Bhagwati Prasad Dixit 'Ghorewala'

Vs

Rajeev Gandhi

Civil Appeal No. 3003(Nec) of 1985

(E. S. Venkataramiah, M. P. Thakkar JJ)

25.04.1986

JUDGMENT

VENKATARAMIAH, J. –

This appeal is filed under Section 116-A of the Representation of the People Act, 1951 against the judgment of the High Court of Allahabad in Election Petition 7 of 1985 dismissing the election petition for failure to disclose a cause of action. The appellant and the respondent were candidates along with some others at the last general election held to fill the seat in the Lok Sabha from 25 Amethi Parliamentary Constituency, District Sultanpur in the State of Uttar Pradesh. The results of the election were declared on December 28, 1984 and the respondent was declared elected to the Lok Sabha from that constituency. The appellant questioned the validity of the election of the respondent by an election petition filed before the High Court of Allahabad in Election Petition 7 of 1985. The grounds on which the appellant challenged the election of the respondent were :

> (i) that the respondent had ceased to be an Indian citizen and, therefore, was disqualified to be a candidate;
>
> (ii) that Since at the time when the election was held the respondent was a member of Parliament and was drawing salary, he was holding an office of profit within the meaning of Article 102(1)(a) of the Constitution at the time of the election and, therefore, was disqualified for being chosen as a member of Parliament; and
>
> (iii) that Shri R.K. Trivedi who was functioning as the Chief Election Commissioner was not qualified to be appointed as the Chief Election Commissioner. The entire elections held throughout the country including the election of the respondent were therefore void.

2. The allegations relating to ground No. (i) were set out in paragraphs 8 to 13, the allegations relating to ground No. (ii) were set out in paragraphs 14 to 16 and the allegations relating to ground No. (iii) were set out in paragraphs 17 to 20 of the election petition. In support of ground No. (i) the appellant alleged that because the respondent had been married to an Italian lady and had acquired properties in his own name as well as in the name of his wife in Italy the respondent must be deemed to have acquired Italian citizenship as per the Italian law and ceased to be an Indian citizen under Section 9 of the Citizenship Act, 1955 and that, therefore, under sub-clause (d) of clause (1) of Article 102 of the Constitution the respondent was disqualified for being chosen as a member of the Lok Sabha. While it was not disputed that the respondent was a citizen of India by virtue of Article 5 of the Constitution, there was no allegation that there had been a decision given on the

question whether he had ceased to be a citizen of India by the competent authority under the Citizenship Act, 1955 nor was it the case of the appellant before us that there was any such adjudication till today declaring that the respondent had ceased to be a citizen of India. The contention of the appellant as regards ground No. (ii) was that while it had been stated in clause (2) of Article 102 of the Constitution that for the purposes of that article a person shall not be deemed to hold an office of profit under the Government of India or the government of any State by reason only that he was a minister either for the Union or for such State, there was no express provision to the effect that a member of Parliament who drew salary and allowances was not holding an office of profit and therefore the respondent who was a member of Parliament on the date of the election eligible to receive the salary and allowances payable to a member must be deemed to be holding an office of profit under the Government of India and was disqualified under sub-clause (a) of clause (1) of Article 102 of the Constitution. The contention as regards ground No. (iii) was that since the Chief Election Commissioner could but be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court of India as provided by clause (5) of Article 324 of the Constitution, no person who was not eligible to be appointed as a Judge of the Supreme Court of India could be appointed as the Chief Election Commissioner and that as Shri R.K. Trivedi was not qualified to be appointed as a Judge of the Supreme Court of India he could not be appointed as the Chief Election Commissioner. The election having been held during the time he was in office as per the election programme fixed by him the entire election was invalid.

3. The respondent on receipt of the copy of the election petition filed an application before the High Court of Allahabad to strike off the petition since the grounds made in the election petition were on the face of the petition untenable. The High Court took up for consideration the application made by the respondent for striking off the petition and after hearing the parties proceeded to dismiss the petition, on the ground that it did not disclose any cause of action. The High Court while holding that it could decide the question whether the respondent had ceased to be a citizen of India came to the conclusion that the respondent had not lost the Indian citizenship by virtue of his marriage with an Italian lady. The High Court further held that membership of Parliament on the date of the election did not amount to a disqualification even though members of Parliament were in receipt of salary and allowances by virtue of such membership and that the appointment of Shri R.K. Trivedi as the Chief Election Commissioner could not be questioned on the ground that he did not possess the qualifications prescribed for the post of a Judge of the Supreme Court of India.

4. It is now well settled that in election petitions pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it is liable to be rejected in limine. In Charan Lal Sahu v. Giani Zail Singh [(1984) 2 SCR 6 : (1984) 1 SCC 390 : AIR 1984 SC 309] which was a petition under Section 14 of the Presidential and Vice-Presidential Elections Act, 1952 challenging the election of Shri Zail Singh as the President of India, the petitioner had alleged among other grounds (1) that Shri Zail Singh was not a suitable candidate for the post of the President; (2) that Shri M.H. Beg former Chief Justice of the Supreme Court of India and then Chairman of the Minorities Commission had been engaged by Shri Zail Singh and by the then Prime Minister for influencing the votes of the minority communities; (3) that a Cabinet Minister of the Union Government who was a supporter and a close associate of Shri Zail Singh exercised undue influence over the voters by misusing the government machinery and that a statement issued by him asking the voters to vote for Shri Zail Singh was published by the Press Information Bureau, Government of India; (4) that the then Prime Minister participated in the election campaign of Shri Zail Singh and misused the government machinery for that purpose; (5) that the then Prime Minister made a communal appeal to the Akali Dal that its members should vote for Shri Zail Singh; and (6) that government helicopters and cars were misused for the purpose of the election of Shri Zail

Singh. It was contended on behalf of Shri Zail Singh that even assuming that those allegations were true they did not disclose any cause of action for setting aside the election. This Court came to the conclusion that the allegations made as regard the participation of Shri Beg in canvassing votes for Shri Zail Singh did not made out the offence of undue influence as defined in Section 171-C of the Indian Penal Code and that the election petition did not disclose any cause of action for setting aside the election of Shri Zail Singh on the ground of undue influence as specified in Section 18(1)(a) of the Presidential and Vice-Presidential Elections Act, 1952. The court also came to the conclusion that the remaining grounds alleged by the election petitioner for invalidating the election of Shri Zail Singh were misconceived. It held that the use of government machinery, abuse of official position and appeal to communal sentiments so long as such appeal did not amount to undue influence were not considered by the legislature to be circumstances which would invalidate a Presidential or a Vice-Presidential election. The Court ultimately held that the averments in the election petition, taken at their face value, did not disclose any cause of action for setting aside the election of the returned candidate on the grounds stated in Section 18(1)(a) of the Presidential and Vice-Presidential Elections Act, 1952. It accordingly dismissed the petition at a preliminary Stage. The principle followed by this Court in the above decision is applicable to the present case also.

5. As regards ground No. (i) it has to be observed that the High Court was in error in construing that it could decide the question whether a person had ceased to be an Indian citizen. The High Court was of the view that since in an election petition the High Court is called upon to decide whether the returned candidate was disqualified to be chosen as a member of the Lok Sabha it was open to the High Court by virtue of that power to decide the question whether a candidate had ceased to be an Indian citizen notwithstanding the statutory bar contained in Section 9(2) of the Citizenship Act, 1955. The Citizenship Act, 1955 is enacted by Parliament is exercise of its powers under Entry 17 of List I of the Seventh Schedule to the Constitution read with Article 11 thereof. Article 11 of the Constitution reads thus :

> 11. Parliament to regulate the right of citizenship by law. - Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

6. Section 9 of the Citizenship Act, 1955 reads thus :

> 9. Termination of citizenship. - (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between January 26, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India :
>
> Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.
>
> (2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

7. In exercise of the powers conferred by clause (h) of sub-section (2) of Section 18 of the Citizenship Act, 1955 and sub-section (2) of Section 9 of that Act the Central Government has framed rules to decide the question of voluntary acquisition of citizenship of a foreign country and the consequent determination of the citizenship of India. By Rule 30 of the Citizenship Rules, 1956, the Central Government is appointed as the authority to decide such question. Schedule III of the Citizenship Rules, 1956 contains the rules of evidence applicable to a case arising under Section 9(2) of the Citizenship Act, 1955. No other court or authority has the power to decide the question as to whether, when or how an Indian citizen has acquired the citizenship of another country. Even where the question whether a person is qualified to be chosen as a member of the Lok Sabha arises in an election petition filed under the Representation of the People Act, 1951, the High Court cannot proceed to decide the question of loss of citizenship of the candidate concerned. It cannot be held that the Citizenship Act, 1955 should yield in favour of the Representation of the People Act, 1951 only because the latter Act is enacted pursuant to Article 327 of the Constitution. As mentioned earlier the Citizenship Act, 1955 is also a law made by Parliament by virtue of Article 11 of the Constitution read with Entry 17 of List I of the Seventh Schedule to the Constitution.

8. In State of M.P. v. Peer Mohd. [1963 Supp 1 SCR 429 : AIR 1963 SC 645 : 1963 (1) Cri LJ 617], Gajendragadkar, J. (as he then was) speaking for the Constitution Bench observed (at page 438) :

> If a dispute arises as to whether an Indian Citizen has acquired the citizenship of another country it has to be determined by such authority and in such manner and having regard to such rules of evidence as may be prescribed in that behalf. That is the effect of Section 9(2). It may be added that the rules prescribed in that behalf have made the Central Government or its delegate the appropriate authority to deal with this question, and that means this particular question cannot be tried in courts.

9. In State of U.P. v. Shah Mohammad [(1969) 3 SCR 1006 : (1969) 1 SCC 771 : AIR 1969 SC 1234] this Court said (at page 1012) : (SCC p. 775, para 6)

In our judgment from the amplitude of the language employed in section 9 which takes in persons in category (2) mentioned above, the intention has been made clear that all cases which come up for determination where an Indian citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the Constitution have be dealt with and decided in accordance with its provisions.

10. In an earlier decision in Government of A.P. v. Sayed Mohd. Khan [1962 Supp 3 SCR 288 : AIR 1962 SC 1778] this Court held (at page 293) :

> Therefore, there is no doubt that in all case where action is proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign State and have lost in consequence the citizenship of this country, it is essential that the question should be first considered by the Central Government. In dealing with the question, the Central Government would undoubtedly be entitled to give effect to the impinged Rule 3 in Schedule III and deal with the matter in accordance with the other relevant rules framed under the Act. The decision of the Central Government about the status of the person is the basis on which any further action can be taken against him.

11. These cases clearly lay down that when the matter falls within Section 9(2) of the Citizenship

Act, 1955, all other provisions of law are excluded. The authority prescribed under the Citizenship Act, 1955 alone can decide the questions arising under Section 9(2) and the rules of evidence which should govern that decision shall be those prescribed for the purpose under that Act. The High Court however relied on two decisions of this Court in Arun Kumar Bose v. Mohd. Furkan Ansari [(1984) 1 SCR 118 : (1984) 1 SCC 91 : AIR 1983 SC 1311] and the decision in Surinder Singh v. Hardial Singh [(1985) 1 SCR 1059 : (1985) 1 SCC 91] (to reach the conclusion that by virtue of Article 329 of the Constitution all questions arising in an election petition were exclusively triable in an election petition and by no other authority). In those decisions the Supreme Court was generally concerned with the power of the High Court to try all issues arising in an election petition in accordance with the provisions of the Representation of the People Act, 1951. It is no doubt true that Article 329(b) of the Constitution provides that notwithstanding anything in the Constitution no election to either House of Parliament or to the House or either House 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 legislature. It is also true that one of the grounds on which an election of a candidate can be set aside in the course of an election petition under the Representation of the People Act, 1951 is that the candidate was not a citizen of Indian at the relevant time. A man may not be a citizen of India because he has not acquired the citizenship of India at all or having acquired he may have lost it by voluntarily acquiring the citizenship of another country as provided in Section 9(1) of the Citizenship Act, 1955. For purposes of deciding the question arising under Section 9(1) of that Act, the Central Government by virtue of the power conferred on it by Section 9(2) has been given an exclusive power to determine in accordance with the rules of evidence provided for the purpose whether a person has acquired the citizenship of another country. It follows that when once a person is admitted or held to be a citizen of India, unless there is a decision of the Central Government under Section 9(2) of the Citizenship Act, 1955 that he has acquired the citizenship of a foreign country, he should be presumed to be an Indian citizen. Section 9 of the Citizenship Act, 1955 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country. Sub-clause (d) of clause (1) of Article 102 of the Constitution provides that a person shall be disqualified for being chosen as and for being a member of either House of Parliament (i) if he is not a citizen of India, (ii) or has voluntarily acquired the citizenship of a foreign State or (iii) is under any acknowledgment of allegiance or adherence to a foreign State. We are concerned here with a case falling under clause (ii) and that question has to be decided by virtue of Article 11 of the Constitution and Section 9(2) of the Citizenship Act, 1955 by the Central Government only. The policy behind Section 9(2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other court or authority would have to act only on the basis of the decision of the prescribed authority in that behalf and on no other basis. That being then mandate of the law, even the High Court trying an election petition can declare an Indian citizen as having acquired the citizenship of a foreign State only on the basis of a declaration made by the Central Government. If such a declaration made by the Central Government is produced before a High Court tyring an election petition the High Court has to give effect to it. If such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned has not ceased to be an Indian citizen. It cannot independently hold an enquiry into that question on its own. This is also the view of the Calcutta High Court in Birendranath Chatterjee v. State of W.B. [AIR 1969 Cal 386] though the question there did not involve Article 329 of the Constitution. What we have said now may not apply to the other two types of disqualifications referred to in sub-clause (d) of clause (1) of Article 102 of the Constitution and we express no opinion on those issues. The view we have taken on the primacy of Section 9(2) of the Citizenship

Act, 1955 does not derogate from the plenary powers of the High Court in trying an election petition under the Representation of the people Act, 1951 but only leads to a harmonious way in which the two types of issue, namely, the issues relating to the validity of an election to either House of Parliament or of a State legislature and the issues relating to loss of Indian citizenship on the acquisition of the citizenship of a foreign country which are both vital can be resolved.

12. In the circumstances it is difficult to agree with the view of the High Court that when a question whether a person has acquired the citizenship of another country arises before the High Court in an election petition filed under the Representation of the People Act, 1951 it would jurisdiction to decide the said question notwithstanding the exclusive jurisdiction conferred on the authority prescribed under Section 9(2) of the Citizenship Act, 1955 to decide the question. Whatever may be the proceeding in which the question of loss of citizenship of a person arises for consideration, the decision in that proceeding on the said question should depend upon the decision of the authority constituted for determining the said question under Section 9(2) of the Citizenship Act, 1955.

13. Even granting that the High Court had jurisdiction to decide the said question it is seen that the allegations made in the election petition regarding acquisition of citizenship of a foreign country by the respondent were wholly inadequate to record any finding in favour of the appellant since it is not shown that there is any provision in our law which provides that a person would automatically lose his Indian citizenship on his marriage with a person who is a citizen of a foreign country or by acquiring, even if true, property in a foreign country. On the face of it the plea was untenable. The entire ground being vexatious and frivolous is liable to be struck off.

14. The plea that a person becomes disqualified for membership of either House of Parliament in case he is in receipt of salary and allowances payable to such member is again on the face of it untenable. The proviso to Section 14(2) of the Representation of the People Act, 1951 authorises the issue of notification for the general election to the Lok Sabha and the holding of the general election before the expiry of the duration of the existing Lok Sabha but not earlier than six months prior to the date on which the duration of the existing Lok Sabha would expire under the provisions of Article 83(2) of the Constitution. Section 73 of the Representation of the People Act, 1951 again authorises the publication of results of a general election to the Lok Sabha before the expiry of the duration of the existing Lok Sabha but by the proviso to that section it is provided that the issue of such notification shall not be deemed to affect the duration of the Lok Sabha, if any, functioning immediately before the issue of the said notification. Hence the dissolution of the existing Lok Sabha is not a condition precedent for holding a general election to it. It is no doubt true that Article 102(1)(a) says that if a person holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder he is disqualified for being chosen as and for being a member of either House of Parliament. The question for consideration is whether the membership of either House of Parliament is such an office of profit. If what is contended by the appellant is correct there can be no member of Parliament at all because all members of Parliament are entitled to receive salaries and allowances as members. Article 106 of the Constitution expressly provides that members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India. Clause (a) of Article 102(1) and Article 106 of the Constitution must be construed in a harmonious way. When those articles are so construed, it cannot be held that by receiving the salary and allowances payable to a member of Parliament a member of Parliament would be disqualified for being either chosen as

a member of either House of Parliament or for continuing as a member of either House of Parliament. In any event the membership of Parliament is not an office under the government. So the fact that the Lok Sabha had not been dissolved on the date on which the election was held would not amount to a disqualification in the case of the respondent who was a member of the Lok Sabha for being a candidate at the next general election.

15. The third ground is only to be stated to be rejected. It is true that the first proviso to Article 324(5) of the Constitution of India provides that the Chief Election Commissioner can be removed only in accordance with the procedure prescribed for the removal of a Supreme Court Judge. But it does not follow from that provision, however liberal our construction of that provision may be, that the Constitution of India provides that a person to be appointed as a Chief Election Commissioner should satisfy the qualifications prescribed for a Judge of the Supreme Court of India. We reject this contention.

16. On going through all the grounds mentioned in the petition we feel that they are so frivolous and vexatious that the only order to be passed on the petition is the one which has been made by the High Court.

17. The allegations in the election petition, even if they are taken as true, do not disclose any cause of action. The High Court was, therefore, right in dismissing the petition on the ground that it does not disclose a cause of action.

18. As regards costs it is to be stated that the learned counsel for the respondent submitted that the respondent would not claim costs either in the High Court or in this Court.

19. We accordingly dismiss the appeal but subject to the modification that the parties shall bear their own costs in the High Court. There will be no order as to costs in this Court.

</html