

(1987) 06 AHC CK 0003

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 9814 of 1987

Anand Mohan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: June 15, 1987

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 246, 246(1), 32

Citation: AIR 1987 All 351

Hon'ble Judges: A.N. Dikshita, J

Bench: Single Bench

Advocate: Anand Mohan, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.N. Dikshita, J.

While democratic fibres of this Republic are under stress and the very concept of rule of law is under pressure and acrimonious imputations and unsavoury allegations against persons in high office having become the order of the day, the petitioner, a zestful social worker has filed this petition for preserving our sacred Constitution and thus claiming for issuing a writ of certiorari to quash provisions of Sections 5B and 5C of the Presidential and Vice Presidential Elections Act 1952 (hereinafter referred to as the Act) and also for a direction commanding the respondents to bring the provisions of the said Act in its primitive stage so as to bring the said provisions practicable and matching to in conformity with the constitutional norms by giving proper public notice. It has further been sought for issuing a direction commanding the respondent No. 4 not to proceed further with the election of the President and also not to accept any nomination paper and refrain him from conducting elections till unconstitutional amendments and defects in the said Act are removed or rectified. A direction has further been claimed

commanding the respondent No. 2 Sri Giani Zail Singh, President of India to protect the Constitution of India and well-being of the people in accordance with the oath taken by him and also directing respondent No. 2 Sri Giani Zail Singh, President of India, Respondent No. 3 Sri Rajiv Gandhi, Prime Minister of India and respondent No. 4 Sri R.V.S. Peri Shastri, Chief Election Commissioner of India to dispose of the telegrams sent by the petitioner and which are annexed as Annexure-3 to the writ petition before proceeding with the election of the President.

2. Facts in a narrow compass as are revealing from the petition are that the petitioner is aggrieved by the incorporation of Sections 5B and 5C of the Act which according to him are unconstitutional being inconsistent with the provisions of Article 58 as enshrined in the Constitution. Another contention of the petitioner is that the public notice of an intended election referred to in Section 5 of the Act and Rule 3 of the Presidential and Vice Presidential Rules 1974 (hereinafter called the Rules) has not been published as provided in Form-I. The case of the petitioner further is that only such person who is the cream of the nation shall be elected President of India who is capable of upholding the constitutional guarantees and obligations and is competent to preserve the welfare of the people for which he has taken oath as enshrined in Article 60 of the Constitution of India.

3. Notices of the petition were accepted on behalf of all the respondents by Sri N.B. Singh Senior Standing Counsel of the Central Government.

4. In view of the controversy encompassing interest of the people at large and considering multiple complications it may have, it was considered expedient to seek the assistance of the Advocate General which was readily forthcoming. It has been submitted by the learned Advocate General that the petitioner has no locus standi in the case in filing this petition. It has further been submitted that this High Court has no jurisdiction to entertain the petition. The learned Advocate General has further submitted that the provisions of Section 5B and Section 5C of the Act are not in conflict with Article 58 of the Constitution. Lastly it has been pointed out that the petitioner can claim appropriate relief within the scope of Article 71(1) of the Constitution before the Supreme Court. The learned counsel appearing on behalf of the respondents has strenuously urged that the election process has been put into motion by issuing the notification as provided in the Act read with the rules and as such this petition is not maintainable.

5. The petitioner, who appeared in person, the learned Advocate General and the Senior Standing Counsel appearing on behalf of the respondents have been heard at length,

6. The first contention of the petitioner is that Sections 5B and 5C of the Act are ultra vires of the Constitution inasmuch as they are in complete derogation and utter conflict with Article 58 of the Constitution. In order to appreciate the provisions of Sections 5B and 5C, they are quoted hereinbelow in extenso :

"5B.(1) On or before the date appointed under clause (a) of Sub-section (1) of section 4, each candidate shall, either in person or by any of his proposers or seconders, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the public notice issued u/s 5 a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

(a) in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders;

(b) in the case of Vice Presidential election, also by at least five electors as proposers and at least five electors as seconders;

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday.

(2) Each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the constituency in which the candidate is registered as an elector.

(3) The Returning Officer shall not accept any nomination paper which is presented on any date before eleven O'clock in the forenoon and after three O'clock in the afternoon.

(4) Any nomination paper which is not received before three O'clock in the afternoon on the last date appointed under clause (a) of Sub-section (1) of Section 4 or to which the certified copy referred to in Sub-section (2) of this section is not attached shall be rejected and a brief note relating to such rejection shall be recorded on the nomination paper itself.

(5) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for the same election

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer."

"5C. (1) A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees :

Provided that where a candidate has been nominated by more than one nomination paper for the same election, not more than one deposit shall be required of him under ♦this sub-section.

(2) The sum required to be deposited under Sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of presentation of

the nomination paper under Sub-section (1) of Section 5B, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury."

In this context it is also necessary to reproduce as well the provisions of Article 58 of the Constitution of India.

"58. (1) No person shall be eligible for election as President unless he -

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.-- For the purposes of this article a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor..... of any State or is a Minister either for the Union or for any State."

7. Before proceeding to examine the merits of the petition it has been stated by the learned Advocate General as well as the learned Senior Standing Counsel appearing for the respondents that in such matters as the one before this Court only the points as regards the locus standi and jurisdiction of this Court be considered and the other issue need not be dealt with. It was urged that in constitutional matters it is advisable to decide only those points which necessarily arise for determination on the facts of the case. Reliance was placed upon [U.N.A. Rao Vs. Smt. Indira Gandhi](#), . in that case the controversy was that the House of People was dissolved by the President on 27-12-70. Smt. Indira Gandhi was the Prime Minister before the dissolution. The controversy thus arose as to whether Smt. Indira Gandhi in view of Article 75(3) of the Constitution was competent to carry on as the Prime Minister contrary to the Constitution. The entire gamut of the controversy was confined to the interpretation of Article 75(3). The petitioner challenging the above submission placed reliance upon [Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another](#), . It was held in this case that in dealing with constitutional matters it is necessary that the decision of the Court should be confined to the narrow points raised before it. The court should always be careful not to cover a ground which is strictly not relevant for the purpose of deciding the petition before it. The points not directly involved in the proceedings should be avoided by the Court. In dealing with the constitutional matters this requirement becomes almost compulsive when the Court is dealing with the constitutional matters.

8. In this situation determination of the points as raised by the petitioner in the petition and during his oral submissions are being considered.

9. Section 5B provides the manner in which the nomination papers are to be entertained by the Returning Officer. It contemplates that such nomination paper shall be filed before the date appointed under Clause (a) of Sub-Section (1) of Section 4. Section 5B(1)(a) provides that 10 electors shall be proposers while equal numbers shall be seconders. Section 5B(2) provides that the nomination paper shall also be accompanied by certified copy of the entry relating to the candidate in the electoral roll for the parliamentary constituency in which the candidate is registered as an elector. Other necessary requirements as regards filing of nomination paper is also mentioned in Section 5B.

10. Section 5C(1) provides that a candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of Rs. 2500/-. Such a deposit has to be made prior to the presentation of the nomination paper and a receipt of such deposit shall be enclosed with the nomination paper.

11. Article 58 of the Constitution of India as has been shown above provides as to who shall be eligible for election as President.

12. Article 71 of the Constitution which enshrines the matter relating or connected with, the election of a President or Vice President is material for a fair appreciation of the controversy in regard to the election of the President. It is quoted in extenso herein under.

"71. All doubts and disputes arising out of or in connection with the election of a President or Vice President shall be enquired and decided by, the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President.

(4) The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

13. Clause (3) of Article 71 provides that subject to the provisions of the Constitution Parliament may by law regulate any matter relating to or connected with the election of President or Vice President. Article 246(1) read with Item No. 72 of List I of the seventh schedule of the Constitution confers powers on Parliament to make

law with respect to the elections of Parliament, to the Legislature of States and to the post of President and Vice President. In its legislative wisdom the Act has been enacted by the Parliament. The Parliament seized with such powers has enacted impugned sections 5B and 5C of the Act. There is nothing in the impugned section which may be described as inconsistent with Article 58 of the Constitution. It would not mean that a candidate who is otherwise qualified under Article 58 is exempt from complying with the requirement of such law as may be enacted by the Parliament under clause (3) of Article 71 for regulating the mode and manner in which the election of the President or Vice President has to be held

14. The petitioner is not a candidate nor there is a whisper from the petition showing his intention to be a candidate for the election of the office of the President. As has been stated above unless a candidate complies with the requirements of Section 5B and Section 5C of the Act which have been enacted under Article 71(3) it cannot be said that the provisions of sections 5B and 5C are repugnant to Article 58 as sections 5B and 5C are the creature of the statute having been brought on the Statute Book in accordance with Clause (3) of Article 71 of the Constitution, as would be manifest from the view taken by the Supreme Court in [Charan Lal Sahu Vs. Fakruddin Ali Ahmed and Others](#), .

15. Article 58 mainly provides the qualification or conditions for being eligible to the Presidential election. The framers of the Constitution found it necessary to lay down certain conditions for a person intending to contest the election as a candidate for being elected to the high office of the President of India. Article 71(3) provides for regulation of the election by law. Section 5B of the Act enjoins that he must have 10 proposers and 10 seconders and also for depositing a sum of Rs. 2500/-. In the case of [Charan Lal Sahu Vs. Neelam Sanjeeva Reddy](#), it was held that the effect of Article 71(3) is only to give effect to a well known general principle that a Court or Tribunal functioning or exercising its jurisdiction under an enactment will not question the validity of that very enactment which is the source of its powers. It was thus held that validity of either Section 5B or Section 5C of the Act or the validity of Article 71(3) of the Constitution of India cannot be challenged and it clearly laid down that there is nothing repugnant in Section 5B and 5C of the Act which may be found in conflict with Article 58 of the Constitution.

16. The second contention of the petitioner is that no public notice of the intended election has been given in the prescribed form as contemplated by Rule 3 of the Rules. Section 4 of the Act provides for issuing a notification in Official Gazette regarding the appointment of dates for nomination etc.

17. Section 5 lays down that on the issue of a notification under Sub-Section (1) of Section 4 the Returning Officer for the election shall give public notice of the intended election in such form and in such manner as may be prescribed inviting nomination of candidates for such election and specifying the place at which the nomination papers are to be delivered. The form of public notice of an intended

election as referred to in Section 5 read with Rule 3 of the said Rules shall be in Form-I. It shall be published by the Returning Officer by such means, in such language or languages and in such places as the Election Commission may direct. The challenge of the petitioner is that the public notice of the intended election shall be by way of an advertisement in the newspaper. The plea is wholly fallacious in view of the fact that the Returning Officer has been authorised to publish such notice by such means, in such language or languages and in such places as may be directed by the Election Commission. Rule 3 thus empowers Election Commission to issue such directions. A notification in conformity with Section 4 of the Act has been issued. Requirement as engrained in Section 5 read with Rule 3 has been achieved by issuing a public notice as prescribed in Form "1" as has been stated by the learned Senior Standing Counsel appearing on behalf of the respondents. Moreover, nothing has been shown by the petitioner either in the petition or in his submission that the Returning Officer has not issued such public notice of intended election as per the direction of the Election Commission. It is a fanciful submission to contend that the notices shall be by way of an advertisement in the newspaper. Once the statute provides the manner in which an act has to be done or performed it cannot be contended that such an act unless shown to the contrary is not in conformity with the provisions of the Act or Rules.

18. Learned Advocate General U.P. and the learned Senior Standing Counsel of the Central Government appearing for the respondents have vehemently submitted that the petitioner has no locus standi to maintain the petition. It has been submitted that the petitioner is acting for personal gain in order to enhance his social image by filing the petition. It has been submitted that the petitioner is politically motivated and is besieged with oblique considerations. The cardinal rule in regard to locus standi is that the judicial redress is made available only to a person who has suffered a legal injury by reason of violation of his legal rights or legally protected interest by the impugned action of the State or of a public authority. In the case of [S.P. Gupta Vs. President of India and Others](#), it has been held as under :

"The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress."

19. Manifestly the right to invoke judicial remedy for enforcement of constitutional rights and obligations has been recognised by public spirited individuals acting pro bono publico but the activating effort/force should be vindication of cause of justice and not for personal gain, political motivation or other oblique consideration as has been held by a Division Bench of this Court in Writ Peta No. 7212 of 1987 Dinesh Dwivedi v. President of India decided on 12-5-1987. In the case of Fertilizer Corporation, Kamgar Union v. Union of India AIR 1981 SC 344 it has been held that the question whether a person has a locus to file a proceeding depends mostly and

often on whether he possesses a legal right and that right is violated. The petitioner has failed to satisfy that there is any violation of any of his rights much less a fundamental right which is sine qua non of the exercise of the right conferred by Article 32 or 226 of the Constitution. The contention of the petitioner that sections 5B and 5C are in conflict with Article 14 of the Constitution stand repelled by the Supreme Court in the case of [Charan Lal Sahu Vs. Neelam Sanjeeva Reddy](#), . There is no force in the contention that sections 5B and 5C are in conflict with Article 14.

20. In this context another aspect of the matter which requires consideration is that the petitioner instantly is not a candidate nor has it been shown that he is an intended candidate. Section 13(a) of the Act defines a candidate to mean a person who has been or claims to have been duly nominated as a candidate at an election. It is not disputed and is settled law that the word "election" used in the Constitution includes the whole process of election from the preparations preceding the holding of it till the result of it is announced after the election is held. For non-compliance of the requirements of sections 5B and 5C the petitioner may be scared of not filing the nomination papers having an apprehension that such nomination papers may be rejected by the Returning Officer as enjoined u/s 5A(3) of the Act on the ground that it is not accompanied by the requisite deposit and is also not subscribed by the required number of proposers or seconders. For non-compliance of sections 5B and 5C there is every likelihood that the Returning Officer would have rejected such nomination paper. But after such rejection a person would have become a candidate within the meaning of Section 13(a) claiming to have been duly nominated. Ignoring the requirements not fulfilled by him and which could have been alleged to be unconstitutional, in such a situation the election could have been challenged as provided u/s 18 of the Act read with Article 71(1) of the Constitution before the Supreme Court inter alia on the ground that the result of the election had been materially affected by the non-compliance with the provisions of the Constitution and that the nomination paper had been wrongly rejected. Such a petition would have been maintainable by a candidate and the authority having jurisdiction to try such election petition shall be Supreme Court as provided u/s 14(2) of the Act. The petitioner having not become a candidate on account of his own willful default is responsible for his own act of negligence thus preventing him from acquiring the locus standi to maintain the petition. Such a view was taken in the case of P. S. Wallace v. Union of India AIR 1975 Del 112. In view of the decision in this case it is manifest that the petitioner does not have any locus standi to question the validity of the Presidential election to be held as per notification.

21. Article 71(1) of the Constitution enshrines that all doubts and disputes arising out of or in connection with the election of ♦the President or Vice President shall be enquired and decided by the Supreme Court whose decision shall be final. The Supreme Court has been vested with the powers to declare the election as void. It is only after the election is held and after an election petition has been filed that the Supreme Court can resolve doubts and disputes or any other matter in connection

with the election of the President. This is the settled law by the decisions of the Supreme Court in [Narayan Bhaskar Khare Vs. The Election Commission of India](#), and the case of [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), .

22. The last aspect of the matter which is to be considered is whether this Court has jurisdiction to entertain this petition or not. Nothing has been shown by the petitioner as to how this Court can assume jurisdiction in entertaining the petition under Article 226 when the offices of the Election Commission are permanently located at Delhi. The only contention of the petitioner is that the votes would be counted at Lucknow thus empowering this Court to assume the jurisdiction. It is not possible to accede to such a proposition that if a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of the parties therein, such tribunal or authority must be regarded as functioning within the territorial limit of the High Court and being therefore amenable to its jurisdiction under Article 226. To file an election petition is a statutory right of a candidate. The Supreme Court is vested with the power under Article 71(1) read with Rule 14(2) to try such election petition. The jurisdiction of the High Court to entertain a petition under Article 226 is discretionary. Matters which can be considered only by the Supreme Court under Article 71(1) are taken out of the jurisdiction of the High Court while exercising power under Article 226. In the case of [Election Commission, India Vs. Saka Venkata Subba Rao and](#), it was held that the High Court of Madras cannot issue any writ under Article 226 to Election Commission having its offices permanently located at New Delhi. This case arose when the respondent was disqualified to be a member of Madras Legislative Assembly u/s 7-B, Representation of the People Act, 1951 as five years have not elapsed from his release from jail. Prior to the election an application for exemption was moved before the Election Commission. In view of the non-disposal of that application he contested the election and was declared elected. Thereafter the Election Commission rejected the exemption application and proceeded with the enquiry. Aggrieved a writ petition was filed before the Madras High Court, for issuing a writ prohibiting the Election Commission from proceeding with the enquiry in regard to this question. A writ of prohibition restraining the Election Commission from proceeding with the enquiry was issued. On an appeal the Supreme Court held that the High Court of Madras cannot issue any writ under Article 226 to the Election Commission having its offices permanently located at New Delhi. The view that this Court has no jurisdiction to entertain the petition also finds support in the case of [Lt. Col. Khajoor Singh Vs. The Union of India and Another](#), .

23. The petitioner is claiming an effective relief that the election of the President scheduled to be held should be prohibited and should be ordered not to be held. In a similar situation it has been held in the case of P.S. Wallace (AIR 1975 Del 112) (supra) that this Court does not have jurisdiction to grant such relief. The process of election of the President by issuing notification as contemplated by law having been

started, in view of the aforesaid decisions of the Supreme Court no such relief as claimed by the petitioner for stalling the election can thus be passed by this Court. In the case of [Narayan Bhaskar Khare Vs. The Election Commission of India](#), the Supreme Court held as under :

"If doubt or dispute arising out of or in connection with the election of a President or Vice President can be brought before the Supreme Court before the whole election process is concluded then conceivably the entire election may be held up till after the expiry of the five years" term which will involve a non-compliance with the mandatory provisions of Article 62. The well recognised principle of election law, Indian and English, is that elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest of the people, which requires that the election should be gone through according to the time schedule."

24. A notification as stated above has already been issued and the process has started. It consists of several stages and embraces many steps. To entertain a petition on the ground which can be called in question in an election petition would mean that the errors, if any, are rectified. The setting up of a Tribunal or Court to try the election petition would thus stand negatived. Article 71(1) provides for the determination of such doubts or disputes or other matters in connection with the election of the President. That remedy is available after the election is over. At no intermediate stage any remedy is provided. It was held in the case of [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. The petitioner can avail relief only from the Supreme Court by filing an election petition in view of Article 71(1). Merely because the petitioner has challenged unconstitutionality of certain provisions of the Act that by itself would not confer any jurisdiction to this Court to entertain the writ petition. Such grounds of challenge can be made by way of election petition after the election is over and result is declared. The Supreme Court has the power to consider those grounds as well as to decide the constitutionality of the provisions of the Act.

25. The petitioner's assertion is that till the telegrams sent by him to the respondents are not disposed of, the election of the President should not be held. The plea deserves to be discarded. It is not possible to issue a writ of prohibition withholding the election on such flimsy grounds, more so when the public notice as required under the law has already been given.

26. It has been urged by the counsel appearing on behalf of the respondents that the respondent No. 2 Sri Zail Singh, President of India, respondent No. 3 Sri Rajiv Gandhi, Prime Minister of India have been viciously impleaded. There is a constitutional protection to the President of India within the ambit of Article 361 of the Constitution. Sagacity is often overwhelmed by oblique considerations. To drag

the office of the President of India is neither a pious nor a sacrosanct nor even a reasonable exercise. Similarly respondent No. 3 Sri Rajiv Gandhi is not a necessary party to this petition. Just to earn acclaim these two respondents have been impleaded. Further even respondent No. 4 could not have been impleaded in his name. In the array of parties respondents Nos. 2 and 3 deserve to be struck off from the petition.

27. In view of the foregoing discussions the petition is wholly ill-merited and deserves to be dismissed.

28. Before parting with the petition this Court shall record its appreciation of the valuable assistance rendered by Sri S.S. Bhatnagar, Advocate General, U-P.

29. In the result the petition fails and is hereby dismissed in limine.

30. After the delivery of the above judgment dismissing the writ petition in limine, an oral prayer has been made by the petitioner that this Court may certify that the case involves a substantial question of law of general importance and that in the opinion of this court the said question needs to be decided by the Supreme Court. Having considered the prayer I do not find any merit in it. The prayer is accordingly rejected.