

S. T. Muthusami

Vs

K. Natarajan and Others

Civil Appeal No. 1722 of 1986

(A.P. Sen, E.S. Venkataramiah JJ)

20.01.1988

JUDGMENT

VENKATARAMIAH, J. –

1. The question for consideration in this case is whether it is appropriate for the High Court to interfere with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election held for the purpose of filling a vacancy in the office of the Chairman of a Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 (Act 35 of 1958) (hereinafter referred to as 'the Act') on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such election.

2. The appellant - S. T. Muthusami, respondent 1 - K. Natarajan, respondent 6 - N. Thangavelu and two others were nominated as candidates at the election held to the office of the Chairman, Panchayat Union, Madathukkulam, Udamalpet Taluk, Coimbatore District in the State of Tamil Nadu. The date of scrutiny of the nomination papers was January 31, 1986 and the last date for withdrawal of nominations was February 3, 1986. The election was to take place on February 23, 1986. On the date of the scrutiny of the nomination papers, the nomination papers of the appellant, respondent 1, respondent 6 and two others were found to be valid by the Returning Officer, respondent 5. As regards the allotment of symbols to the candidates the order made by the State Government on January 8, 1986 in exercise of the powers under Rule 17 (1) of the Tamil Nadu Panchayats (Conduct of Election of Chairmen of Panchayat Union Councils and President and Members of Panchayats) Rules, 1978 (hereinafter referred to as 'the Rules') directed that the Returning Officer shall assign to the candidates set up by the National and the State parties the symbols reserved for the purpose by the Chief Election Commissioner. The symbols reserved for the Indian National Congress (I) was 'hand'. Similarly the symbols were also reserved for the All India Anna Dravida Munnetra Kazhagam and Dravida Munnetra Kazhagam. Fifteen other symbols were also notified by the Returning Officer which could be assigned to the independent candidates contesting the elections. Under the procedure prescribed by the government where a candidate was set up by a national party who could claim the symbol which was reserved for such national party, the said national party had to send an intimation to the State Election Authority, namely, the Director of the Rural Development, Madras (respondent 3) intimating in Form 'A' annexed to the order of the government the names and the specimen signatures of not more than two representatives of the party who had been authorised to send intimations of the names of the candidates set up by the party in respect of the election to the office of the Chairmen of the Panchayat Union Councils and the Presidents of Town Panchayats. These representatives of the parties, whose names were intimated to the Director of the Rural Development were then either singly or generally required to intimate the names of the persons, whom the party concerned had

authorised to contest as its official candidates in order of priority in Form 'B' annexed to the government order. If the support to a candidate was withdrawn an intimation was required to be sent to the Returning Officer not later than 3 p.m. on the last date fixed for withdrawal of the nomination papers. If no intimation was received before 3 p.m. on the last date fixed for withdrawal the Returning Officer was directed not to consider any candidate as a candidate set up by the political party and not to assign the symbol for which the priority was given to the concerned party. This order also stated that symbols should be assigned only by drawing lots when there were conflicting claims between two or more candidates and that no priority could be given to any candidate. In the case before us intimation was received by the Returning Officer showing the appellant as the official candidate of Indian National Congress (I) under the signature of the President of the Tamil Nadu Congress (I) Committee by 12 noon on February 3, 1986. A similar letter was handed over by respondent 6 at 12.45 p.m. on that date showing that he was also the official candidate of the Indian National Congress (I). That letter also appeared to have been signed by the President of the Tamil Nadu Congress (I) Committee. Having found that two persons were claiming to be the official candidates of the same party, the Returning Officer declined to grant the symbol 'hand' to any one of them. These two candidates, i.e., the appellant and respondent 6 then gave in writing their choice of symbols belonging to the unreserved category giving three alternative choices. Accepting the first choice of each of them, the Returning Officer allotted at 4.30 p.m. on February 3, 1986 the symbol 'glass tumbler' to the appellant and the symbol 'fish' to respondent 6. The Returning Officer then proceeded to publish the list of the candidates nominated as per Rule 17(2) of the Rules with the symbols allotted to each of the three candidates, whose nomination papers had been found to be valid. Immediately after the publication of the said list of the nominated candidates, the President of the Tamil Nadu Congress (I) Committee who was alleged to have signed both the letters given to the Returning Officer representing that the appellant and respondent 6 were both official candidates wrote to the Director of the Rural Development Department, respondent 3, who was the Election Authority as well as the Secretary to the Government, Rural Development Department, Government of Tamil Nadu on February 4, 1986 stating that he had not given his approval to respondent 6 being an official Congress (I) candidate and that the authorised candidate of the Congress (I) Party was the appellant, S. T. Muthusami. On receipt of the said letter respondent 3 - the Director of the Rural Development Department, the Election Authority sent a telex message to the Collector of Coimbatore to treat the appellant as the official candidate of the Indian National Congress (I) party and to assign the symbol 'hand' to him. The Collector communicated this message to the Returning Officer by sending telex message on February 6, 1986. In accordance with that direction the Returning Officer issued an Errata Notification in Form VI assigning of the symbol 'hand' which had been reserved for the Indian National Congress (I) to the appellant on that date itself and the contesting candidates through special messengers. This action of the Returning Officer was challenged by respondent 1 - K. Natarajan, who was a validly nominated candidate with 'bow and arrow' as his symbol by filing a petition in Writ Petition No. 1178 of 1986 on the file of the High Court of Madras under Article 226 of the Constitution of India contending that the issuing of the Errata Notification was an abuse of power committed on extraneous and irrelevant considerations and there was undue interference with the actual conduct of the election. He prayed before the High Court that the Errata Notification dated February 6, 1986 should be quashed and the election should be directed to be proceeded with in accordance with the notification issued on February 6, 1986 should be quashed and the election should be directed to be proceeded with in accordance with the notification issued on February 3, 1986 under which the 'glass tumbler' symbol had been allotted to the appellant. The above writ petition came up for consideration before the learned Single Judge of the High Court on February 17, 1986. The learned Single Judge dismissed the writ petition holding that respondent 1 - K. Natarajan, who had filed the writ petition, could not be considered as an

aggrieved party since he did not claim to be the candidate sponsored by the Indian National Congress (I) and that the dispute could be, if at all, between the appellant and respondent 6. Aggrieved by the order of the learned Single Judge, respondent 1 filed an appeal in Writ Appeal No. 173 of 1986 before the High Court of Madras. The said appeal was heard by a Division Bench and it was allowed on April 8, 1986. The Division Bench quashed the Errata Notification issued by the Returning Officer and directed him to hold the election on the basis of the symbols originally allotted, treating 'glass tumbler' as the symbol of the appellant and 'fish' as the symbol of respondent 6. The Returning Officer was further directed to proceed immediately with the election process from that stage as provided by the Rules. Aggrieved by the order of the Division Bench, the appellant has filed this appeal by special leave.

3. In this appeal there is no dispute about the facts which have been set out above. The point urged by the appellant before us is that the Division Bench was in error in setting aside the Errata Notification issued by the Returning Officer in exercise of its jurisdiction under Article 226 of the Constitution of India before the declaration of the result of the election in view of the existence of an alternative remedy under the Rules framed under Section 178(2)(ii) of the Act entitled 'Decision of Election Disputes Relating to Panchayat Union Councils' have provided a machinery for the settlement of the election disputes relating to Panchayat Union Councils. The relevant parts of Rule 1 and Rule 11 of the said Rules read this :

1. (1) Save as otherwise provided, no election held under the T. N. Panchayats Act, 1958 whether of a member, chairman or vice-chairman of a panchayat union council shall be called in question except by an election petition presented in accordance with these rules to an election court as defined in sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called returned candidate).

(2) The election court shall be -

(i) except in cases falling under clause (ii) in the case of districts other than the Nilgiris, the District Munsif having territorial jurisdiction over the place in which the office of the panchayat union council is situated, or if there is more than one such District Munsif, the Principal District Munsif, and in the case of Nilgiris district the Subordinate Judge, Ootacamund; and

(ii) where the government so direct, whether in respect of panchayat union councils generally or in respect of any class of panchayat union councils or in respect of panchayat union councils in the same district or taluk, such officer or officers of government as may be designed by the government in this behalf by name or by virtue of office :

Provided that an election petition may, on application, be transferred -

(a) if presented to a District Munsif under clause (i), by the District Judge concerned to another District Munsif within his jurisdiction; and

(b) if presented to an officer of government under clause (ii), by the government to another officer of government :

Provided further that where an election petition is transferred to any authority under

the foregoing proviso, such authority shall be deemed to be the election court.

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11. If in the opinion of the election court -

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(c) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the rules made thereunder, the election of such returned candidate shall be void :

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4. The Government Order No. 1677 L.A. dated October 8, 1960 provides that for all the purposes of the Act, District Collector and the Division Development Officer in respect of panchayat constituted under the said Act under the area within their respective jurisdiction, the District Collector in respect of every panchayat union council constituted under the Act in the district under his charge and the Additional Development Commissioner, Madras in respect of every said panchayat union council under the said Act shall be the election authorities. The expression 'election authority' is defined by Section 2(9) of the Act as such authority, not being the president or vice-president or a member of the panchayat or the chairman or vice-chairman or a member of the panchayat union council as may be prescribed. Rule 5 of the Rules provides that subject to the superintendence, direction and control of the election authority the Returning Officer shall be responsible for the proper conduct of the election under the rules. Instructions issued by the Election Authority to the Returning Officer regarding the allotment of the symbols cannot, therefore, be construed as interference with the election process by an authority unconnected with process of election. Even if there is any mistake committed by either the election authority or the Returning Officer in the allotment of symbol to the appellant the said mistake can only amount to a non-compliance with the provisions of the Act or the Rules made thereunder. It is clear from clause (c) of Rule 11 of the Rules made for the purpose of providing a machinery for the decision of election disputes relating to panchayat union councils that every action amounting to such non-compliance with the provisions of the Act and the Rules made thereunder would not automatically vitiate an election. It is only when the election court on a consideration of the entire material placed before it at the trial of an election petition comes to the conclusion that the result of the election has been materially affected by such non-compliance with any of the provisions of the Act or the Rules made thereunder the election of the returned candidate can be declared void. Rule 1 of the said Rules provides that an election held under the Act whether a member or chairman or vice-chairman of a panchayat union council can be called in question only by an election petition and not otherwise. In these circumstances it has to be seen whether the Division Bench of the High Court was justified in setting aside the Errata Notification issued by the Returning Officer with regard to the allotment of symbols.

5. It is no doubt true that Rule (1) of the Rules made for the settlement of election disputes which provides that an election can be questioned only by an election petition cannot have the effect of overriding the powers of the High Court under Article 226 of the Constitution of India. It may, however, be taken into consideration in determining whether it would be appropriate for the High Court to exercise its powers under Article 226 of the Constitution of India in a case of this nature.

6. In *N. P. Ponnuswami v. Returning Officer* (1952 SCR 218 : AIR 1952 SC 64) dealing with the question whether a writ petition was a proper remedy which can be availed of by a person aggrieved by any irregularity in the conduct of an election before the result of the election is declared, Fazl Ali, J. on a consideration of the nature of litigation in respect of elections observed thus at page 234 :

The conclusions which I have arrived at may be summed up briefly as follows :

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.

7. Having laid down the above principles, the court further held that Article 329(b) of the Constitution of India had the effect of ousting the jurisdiction of the courts with regard to the matters arising between the commencement of the polling and the final selection. Repelling the argument that Article 329 (b) of the Constitution ousted the jurisdiction of the courts only with regard to matters arising between the commencement of the polling and the final selection and that question relating to nominations could be agitated under Article 226 of the Constitution, this Court observed thus :

The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself, i.e., it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

8. It is thus seen that in the above decision (which was rendered by the Full Court) this Court first laid down as a matter of general principle that interference with an election process between the commencement of such process and the stage of declaration of result by a court would not ordinarily be proper and next laid down that Article 329(b) of the Constitution had the effect of taking away the jurisdiction under Article 226 of the Constitution also in respect of the disputes arising out of election during the said period.

9. Following the above decision in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64) in Nanhoo Mal v. Hira Mal ((1976) 1 SCR 809 : (1976) 3 SCC 211 : AIR 1976 SC 2140) this Court held that the right to vote or stand for election to the office of the President of a Municipal Board is a creature of the statute, that is the U.P. Municipalities Act and it must be subject to the limitations imposed by it. Accordingly, this Court held that the election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of that Act and in no other way. The court further held that the said Act provided only for one remedy, that remedy being an election petition to be presented after the election was over and there was no remedy provided at any intermediate stage. Referring to the decision in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64) this Court observed in the above decision at page 814 thus : (SCC p. 215, para 5)

These conclusions follow from the decision of this Court in in Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64) in its application to the facts of this case. But the conclusions above stated were arrived at without taking the provisions of Article 329 into account. The provisions of Article 329 are relevant only to the extent that even the remedy under Article 226 of the Constitution is barred as a result of the provisions. But once the legal effect above set forth of the provision of law which we are concerned with is taken into account there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution. Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Article 226 of the Constitution in relation to elections it is not now necessary to consider. All the considerations applied in coming to the conclusion that elections to the legislatures should not be delayed or protracted by the interference of courts at any intermediate stage before the results of the election are over apply with equal force to elections to local bodies.

10. In the above passage this Court clarified that the conclusions in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64) had been arrived without taking the provisions of Article 329 of the Constitution into account and that the provisions of Article 329 of the Constitution were relevant only to the extent that even the remedy under Article 226 of the Constitution was barred as a result of the provisions. Earlier in the course of the decision in Nanhoo Mal case ((1976) 1 SCR 809 : (1976) 3 SCC 211 : AIR 1976 SC 2140) this Court observed at page 811 : (SCC p. 213, para 3)

After the decision of this Court in N. P. Ponnuswami v. Returning Officer, Namakkal Constituency (AIR 1971 MP 195) there is hardly any room for courts to entertain applications under Article 226 of the Constitution in matters relating to elections.

11. A Full Bench of the High Court of Madhya Pradesh had expressed the same view in the year 1971 earlier in Malam Singh v. Collector, Sehore, M. P. (AIR 1971 MP 195) In the above decision the High Court of Madhya Pradesh was called upon to consider the controversial question whether it was proper that the High Court should exercise its powers under Article 226 of the Constitution in election matters arising under the Madhya Pradesh Panchayats Act, 1962 at intermediate stages, that is, to interfere with individual orders passed during the process of election and thus impede that process or should it decline to exercise that power and leave the parties to their remedy of an election petition to be presented after the election was over. The provision that fell for consideration before the Full Bench of the Madhya Pradesh High Court in that Case was Section 357(1) of the Madhya Pradesh Panchayats Act, 1962, the language of which was identically the same as that of

Section 80 of the Representation of the People Act, 1951. It was pointed out that the court in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64), having regard to the words 'Notwithstanding anything in this Constitution used in Article 329(b) held that they were sufficient to exclude jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress. Nevertheless, the decision of the court in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64) did not entirely turn on the language of Article 329(b) of the Constitution but the court also enunciated certain well settled principles applicable to election cases in general. In particular, the court interpreted Section 80 of the Representation of the People Act, 1951. The Full Bench observed that though it was not concerned with Article 329(b) of the Constitution, it was bound by the principles laid down in N. P. Ponnuswami case (1952 SCR 218 : AIR 1952 SC 64). In delivering the judgment of the Full Bench, one of us (Sen, J.) observed :

First of all, their Lordships rejected the contention that the post-election remedy of an election remedy of an election petition was inadequate to afford the relief which the petitioner sought. On the strength of the observations of Wallace, J., in Sarvothama Rao v. Chairman, Municipal Council, Saidapet (ILR 47 Mad 585 : AIR 1923 Mad 475), it was urged before them that to drive him to that remedy would be an anomaly, which their Lordships more appropriately described as hardship or prejudice. It was further urged that the court could not stultify itself by allowing the wrong which it was asked to prevent to be actually consummated. While rejecting the contention, their Lordships noticed with approval the following observations of Wallace, J. in *Desi Chettiar v. Chinnasami Chettiar* (AIR 1928 Mad 1271, 1272) :

The Petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him that that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop the election altogether; and certain observations at page 600 in *Sarvothama Rao v. Chairman, Municipal Council* (ILR 47 Mad 585 : AIR 1923 Mad 475), are quoted. In the first place, we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election petition, will in itself confer on him any right to obtain a writ. In the second place, these observations were directed to the consideration of the propriety of an injunction in a civil suit, a matter with which we are not here concerned. And finally it may be observed that these remarks were made some years ago when the practise of individuals coming forward to stop elections in order that their own individual interest may be safeguarded was not so common. It is, clear that there is another side of the question to be considered, namely, the inconvenience to the public administration of having elections and the business of Local Boards held up while individuals prosecute their individual grievances.

These observations of Wallace, J. were made in regard to elections to Local Boards. It thus follows that the alternative remedy of an election petition is not less convenient, beneficial and effectual.

12. It was then observed :

Next, their Lordships re-stated the principle that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Their Lordships relied on the dictum of Willes, J., which has become classical :

It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J., in *Wolverhampton New Water Works Co. v. Hawkesford* ((1859) 6 CB (NS) 336, 356), in the following passage :

There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and a peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down by this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* (1919 AC 368), and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad v. Gordon Grant & Co.* (1935 AC 532) and *Secretary of State v. Mask & Co.* (44 Cal WN 709 : AIR 1940 PC 105), and it has also been held to be equally applicable to enforcement of rights (see *Hurdutrai v. Official Assignee of Calcutta* ((1948) 52 Cal WN 343, 349)).

13. Further it was observed :

Lastly, their Lordships stated that the law of election in this country does not contemplate that there should be two attacks on matters connected with election proceedings, in the following passage :

In my opinion, to affirm such a position would be contrary to the scheme of ... the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court.

It seems to me that under the election law, the only significance, which the rejection of a nomination paper has, consists in the fact that it can be used as a ground to call the election in question

14. In the ultimate analysis, the Full Bench laid down :

There is no constitutional bar to the exercise of writ jurisdiction in respect of elections to local bodies such as, Municipalities, Panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the court in the exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So, their Lordships of the Supreme Court in *Sangram*

Singh v. Election Tribunal, Kotah (AIR 1955 SC 425) stated :

... though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of cases.

15. We are inclined to accept this view which lays down a salutary principle.

16. The Division Bench of the High Court against whose decision the present appeal by special leave is filed was of the view that the issuing of the Errata Notification by the Returning Officer amounted a very serious breach and interference under Article 226 of the Constitution of India was called for. Taking into consideration all the aspects of the present case including the fact that the person who filed the writ petition before the High Court was not once of the candidates nominated by the Indian National Congress (I) and the fact that the President of the Tamil Nadu Congress (I) Committee had written that he had authorised the appellant to contest as the candidate on behalf of his party and he had not given his approval to respondent 6 contesting as a candidate on behalf of his party, we feel that the exercise of the jurisdiction by the High Court in this case under Article 226 of the Constitution cannot be supported. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy.

17. We are of the view that the Division Bench of the High Court committed a serious error in issuing a writ under Article 226 of the Constitution quashing the Errata Notification allotting the symbol 'hand' to the appellant by its judgment under appeal. We, therefore, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. The Returning Officer shall proceed with the election in accordance with law from the stage of which it was interrupted by the order of the High Court. The appeal is accordingly allowed. No costs.

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