

Charan Lal Sahu

Vs

Shri Fakruddin Ali Ahmed and Others

Election Petition No. 1 of 1974

(K. K. Mathew, P. Jagmohan Reddy, P. N. Bhagwati JJ)

14.10.1974

ORDER

1. Our brother Beg, J., sitting Chambers has referred this election petition for preliminary hearing as to whether the petitioner has locus standi and whether he can proceed further with the petition. The question before us, therefore, is whether the petitioner is a "candidate" as defined in Section 13(a) for the petition would be maintainable by him only if he is "candidate" as defined in Section 13(a). The petitioner claims to have been duly nominated as a candidate and we have therefore to determine whether his claim is well-founded. His nomination was rejected on the ground of non-compliance with Sections 5B and 5C introduced in the Presidential and Vice-Presidential Elections Act 1952 by an amendment made by Act 5 of 1974. These sections read as follows :

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 under Section 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 electoral roll for the Parliamentary 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 day 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.

We need concern ourselves only with Section 5C for the disposal of this point. It is clear on the petitioner's own submission that he sent a cheque for Rs. 2,500 to the Returning officer on July 19, 1974 along with his nomination paper. The last date for filing nomination papers was July 30, 1974. It is not disputed that under sub-section (2) of Section 5C a candidate has to either deposit Rs. 2,500 in cash or enclose 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. The enclosing of a cheque for Rs. 2,500 does not comply with the mandatory requirement of sub-section (2) of Section 5C. The petitioner has, therefore, clearly not complied with the requirement of sub-section (2) of Section 5C. He sought to contend that Sections 5B and 5C are ultra vires the Constitution but he was unable to persuade us as to why they are so. Clause 3 of Article 71 says that 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 and Article 246(1) read with Item 72 of List I of the Seventh Schedule confers power on Parliament to make law with respect to elections to Parliament to the Legislatures of States and to the offices of President and Vice-President; the Election Commission. These powers are in our view sufficient to enable Parliament to enact the impugned sections. It was contended that under Article 58 of the Constitution there is no impediment in the way of a person being nominated as a candidate for election to the office of President if he can satisfy that he is qualified to be any help to the petitioner. There is, in our view, nothing in the impugned sections which is inconsistent with Article 58. Article 71(3) which vests power in Parliament to regulate by law any matter relating to or connected with the election of a

President or Vice-President is subject to the other provisions of the Constitution which include Article 58 but merely because a candidate is qualified under Article 58 it does not mean that he is exempt from compliance with the regulating the mode and manner in which nominations should be filed. If the petitioner does not comply with the requirements of such a law passed in exercise of the power under Article 71(3) he cannot properly claim to be duly nominated and he would not be a "candidate" for election.

2. In this view we do not think that the petitioner has locus standi to maintain the petition and the same is accordingly dismissed.

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