

(2014) 07 DEL CK 0076

Delhi High Court

Case No: W.P. (C) 3180 and 3199/2012

Sudhir Kumar Parcha

APPELLANT

Vs

State Election Commission

RESPONDENT

Date of Decision: July 24, 2014

Acts Referred:

- Constitution of India, 1950 - Article 191, 192, 193, 226, 329 (b)
- Delhi Municipal Corporation Act, 1957 - Section 15, 17

Citation: (2014) 212 DLT 300

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Avadh Kaushik, Advocate for the Appellant; Sumeet Pushkarna, Vijay Kasana, Adv., Meenakshi Midha, Advocate and Sunil Goel, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

The present writ petitions have been filed challenging the action of respondent Nos. 1 to 3 in shifting polling stations just prior to starting of the election process for Municipal Corporation. Petitioners have also prayed for setting aside of the election results of Wards no. 5 and 19 of Delhi Municipal Corporation Elections 2012 and for a direction to conduct fresh elections to the said Wards.

2. At the outset, learned counsel for the respondents raise a preliminary objection to the maintainability of the present writ petitions on the ground that election disputes can only be raised by way of an election petition. In this connection, they rely upon the judgments of the Supreme Court in [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), as well as [Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others](#), . The relevant portion of the judgment in Avtar Singh Hit is reproduced hereinbelow:-

"19. It is well-settled principle that where elections are conducted in accordance with the provisions of a statute and the statute also provides a remedy of settlement of election disputes by filing an election petition before a tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. This view has been taken in a series of decisions rendered by this Court. The earliest decision was rendered in [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), by a Bench of six learned Judges. In this case the nomination paper of the appellant for election to the Madras Legislative Assembly was rejected by the Returning Officer. The appellant challenged the rejection of the nomination paper by filing a writ petition in the High Court which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning Officer on account of Article 329(b) of the Constitution, which says that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. In appeal, this Court examined the question whether the writ petition would be maintainable at the initial stage against an order rejecting the nomination paper. Certain observations made in AIR para 9 of the reports are relevant and they are being reproduced below: (SCR p. 228)

"The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court."

20. In AIR para 12 it was observed:

"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.

It will be a fair inference from the provisions of the Representation of the People Act to draw that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

3. Mr. Kaushik, learned counsel for the petitioners submits that jurisdiction under Article 226 is always available after the election process is over. In support of his submission, he refers to another judgment of the Supreme Court in [K. Venkatachalam Vs. A Swamickan and Another](#), wherein it has been held as under:-

"26. The question that arises for consideration is if in such circumstances the High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be a Member of Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. From the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as "Venkatachalam, s/o Pethu" taking advantage of the fact that such a person bears his first name. The appellant would be even criminally liable as he filed his nomination on an affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be a fraud on the Constitution.

27. In view of the judgment of this Court in the case of [Election Commission, India Vs. Saka Venkata Subba Rao and](#), it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one the bar of Article 329(b) will not come into play when the case falls under Articles 191 and 193 and the whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"

4. He also states that the petitioners are confining their relief to prayer (b) in the present writ petitions and are neither seeking setting aside of the elections of the returned candidates nor re-elections.

5. In the opinion of this Court, Article 329 (b) enacts a bar prohibiting the Court from exercising jurisdiction in regard to election disputes. Article 329(b) is reproduced hereinbelow:-

"329. Bar to interference by Courts in electoral matters.--

xxx xxx xxx

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

6. Section 15 of Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "Act, 1957") also stipulates that no election for Councillor shall be called in question except by an election petition presented to the court of district judge of Delhi within fifteen days from the date of publication of the result. Section 17 of the Act, 1957 stipulates the grounds for declaring the election to be void. Some of the grounds mentioned in such Section are improper acceptance of any vote and/or non-compliance with the provisions of the Act, 1957 or any rules or orders made therein. Consequently, this Court is of the view that even prayer (b) should have been raised by the petitioners by way of an election petition.

7. The argument of the petitioners that they are confining their relief to prayer (b) is also meaningless as the logical sequitur of granting prayer (b) would be that the election results of the returned candidates of both the seats of North Delhi Municipal Corporation election would be null and void.

8. In fact, the judgment of the Supreme Court in K. Venkatachalam (supra) has been discussed by a coordinate Bench of this Court in [Balzor Singh Vs. Chief Election Commissioner of India and Another](#), and it has been held that the Court had exercised extraordinary jurisdiction under Article 226 in K. Venkatachalam (supra) as the action of one of the parties amounted to a fraud on the Constitution-which is not even the allegation in the present cases.

9. In Balzor Singh (supra), it was also held that dispute with regard to revision of electoral rolls would involve examination of disputed questions of fact which are best left to be determined by an Election Tribunal. The relevant portion of the judgment in Balzor Singh (supra) is reproduced hereinbelow:-

"6. The Court has carefully considered the submissions. Article 329(b) enacts a bar inhibiting the Courts exercising jurisdiction in regard to election disputes. Consistently the Supreme Court has ruled [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), that Courts should desist from interfering with election processes and leave such disputes for determination to the properly constituted forum in that regard. Having regard to this clear position, this Court is of opinion that the jurisdiction vested in it under Article 226 cannot be utilized for the purpose.

7. As far as arguments by the petitioner with regard to K. Venkatachalam's case are concerned, the facts there were that the appellant was declared as disqualified and had nevertheless contested the election. The Court felt that this amounted to fraud on the Constitution as a candidate due to such disability could not take oath. In the circumstances, the extraordinary remedy under Article 226 was held to be maintainable. Further the Court had affirmed the findings of the High Court and did not primarily exercise the jurisdiction invalidating the election process in the first instance, as the petitioner is inviting this Court to do.

8. Apart from the above reasons, there can be no dispute that the revision of the concerned electoral rolls has taken place w.e.f. 1.1.2009. Any intervention by this Court with regard to the position as it existed before 1.1.2009 would necessarily involve examination of disputed questions of facts which are best left to be determined by the Election Tribunal constituted for the purpose.

9. For the above reasons, the Writ Petition has to fail; it is accordingly dismissed."

10. In view of the aforesaid judgment, this Court is of the view that the issue raised in the present petitions should have been raised by the petitioners by way of an election petition and the same cannot be adjudicated by way of a writ petition. Consequently, the present writ petitions are dismissed, but with no order as to costs.