

Narayan Bhaskar Khare

Vs

The Election Commission of India (and connected petition)

Petitions Nos. 63 and 64 of 1957

(CJI S. R. Dass, P. B. Gajendragadkar, S. K. Das, N. H. Bhagwati, Syed Jafar Imam, A. K. Sarkar, J. L. Kapur JJ)

03.05.1957

JUDGMENT

DAS C.J. -

The petitioners in the above petitions have moved this Court to exercise the jurisdiction and power vested in it by and under Art. 71(1) of the Constitution of India and to inquire into and decide what has been described as a "grave doubt" in connection with the election of the President of India and to direct the Election Commission not to proceed with the polling in connection with the said election which has been fixed for May 6, 1957, but to hold the same after duly completing all the elections to the Lok Sabha and the Legislatures in all the States of the Indian Union including the Union territory. The first main petition was presented on April 26, 1957, and the second on April 29, 1957. Along with each of the said petitions has been filed a Civil Miscellaneous Petition asking for a stay of the polling for the Presidential election fixed for May 6, 1957. In the first main petition the Returning Officer has not been made a party, but in the second petition he has been impleaded as a respondent. The learned Attorney-General has appeared on behalf of the Election Commission and has waived the service of notice. We can, therefore, dispose of all the petitions before us.

There is no dispute as to the material facts which may shortly be stated as follows.

After the general elections in all the States and Union territories of India, except in the Union territory of Himachal Pradesh, which is to return four members to the Lok Sabha and in two constituencies in the State of Punjab, the old Lok Sabha was dissolved on April 4, 1957 and the New Lok Sabha was constituted on April 5, 1957, under s. 73 of the Representation of the People Act (XLIII of 1951). As required by s. 4 of the Presidential and Vice-Presidential Election Act, 1952 (XXXI of 1952), the Election Commission issued a notification in the official Gazette appointing April 16, 1957, as the last date for making nominations, April 17, 1957, as the date for the scrutiny of the nominations, April 20, 1957, as the last date for the withdrawal of candidatures, May 6, 1957, as the polling date and May 10, 1957, as the date for the counting of the votes and the declaration of the result. The term of office of the present President is due to expire on the mid-night of May 12, 1957. The reason for fixing the above time schedule obviously was that the Presidential election should be completed before the term of office of the present President expired.

After the notification constituting the now Lok Sabha was published in the Press on April 7, 1957, the petitioner in the first petition applied to the Election Commission for the supply of the nomination papers, which he eventually received at Nagpur in the afternoon of April 10, 1957. This left a period of five days for the filing of the nomination paper before the Returning Officer at New

Delhi. The petitioner submits that the time was too short and he was prevented from filing his nomination paper due to want of time. He has filed the petition as a citizen of India and as an "intending candidate" for the Presidential election.

The petitioner in the second petition is a member of the Hindu Mahasabha and is contesting the election to the Lok Sabha as an independent candidate from Kangra Parliamentary constituency in the State of Punjab. He filed his nomination paper on January 28, 1957, as originally the polling was scheduled to commence in that constituency on February 24, 1957. The polling, however, has since been postponed and fixed for June 2, 1957. He has filed the petition as a citizen of India and as a prospective member of Lok Sabha and contends that if the Presidential election is held on May 6, 1957, he will be deprived of his right to vote for the election of the President of the Union. He has also complained of discrimination offending against Art. 14 of the Constitution.

Under Art. 56 of the Constitution the President holds office for a term of five years from the date on which he enters upon his office. The present incumbent of the high office entered upon his office on May 12, 1952, and, as already stated, his term is due to expire on the mid-night of May 12, 1957. Article 62(1) peremptorily requires that the election to fill the vacancy caused by the expiration of the term of office of the President shall be completed before the expiration of the term. It is necessary to bear in mind this clear mandatory provision of the Constitution. For ascertaining how such election of President is to be held, we have to go back to Art. 54, which runs thus :

"54. The President shall be elected by the members of an electoral college consisting of -

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States."

On one side it is said that the electoral college is to consist of those members falling under clauses (a) and (b), who are elected at the crucial date, that is to say, the date when the election is to take place. Suppose, it is said, that the term of the President's office expires during the currency of the life of Parliament, as it may well do in cases contemplated by Art. 62(2) and suppose there are vacancies in Parliament or in the Legislature of one or more States, surely the election of the President required by Art. 62(1) to be held before the expiry of the term of the outgoing President cannot be held up until the vacancies are filled up. On the other hand it is contended that the electoral college must be constituted after the elections in all States and Union territories are completed and should consist of all the elected members falling within both the categories. Inasmuch as elections have not taken place at all in Himachal Pradesh and in two constituencies of the State of Punjab, the electoral college cannot be constituted until after those members are also elected. It is pointed out that though on the present occasion only four members of Himachal Pradesh and only two members in the State of Punjab have not been elected, nevertheless, if the objection of the petitioners is not now heeded any party in power may in future arrange for the election of its own nominee as President by postponing the elections in several States, where it may not expect to get a majority of seats. It is said that on March 28, 1957 some members of the then Lok Sabha had raised a question as to the danger and impropriety of holding the election of the President before the completion of the elections throughout the territory of India. Both the petitioners share the same view and contend that a "grave doubt" has arisen in connection with the election of the President and that such a doubt must, under Art. 71, be inquired into and decided by this Court. The extreme contention put forward on behalf of the petitioners is that it does not matter

whether the doubt is well founded or not or whether it is good, bad or indifferent; this Court is bound to inquire into and decide the same as soon as a doubt arises and a citizen brings it before this Court for resolution thereof. For the purpose of this case it is not necessary for us to express any opinion on the merits of the respective contentions for these petitions may well be disposed of on a narrower preliminary ground.

Article 71(1) undoubtedly confers jurisdiction and power on this Court to inquire into and decide "all doubts and disputes arising out of or in connection with the election of President or Vice-President" and this Court will have to inquire into and decide the same. But the question is whether there is anything in the Constitution indicating the time at which and the manner in which such doubts and disputes have to be inquired into and decided. Under Art. 324 the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and the Legislatures of States shall be vested in the Election Commission. It will be noticed that identical words are used, namely, "doubts and disputes arising out of or in connection with elections" which are also to be found in Art. 71(1). By Art. 327, Parliament was authorised to make provision with respect to all matters "relating to or in connection with elections" to Parliament or to the Legislatures of the States. Art. 329 provides, amongst other things, that notwithstanding anything in this Constitution no election to either House of Parliament or either House of 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 proper legislature. In exercise of powers thus conferred on it, Parliament enacted the Representation of the People Act, 1951, providing how elections are to be held and how and on what grounds such elections may be called in question. It also set up a special forum called Election Tribunal for the decision of "doubts and disputes arising out of or in connection with such elections." In *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency* [(1952) S.C.R. 218] the Returning Officer for that constituency had rejected the nomination paper of the appellant. Thereupon the appellant applied to the High Court of Madras under Art. 226 of the Constitution for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the Returning Officer to include his name in the list of valid nominations to be published. The High Court of Madras dismissed the petition and the appellant brought an appeal to this Court. The Full Court held that in view of the provisions of Art. 329(b) of the Constitution and s. 80 of the Representation of the People Act, 1951, the High Court had no jurisdiction to interfere with the order of the Returning Officer. The main controversy in the appeal centred round the words "no election shall be called in question except by an election petition" occurring in Art. 329(b). The most important question for determination by this Court was the meaning to be given to the word "election" in Art. 329(b). This Court said at page 226 :

"That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected."

After referring to the cases of *Srinivasalu v. Kuppuswami* [A.I.R. (1928) Mad. 253, 255] and *Sat Narain v. Hanuman Prasad* [A.I.R. (1945) Lah. 85] and a passage in *Halsbury's Laws of England*,

2nd edition, Volume 12, page 237, this Court took the view that the word "election" could be and had been properly used with respect to the entire process which consisted of several stages and embraced many steps some of which might have an important bearing on the result of the process and, therefore, held that in view of the provisions of Art. 329(b) of the Constitution and s. 80 of the Representation of the People Act, 1951, the High Court had no jurisdiction to interfere with the order of the Returning Officer under Art. 226. The only way such an order could be called in question was as laid down in Art. 329(b) of the Constitution and s. 80 of the Representation of the People Act, 1951, and this could be done only by an election petition presented before the Election Tribunal after the entire process of election culminating in a candidate being declared elected had been gone through. On such election petition being filed the Election Tribunal would be properly bound to inquire into and decide "all doubts and disputes arising out of or in connection with the election" irrespective of the stage in the entire election process to which the "doubts and disputes relate". We now approach the construction of Art. 71 in the light of the decision of this Court.

As already indicated Art. 71(1) confers jurisdiction and power on this Court to inquire into and decide "all doubts and disputes arising out of or in connection with the election of a President or Vice-President". The question is : Is there in this Article or in any other part of the Constitution or anywhere else any indication as to the time when such inquiry is to be held ? In the first place, Art. 71 postulates an "election of the President or Vice-President" and provides for inquiry into doubts and disputes arising out of or in connection with such an election. What is the meaning to be given to the word "election" as used in this Article ? If we give to the word "election" occurring in Art. 71(1) the same wide meaning as comprising the entire election process culminating in a candidate being declared elected, then clearly the inquiry is to be made after such completed election, i.e., after a candidate is declared to be elected as President or Vice-President as the case may be. We see no reason why this accepted meaning should not be given to the critical word. In the second place, under cl. 3 of Art. 71, 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. The words here also are similar to those used in Art. 327 and are equally wide enough to cover matters relating to or connected with any stage of the entire election process. In exercise of powers conferred on it by Art. 71(3), Parliament has enacted the Presidential and Vice-Presidential Election Act, 1952 (XXXI of 1952) to regulate certain matters relating to or connected with elections to the office of President and Vice-President of India. A glance through the provisions of this Act will indicate that in the view of Parliament the time for the exercise of jurisdiction by this Court to inquire into and decide doubts and disputes arising out of or in connection with the Presidential election is after the entire election process is completed. Under s. 14 of this Act, which corresponds to s. 80 of the Representation of the People Act, 1951, no election, meaning the election of the President or Vice-President, shall be called in question except by an election petition presented to this Court in accordance with the provisions of Part III of that Act and of the rules made by this Court under Art. 145. Section 18, which lays down the grounds for declaring the election of a returned candidate to be void, runs as follows :

18. Grounds for declaring the election of a returned candidate to be void :- If the Supreme Court is of opinion -

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

(b) that the result of the election has been materially affected -

- (i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance; or
 - (ii) by the improper reception or refusal of a vote, or
 - (iii) by the non-compliance with the provisions of the Constitution or of this Act or of any rules or order made under this Act; or
- (c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate or of any other candidate who has not withdrawn his candidature has been wrongly accepted; the Supreme Court shall declare the election of the returned candidate to be void.
- (2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code (Act XLV of 1860).

It is quite clear from the language of the section that any improper reception or refusal of a vote, or any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act or the improper acceptance or rejection of a nomination paper may be made a ground for challenging the election. This means that all doubts and disputes relating to any stage of the entire election process is to be canvassed by an election petition presented to this Court after the election in its wide sense is concluded.

The above stated interpretation appears to us to be in consonance with the other provisions of the Constitution and with good sense. If doubt or dispute arising out of or in connection with the election of President or Vice-President can be brought before this 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 Art. 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 in derogation of the general interest of the people, which requires that elections should be gone through according to the time schedule. It is, therefore, in consonance both with the provisions of Art. 62 and with good sense to hold that the word "election" used in Art. 71 means the entire process of election. That is what Parliament understood to be the meaning of Art. 71 as is apparent from the Presidential and Vice-Presidential Election Act, 1952. Again this Court has framed rules under Art. 145 to regulate the procedure and a perusal of those rules will also indicate that "all doubts and disputes arising out of or in connection with the election of a President to Vice-President" should be brought before the court after the result of the entire election is declared, that is to say, after a candidate is declared to be elected to the office of President or Vice-President.

It is pointed out that if the petitioners are compelled to wait until after the entire election process is concluded and then to file election petitions, they will have to show that the result of the election has been materially affected as required by s. 18 of the Presidential and Vice-Presidential Election Act, 1952. It is contended that there is no reason why this extra burden or hardship, which is not in term imposed by Art. 71, should be placed upon the petitioners. It is not necessary for the purposes of disposing of these petitions to express any opinion as to the validity or otherwise of this requirement of s. 18 and we do not do so. But the plea of alleged hardship brought about by s. 18

cannot alter the true meaning and import of Art. 71. In our judgment Art. 71 postulates an election and the word "election" occurring in Art. 71 means the entire election process culminating in a candidate being declared elected and doubts and disputes arising out of or in connection with any of the stages of such completed election have to be inquired into and decided by this Court which, in point of time, must necessarily be after the completion of the entire process compendiously called the election.

Learned counsel appearing for the petitioner in the second petition raised an additional point that the Election Commission by fixing the election on May 6, 1957, has arbitrarily deprived the members representing territorial constituencies like Kangra and Himachal Pradesh of their right to exercise and enjoy other privileges of membership of Parliament. This argument was raised half heartedly at the fag end of his argument in reply and was not seriously pressed. In any event he did not advance any cogent argument showing how the petitioner had been deprived of the equal protection of the law. Elections have to be held in numerous constituencies and different dates have to be fixed for holding the actual elections in different constituencies according to the various exigencies relating to the particular localities in which the constituencies are situated. No good ground has been established for holding that there has been any discrimination such as is prohibited by Art. 14 of the Constitution. In so far as the alleged discrimination, if any, in breach of the equal protection clause of the Constitution may be said to be calculated to raise any doubt in connection with the election of the President it will, at best, be a non-compliance with the provisions of the Constitution which may or may not, after the conclusion of the entire election, be made a ground, under s. 18 of the Presidential and Vice-Presidential Election Act, 1952, for calling the election in question as to which we need formulate no final opinion at this stage.

We express no opinion on the merits of any of the controversies between the parties, but, for the foregoing reasons, we hold that the present petitions are premature and cannot be entertained at this stage. We, therefore, dismiss the petitions Nos. 63 and 64 of 1957. Civil Miscellaneous Petitions Nos. 563 and 564 of 1957 will also stand dismissed.

Petitions dismissed.

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