, and that it also infringed the guarantee under Article 19(1) (a). In respect of the Second Ordinance the objection was that the period of 14 days substituted by the amendment was too short, and the reduction from the period of 20 days was arbitrary and prejudicial to the larger interest for which elections are held.

The Petition was contested on behalf of Union of India by stating that on account of increase in terrorism and

physical violence in several parts of the Country combined with the phenomenal increase in the number of independent candidates, the danger of disruption of the election process had been fast growing and the problem was, therefore, taken up, examined and it was considered that the amendments were essential to curb the danger of disruption of the election process.

Dismissing the Writ Petition, this Court,

HELD : 1. The right to vote or to stand as a candidate for election is neither a fundamental right nor a civil right In England also it has never been recognised as a common law right [791D]

Jyoti Basu & Ors. v. Debi Ghosal & Ors, A.I.R. 1982 S.C. 983 and 986, referred to.

2. The Cabinet system of Government has been envisaged by our

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Constitution, and the same is on the British pattern. In England, where democracy has prevailed for longer than in any other country in recent times, the Cabinet system of Government has been found to be most effective. In other democratic countries also the party system has been adopted with success. [792C-D]

Shamser Singh v. State of Punjab, [1975] 1 SCR 814 at 827, referred to.

3.For a strong vibrant democratic Government, it is necessary to have a parliamentary majority as well as a parliamentary minority, so that the different points of view on controversial issues are brought out and debated on 'he floor of the Parliament. This can be best achieved by the party system, so that the problems of the nation may be discussed, considered and resolved in a constructive spirit. To abolish or ignore the party system would be to permit a chorus of discordant notes to replace an organised discussion. [792E]

Sir Ivor Jennings 'Cabinet Government 2nd Edn. p.16, referred to.

4.Our Constitution has dearly recognised the importance of the party system, which was further emphasized by the addition of the 10th Schedule to it The Election Symbols (Reservation and Allotment) Order is also a step in that very direction. [792F]

5.That candidates set up by political parties constitute a class separate from other candidates has been recognised in numerous cases by this Court which has also emphasized the vital role of political parties in a parliamentary form of democracy and expressed anxiety about the growing number of independent candidates. [792H, 793C]

Dr. P.N. Thampy Terah v. Union of India [1985] Suppl. SCC 189 and D.M.L. Agarwal v. Rajiv Gandhi, [1987] Suppl. SCC 93, referred to.

6.The Representation of the People (Amendment) Ordinance, 1992 and theRepresentation of the People (Second

Amendment) Ordinance, 1992 are constitutionally valid. [789C]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 47 of 1992.

(Under Article 32 of the Constitution of India).

P.L Singal and NA. Siddiqui for the Petitioner. D.N. Dwivedi, Additional Solicitor General and Mrs. Niranjana Singh for the Respondent.

The Judgment of the Court was delivered by SHARMA CJ. By the present application under Article 32 of the Constantine of India, the petitioner has challenged the constitutional validity of the Representation of the People (Amendment) Ordinance, 1992 (Ordinance No.1 of 1992) and the Representation of the people (Second Amendment) Ordinance, 1992 (Ordinance No.2 of 1992), on the grounds of violation of Articles 14, 19 and 21. By the first Ordinance, section 52 of the Representation of the People Act, 1951 (the Act) providing for countermanding elections in certain circumstances has been amended. By the second Ordinance the period of 20 days in section 30 of the Act has been reduced to 14 days. Later, when the Parliament met, the amendments were incorporated by an amending Act.

2.The provisions of section 52, as they stood before the amendment, provided for countermanding the election in either of 2 contingencies (i) if a candidate whose nomination was found valid on scrutiny under section 36 or who has not withdrawn his candidature under section 37 died and a report of his death was received before the publication of the fist of contesting candidates under section 38, (ii) if a contesting candidate died and a report of his death was received before the commencement of the poll. On countermanding the Returning Officer will have to report the fact to the Election Commission; and all proceedings with reference to the election will have to be commenced de novo in all respects as if for a new election. By the first Ordinance, the area attracting the provisions of countermanding has been narrowed down by confining the provisions only to such cases where a candidate of a retired political party dies.

3.Section 30 deals with appointment of dates for nomination, scrutiny and the holding of poll and in clause (d) it is provided that the date of poll shall not be earlier than the twentieth day after the last date for the withdrawal of candidatures. With a view to expedite the whole process the words 'twentieth day' have been substituted by the words "fourteenth day" in the said clause by the impugned Ordinace.

4. Learned counsel for the petitioner has strenuously contended that the distinction made by the impugned amendment between a candidate set up by a recognised political party and any other candidate is artificial inconsistent with the spirit of the election law and discriminatory. The Constitution does not confer on a candidate set up by a registered political party any special right

and treats all candidates similarly. It does not recognize any categorisation. It is, therefore, argued that the difference which is being introduced by the impugned amendment is contrary to the scheme of the Constitution and violative of the equality clause in Article 14. According to the learned counsel this will also infringe the guarantee under Article 19(1)(a) in respect of freedom of speech and expression.

5.Elaborating his argument, the learned counsel contended that the right to choose its representative belongs to the voters of a particular constituency, and this should not be whittled down by amendments which have a tendency to undermine this element. Lack of wisdom in giving importance to recognized political parties was emphasised by saying that such parties almost always impose their choice of candidates in their own interest and at the cost of the welfare of the constituencies. By introducing this imbalance in the Act, it is stated, the republican character of the Constitution is jeopardised. The sum and substance of the argument on behalf of the petitioner is that no distinction can be made between one candidate and another purely depending on recognition as a political party.

6.So far the second Ordinance is concerned, the objection is that the period of 14 days, substituted by the amendment, is too short and the reduction from the period of 20 days is arbitrary and prejudicial to the larger interest for which elections are held.

7.In reply, Mr. Altaf Ahmad, Additional Solicitor General, appearing on behalf of the Union of India has strongly relied upon the statements made in the counter affidavit filed on behalf of the respondent stating that on account of increase in terrorism and physical violence in several parts of the country combined with the phenomenal increase in the number of independent candidates, the danger of disruption of the election process has been fast growing and the problem was, therefore, taken up for serious consideration. The issue was examined by the Electoral Reforms Committee set up in 1990 under the Chairmanship of the then Minister of law and Justice, late Dinesh Goswami. After studying the problem deeply and considering various points of view presented in this regard the. Committee made its recommendation and, accordingly, the impugned amendment was made. Explaining the urgency of introducing the amendment by an Ordinance (when Parliament was not in session) the counter-affidavit states that it had then been decided to hold the General Elections to the House of People from the State of Punjab as also the election to the State Legislature of that State and having regard to the law and order situation prevailing in the State, it was considered essential to curb the danger of disruption of the election process by amending section 52 immediately. With the same object in view, the period of 20 days mentioned in section 30 was substituted by 14 days.

8.Before proceeding to examine the merits of the argument addressed on behalf of the petitioner it will be useful to note that the right to vote or to stand as a candidate for election is neither a fundamental nor a civil right. In England also it has never been recognised as a common law right. In this connection, we may usefully refer to the following observations in,Jyoti Basu & Others v. Debi Ghosal & Others, A.I.R.1982 S.C.983 and 986 which reads as under :

> "The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in N.P. Ponnuswani v. Retuming Officer, Namakkal Constituency, [1952] SCR 218 : AIR 1952 SC 64 and Jagan Nath v. Jaswant Singh, AIR 1954 SC
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> 210. We proceed to state what we have gleaned from what has been said, so much as necessary for this case.
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> A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

The objection raised by the petitioner, therefore, must be examined in this background.

9.The challenge of the petitioner is directed against the differential treatment which the election law in India gives to candidates set up by political parties. The main thrust of the argument of the learned counsel is that the party system and the recognition of political parties is itself detrimental to the cause of real democracy. In any event, no additional advantage ought to have been allowed to candidates set up by political parties. This stand runs counter to the constitutional scheme adopted by the nation. It has firmly been established that the Cabinet system of Government has been envisaged by our Constitution and that the same is on the British pattern. (See Shamsher Singh v. State of Punjab, [1975] 1 SCR 814 at 827). In England where democracy has prevailed for longer than in any other country in recent times, the Cabinet system of Government has been found to be most effective. In the other democratic countries also the party system has been adopted with success. It has been realised that for a strong vibrant democratic Government, it is necessary to have a parliamentary majority as well as a parliamentary minority, so that the different points of view on controversial issues are brought out and debated on the floor of the Parliament. This can be best achieved by the party system, so that the problems of the nation may be discussed, considered and resolved in a constructive spirit. To abolish or ignore the party system would be to permit a chorus of discordant notes to replace an organised discussion. In his book "Cabinet Government" (2nd Edition page 16) Sir Ivory Jennings has very rightly said."Party warfare is thus essential to the working of the democratic system". It is, therefore, idle to suggest that for establishing a true democratic society, the party system should be ignored. Our Constitution has clearly recognized the importance of this system, which was further emphasized by the addition of the 10th Schedule to it. The Election Symbols (Reservation and Allotment) Order is also a step in that very direction.

10. There is also no merit whatsoever in the contention that candidates set up by political parties should not receive any special treatment. The fact that candidates set up by political parties constitute a class separate from the other candidates has been recognized by this Court in numerous cases. In paragraph 14 of the judgment in the case of Dr. P.N. Thampy Terah v. Union of India

[1985] Suppl. SCC 189, the Constitution Bench observed thus :-

> "It is the political parties which sponsor candidates, that are in a position to incur large election expenses which often run into astronomical figures. We do not consider that preferring political parties for exclusion from the sweep of monetary limits on election expenses, is so unreasonable or arbitrary as to justify the preference being struck down upon that gournd."

In D.M.L. Agarwal v. Rajiv Gandhi, [1987] Suppl. SCC 93 a Division Bench of this Court took note of and emphasized the vital role of political parties in a parliamentary form of democracy and anxiety was expressed about the growing number of independent candidates.

11. For the reasons indicated above, we do not find any substance in the argument of the learned counsel for the petitioner challenging the constitutional validity of the impugned amendment of section 52. The argument against the reduction of the period of 20 days to 14 days in section 30 is equally without any merit. The learned counsel could not suggest any good reason for holding that the period of 14 days would be inadequate or inappropriate, especially in the changed circumstances which are prevailing in the country. Consequently, this writ petition is dismissed with costs assessed at Rs. 2,500 payable to the respondent Union of India.

N.V.K. Petition dismissed.