

A. K. M. Hassan Uzzaman and Others

Vs

Union of India and Others

And

Lakshmi Charan Sen and Others

Vs

A. K. M. Hassan Uzzaman and Others

Transfer Case No. 3 of 1982 and Civil Appeals Nos. 737-742 (E) of 1982

(CJI Y. V. Chandrachud, D. A. Desai, A. P. Sen, E. S. Venkataramiah, Baharul Islam JJ)

30.03.1982

ORDER

1. The transferred case and the appeals connected with it raise important questions which require a careful and dispassionate consideration. The hearing of these matters was concluded four days ago, on Friday, the 26th. Since the judgment will take some time to prepare, we propose, by this Order, to state our conclusions on some of the points involved in the controversy :

(1) The High Court acted within its jurisdiction in entertaining the writ petition and in issuing a rule nisi upon it, since the petition questioned the vires of the laws of election. But, with respect, it was not justified in passing the interim orders dated February 12 and 19, 1982 and in confirming those orders by its judgment dated February 25, 1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the writ petition are of a vague and general nature, on the basis of which no relief could be granted. Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the courts the use of wise statemanship in the exercise of their extraordinary powers under the Constitution. The High Courts

must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(b) of the Constitution. We will pronounce upon that question later in our judgment.

(2) We are unable to accept the argument advanced on behalf of the petitioners that the Election Commission, or the Chief Electoral Officer or the Electoral Registration Officers have in any manner acted in violation of the Constitution, the Representation of the People Acts of 1950 and 1951, or the Registration of Electors Rules, 1960. The Election Commission issued the various directives *ex debito justitiae*, as steps-in-aid of a fair election. They are being observed faithfully and honestly, and shall be so observed until the deadline mentioned in Section 23(3) of the Act of 1950. The manner in which the directives are implemented cannot be regarded as unreasonable, in the circumstances of the case.

It takes years to build up public confidence in the functioning of constitutional institutions, and a single court hearing, perhaps, to sully their image by casting aspersions upon them. It is the duty of the courts to protect and preserve the integrity of all constitutional institutions which are devised to foster democracy. And when the method of their functioning is questioned, which it is open to the citizen to do, courts must examine the allegations with more than ordinary care. The presumption, be it remembered, is always of the existence of *bona fides* in the discharge of constitutional and statutory functions. Until that presumption is displaced, it is not just or proper to act on preconceived notions and to prevent public authorities from discharging functions which are clothed upon them. We hope and trust that the charges levelled by the petitioners against the Election Commission, the Chief Electoral Officer and the Electoral Registration Officers will not generate a feeling in the minds of the public that the elections held hitherto in our country over the past thirty years under the superintendence, direction and control of successive Election Commissions have been a pretense and a facade. The public ought not to carry any such impression and the voters must go to the ballot-box undeterred by the sense of frustration which the petitioner's charges are likely to create in their minds. We see no substance in the accusation that the voters' lists have been rigged by the election authorities with the help of enumerators belonging to any particular political party. Enumerators are mostly drawn from amongst teachers and government servants and it is difficult to imagine that thirty-five years after independence, they are totally colour-blind. They are the same in every State and every constituency. The safeguard lies in the efficiency and impartiality of the higher officers who have to decide objections filed in relation to the voter's lists. That safeguard is not shown to have failed in the instant case.

(3) Surprisingly, though rightly, no argument was made before us on behalf of the petitioners on the question of the constitutional validity of any of the provisions of the Acts of 1950 and 1951 or the Rules. 'Surprisingly', because, the major part of the writ petition is devoted to the adumbration of a challenge to some of those provisions and yet no argument was urged before us in support of that challenge. 'Rightly', because, there is no substance whatsoever in that challenge and counsel exercised their judgment fairly and judiciously in refusing to waste the time of the court in pursuing an untenable contention. Only one learned counsel, Shri Bhola Nath Sen,

complained that the fee of 10 paise prescribed by Rule 26 of the Rules of 1960 is unreasonable since, there are many voters who cannot afford to pay 10 paise. The argument must be rejected out of hand as devoid of substance and as lacking in awareness of Indian Economics. There is no voter in our country who does not have or cannot raise a sum of 10 paise to ventilate his objection to the voters' list. Counsel should not grudge at least that modest achievement to our successive Governments which have been fighting a relentless war against poverty. The reason for our mentioning that a large part of the writ petition is devoted to a statement of constitutional challenge to election laws is, that it is upon a petition of this nature that the High Court's jurisdiction was invoked. The petition is dressed up in constitutional attire but, before us, no counsel tried even to have the feel of it, except Shri Bhola Nath Sen. We will have occasion to demonstrate how, in a petition of this nature, no interim relief was permissible, especially in terms of prayer clause (f), by which the entire election process was brought to a standstill.

2. For these reasons and those which we will give in our judgment later, we dismiss the writ petition filed in the Calcutta High Court which was transferred for disposal to this Court. All orders, including interim orders, passed by the Calcutta High Court are hereby set aside. Civil Appeals 739 to 742 of 1982 will stand disposed of in the light of the dismissal of the writ petition, out of which they arise. There will be no order as to costs.

per Baharul Islam, J. (partly dissenting)

3. I regret my inability to associate myself with some of the observations made by My Lord, the Chief Justice, in para (2) of the Order just pronounced. While I do not have any doubt in the integrity and impartiality of the Election Commission, I am not satisfied that all the Electoral Registration Officers concerned and all the staff working under them, were beyond reproach in their conduct in implementing the relevant provisions of the Constitution, the Representation of the People Acts of 1950 and 1951, the Registration of Electors Rules, 1960 and the directions given by the Election Commission in the preparation of the electoral rolls. I, however, agree that the writ petition under Article 226 of the Constitution filed before the Calcutta High Court and transferred to this Court be dismissed and the stay orders granted by the High Court be vacated, for reasons to be given in my judgment to follow.

4. Mr Nariman, learned counsel for the Election Commission told us at the time of hearing that the claims and objections already filed had been, and were being, looked into. It is hoped that claims and objections, if any outstanding yet, will be disposed of, and names included, in the electoral rolls till the last date of making nominations, as permissible under Section 23(3) of the Representation of the People Act, 1950.

</html