

K. K. Shrivastava and Others

Vs

Bhupendra Kumar Jain and Others

Civil Appeals No. 177-178(N)

(R. S. Sarkarkaria, V. R. Krishna, Iyer, Jaswant Singh JJ)

15.03.1977

JUDGMENT

KRISHNA IYER, J. –

1. These two appeals by special leave relate to the same subject matter, namely the validity of the election to the Bar Council of Madhya Pradesh of twenty returned candidates. We are not going into the grounds of the challenge nor do we propose to express any view thereon since we are disposed to allow the appeals on the short ground that the High Court fell into a grievous error in entertaining the writ petition.

2. Briefly the facts are as follows. The election to the Bar Council of Madhya Pradesh took place under the Indian Advocates Act. There are rules framed by the Bar Council of Madhya Pradesh with the approval of the Bar Council of India regulating the disputes regarding election. There is specific provision regarding the constitution of election tribunals, the period of limitation within which election petitions should be filed and other connected matters. Rule 31 of the Election Rules framed by the Bar Council of Madhya Pradesh governs the situation. The powers of the tribunal so far as we are able to see are wide. Moreover, Rule 31(4) states :

All disputes arising under the above sub-rule shall be decided by a Tribunal to be known as an Election Tribunal.....

It is represented before us that within the period of limitation prescribed by Rule 31(1), viz., 15 days, an election petition has been filed before the Tribunal constituted under the rules. Notwithstanding the pendency of such an election petition, four months after the period of limitation had expired for filing an election petition, two voters (one of whom was a defeated candidate) moved the High Court under Articles 226 and 227 of the Constitution challenging the validity of the election. The High Court was confronted by the argument from the respondents' side that in the presence of an equally efficacious remedy it was not proper for the High Court to entertain a writ petition. However, after noticing the decision which lays down that when there is an appropriate or equally efficacious remedy the writ jurisdiction should not be exercised, the Court nevertheless interfered. The reasoning which prevailed with it was in its own words :

We are of the view that where the entire election is challenged an election petition would not be an appropriate remedy. In any case, it cannot be considered as an equally efficacious remedy.

Earlier the same court had held that election disputes whether they related to one candidate or more than one would be covered by the election rules and in particular Rule 31. Having held so the

somewhat inconsistent attitude expressed in the observations quoted passes our comprehension.

3. It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of election, therefore, a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Again in the present case an election petition covering the same subject matter is actually pending. There is no foundation whatever for thinking that where the challenge is to an "entire election" then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as mis-exercise. It is unfortunate that an election petition, which probably might have been disposed of long ago is still pending because the writ petition was pending in the High Court and later on special leave having been granted these appeals have been pending in this Court. How injurious sometimes the repercussions of entertaining writ petitions are where they should not be, is illustrated by this very case.

4. In this view we hold that the High Court fell into an error in entertaining the petitions and so we allow these appeals. We need hardly say that the tribunal created by the Bar Council takes note of the fact that as considerable lapse of time has already occurred it must now move quickly to hear and dispose of the election disputes. We express no opinion on the reasoning of the High Court on the merits of the case. With these observations, we allow the appeals but the parties will bear their own costs.

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