Rulya Ram Vs The State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 16, 1962

Acts Referred: Punjab Panchayat Samitis and Zila Parishads Act, 1961 â€" Section 6(h)

Hon'ble Judges: Dua, J

Bench: Single Bench

Advocate: H.L. Sarin and K.K. Cuccria, for the Appellant; C.D. Dewan, D.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dua, J.
Rulya Ram petitioner filed his nomination papers for contesting the election to the Gharaunda Block Samiti as a representative of

Co-operative Societies. His nomination papers along with those of other candidates came up for scrutiny before the Returning Officer Block Samiti

Gharaunda, Tehsil and District Karnal on 18th August 1961. When his nomination papers were rejected on the ground of removal from the

membership of the Market Committee Gharaunda vide Government notification No. 195 dated 24th April 1958 Agri (IX)-58/2107. The

notification referred to in the order dated 18th August 1961 is attached with the petition as Annexure ''A''. According to this notification, Rulya

Ram was held guilty of misconduct as a member of the Market Committee Gharaunda and for that reason removed from the membership of the

said Market Committee. It is this order of rejection of the nomination papers dated 18th August 1961 which is being assailed in the present

proceedings which were initiated on 21st August 1961. The counsel has contended that there is no provision of law justifying rejection of the

petitioner''s nomination papers on the ground that he had been removed from the membership of the Market Committee.

2. From the reply sent by Shri M.N. Sawani, Returning Officer, Gharaunda Block Samiti, it appears that the petitioner''s nomination papers were

rejected u/s 6(h) of the Punjab Panchayat Samities and Zila Parishads Act, 1961. This provision reads as follows:-

6. No person shall be eligible for election as a primary Member if such person-

* * * *

* * * *

(h) has been dismissed from the service of Government or a Municipal Committee or a Gram Panchayat or any other local authority for

misconduct and has been declared to be disqualified and has within five years from the date fixed for the nomination of candidates, been

proscribed from Government employment:

* * * *

That this provision is wholly inapplicable to the petitioner''s case can I hardly admit of any doubt. The language is plain and unambiguous and

indeed even the learned counsel for the respondents did not attempt to bring the petitioner''s case within this clause. The only point on which the

learned counsel for the respondents tried to defeat the petitioner''s claim urged before me is based on the plea that there is an alternative remedy in

the form of an election petition available to the petitioner and that he having not utilised the alternative remedy, he should not be granted relief on

the writ side.

3. This contention appears to me to be difficult to sustain. According to Shri Sarin the election petition rules described as the Punjab Panchayat

Samiti and Zila Parishad (Election Petition) Rules framed u/s 115 read with section 121 of the parent Act were enforced on 26th August 196,

whereas the impugned order had been passed eight days earlier i.e. on 18th August 1981. The present writ petition was also presented in this

Court five days before the election petition rules were enforced, namely, on 21st August 1961, and it was admitted by a Division Bench on 22nd

August 1961. The learned counsel for the respondents did not contend that the impugned order dated 18th August 1961 is specifically subjected

to challenge or is explicitly made assailable under the Election Petition Rules mentioned above. Reference was, however, made by the counsel to

section 121 of the parent Act (Punjab Act No. 3 of 1961) which provides for election petitions. According to this section any person who is a

voter for the election of a Member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty

days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election

of any person etc. The argument was not developed on behalf of the respondents and the counsel did not by reference to the rules attempt to

establish that the erroneous rejection of nomination papers can constitute a valid ground for founding an election petition for setting aside the

election in question. I am, therefore, not called upon to express any considered opinion on the point whether under the rules in question the order

rejecting nomination papers can be challenged in an election petition nor upon the validity and scope and effect of the relevant rules. Assuming,

however, that an order rejecting nomination papers can be challenged in an election petition, in my opinion, such an alternative remedy would not

on the facts and circumstances of this case constitute a sufficiently cogent ground to bar certiorari or other suitable writ, order or direction under

Article 226 of the Constitution. It is obvious that before approaching this Court on 21st August 1961, the petitioner could not exhaust the

alternative remedy on which the respondents have placed reliance as admittedly the rules prescribing such remedy had not till then been enforced;

besides, such remedy even when created by the enforcement of the rules was claimable only after the announcement of the result of elections and,

not at any earlier stage. It is thus obvious that in the present case when the writ petition was filed in this Court this was the only remedy available to

the petitioner, and same was the position on 22nd August 1961 when the Motion Bench admitted it to a hearing and issued notice to the

respondents, The petitioner''s prayer for staying the elections was refused by the Motion Bench which, however, expressly directed in the admitting

order that the writ petition should be heard the following week, if possible. It is unfortunate that inspite of this direction by the Motion Bench the

writ petition has taken 11 months to be heard. Whether this delay is due to the laxity in the office of this Court or to want of due diligence on the

part of the respondents in not filing their return with the requisite promptitude so as to enable this Court to expeditiously dispose of the controversy

is unnecessary to determine in these proceedings, for, it is indisputable that the petitioner is wholly free from blame in this matter. In this connection

there is one other fact which deserves to be stated at this stage. The petitioner also applied to the Deputy Commissioner, Karnal on 18th August

1961, the date on which the impugned order was passed, under rule 39 of the Punjab Panchayat Samities (Primary Members) Election Rules

enforced on 6th July 1961 for redress against the impugned order but the Deputy Commissioner came to the conclusion that he had no power to

interfere with the order in question. This order of Deputy Commissioner which is dated 19th August 1961 is also on the present record. Now can

it be said that the petitioner rushed to this Court on the writ side with undue haste without exhausting all other adequate alternative remedies

available to him? I would unhesitatingly answer this query in the negative.

4. The next question is that though at the time of the passing of the impugned order and also at the time of the presentation of the writ petition in this

Court there was no alternative remedy at all open to the petitioner, one came into existence on 26th August 1961 which could be availed by the

petitioner after the elections; and the respondents pose the question that as this Court had not granted stay to the petitioner, he should have utilised

that remedy after the elections, pendency of the present writ petition in this Court notwithstanding. The learned counsel for the respondents has not

contended that the existence of an alternative remedy is an absolute bar to the writ petition as indeed it could not be so contended. The legal

position is well-settled that inspite of the existence of adequate alternative remedy a discretion vests in this Court to entertain a petition for writ etc.

and to grant requisite relief. The broad lines of the general principles are no longer in dispute and need not be repeated here: their application to a

given case however depends on the variety of individual facts and peculiar circumstances and no inflexible or rigid rule has over been laid down or

is possible to lay down which would control and govern all cases: See A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand

Sobhraj Wadhwani and Another, and Dharam Chand v. State of Punjab (1962) 64 P.L.R. 589.

5. In the case in hand the impugned order is manifestly and clearly contrary to law and without any legal basis; so much so that the counsel for the

respondents has not even attempted to justify it on the merits., The alternative remedy, if at all it can be called one, came into existence long after

even the admission of the writ petition by a Bench of this Court. The'' hearing of the petition had been ordered in the week following the date of the

admission i.e. 28th August 1961; the petitioner did actually apply to the Deputy Commissioner for relief which was refused to him on the ground

that such a remedy was non-existent, an election petition would by now be clearly barred by time. For these reasons I am wholly unable to

persuade myself to decline relief to the petitioner in the exercise of the discretion vested under Article 226 of the Constitution. To decline relief in

this case would, in my opinion, be defeating the cause of justice and not promoting it.

6. As no other point was raised at the Bar, I have no option but to allow this petition and set aside the order of the Returning Officer dated 18th

August 1961 as also of the Deputy Commissioner dated 19th August 1961 which I hereby do. The quashing of the order of the (sic) Magistrate

would obviously have the effect of enlisting the petitioner to contest the elections. The petitioner would be entitled to his costs of these proceedings.