

Bhim Singh, President J&K Panthers Party

Vs

Election Commissioner of India and Another

Writ Petition (C) No. 227 of 1996

(K. Ramaswamy, S.P. Bharucha, K.S. Paripoornan JJ)

04.04.1996

ORDER

1. This is a writ petition for a declaration that Section 30(d) of the Representation of the People Act, 1951, is unconstitutional and ultra vires Article 14 of the Constitution of India "as it does not specify the maximum period for holding the election after the withdrawal of nomination...", and for a direction to the Election Commission of India to issue a separate notification under Section 30(d) read with Section 153 of the Act for holding elections in the State of Jammu and Kashmir within 20 days from the date for withdrawal of nominations. The writ petition is filed by one Bhim Singh, who is the President of a political party recognised by the Election Commission, namely, the Jammu and Kashmir Panthers Party. The writ petition contends that the provisions of Section 30(d) confer unbridled, unguided and uncontrolled power upon the Election Commission to hold polls upon any day subsequent to the date of withdrawal of nominations and fixes no terminal date in this behalf. It is also the case in the writ petition that prospective candidates in the State of Jammu and Kashmir would have to obtain personal security from the State for a period of one month and 24 days and this would be both difficult and expensive.

2. Having regard to the obvious urgency, notice was issued on 2-4-1996, to the Union of India and the Election Commission to file counter-affidavits and the writ petition was posted for hearing on 3-4-1996.

3. On 3-4-1996 the Election Commission did not file a counter-affidavit but relied upon material on record.

4. The Union of India filed a counter-affidavit affirmed by the Joint Secretary in the Ministry of Home Affairs. It states that "the Union of India shares the sentiments and the concern expressed by the petitioner". It states that, contrary to past practice and to the period of 20 to 25 days provided for constituencies outside the State of Jammu and Kashmir in the forthcoming parliamentary elections, the period for canvassing in the State of Jammu and Kashmir is, according to the schedule laid down by the Election Commission, 55 days. The affidavit states that "owing to the prevailing peculiar situation in the State of Jammu and Kashmir, it is not desirable that the time for canvassing in the State should be more than the necessary minimum statutory period", inter alia, for the following reasons :

(a) The candidates would require to obtain personal security from the State for comparatively a longer period of 55 days for the polling on 30-5-1996 and 48 days for the polling on 23-5-1996. This is in contrast with the rest of the country where the period ranges from 21 days to 31 days.

(b) It costs a great deal to the State in terms of resources and effort to provide security for such a long period to the candidates, their family members, their election agents, their political workers etc. In this context it would be relevant to state here that there is a threat from various militant outfits from outside the country to disrupt the process of the general elections including attempts at liquidating the candidates.

#(c) \* \* \*"#

5. The aforementioned affidavit annexes copies of correspondence between the Union of India and the Election Commission. By letter dated 25-3-1996, the Union of India stated :

"4. As regards the announcement of Parliamentary Elections in Jammu and Kashmir State, the Commission's attention is drawn to various queries raised by the Ministry of Home Affairs with the Law Ministry, as contained in the enclosed note (Annexure-1). The Law Ministry have now advised us that it is permissible to issue different notifications with different dates for polls under Section 14 of the RP Act, 1951. The Law Ministry have further confirmed that the Election Commission itself has followed such practice in the past in the context of the Third General Elections and also for Elections to the tenth Lok Sabha. As stated in the MHA Note, allowing a long gap between the date of filing nominations and the date for the poll is bound to create grave security threats to the contesting candidates and is also likely to deter prospective candidates from contesting in the elections.

5. At the time of the Home Secretary's presentation on the 19th March, the need for staggering the polling dates in Jammu and Kashmir State taking into account the requirement of paramilitary forces, was discussed at length. The Commission at that time assured that in case of such a need arising, the Commission could consider revising the dates of the poll. This matter has now been further examined and taking into account the availability of security forces, the time required to mobilise the forces and deploy them at various polling stations and other considerations, it is found absolutely essential to spread the polling in Jammu and Kashmir State at least on three dates as follows :

#Phase-I Jammu and Ladakh Polling on 7th Parliamentary May (Day I)  
Constituencies (As fixed by EC)Phase-II Baramulla and Anantnag Polling on Day  
Parliamentary I + 14 days ConstituenciesPhase-III Srinagar and Udhampur Polling  
on Day Parliamentary II + 7 days Constituencies##

6. It is, therefore, suggested that Election Commission may kindly consider this, and recommend to the President for the present, to issue a notification under Section 14 of the RP Act, 1951 for Parliament elections in the rest of the country (other than in J&K State). As regards Parliament elections in J&K State, the Commission may recommend to the President, later on at an appropriate time for issuing one or more notifications for Parliamentary Elections in Jammu and Kashmir according to the above Schedule. The dates of the notifications could be such that the minimum period for canvassing is limited to the prescribed period of 20 days for each constituency."

In its reply dated 25-3-1996, the Election Commission said :

"6. Taking all factors into account the Commission is agreeable to have the polls for Lok Sabha seats in Jammu and Kashmir, as proposed by Government of India, namely,

#Phase-I 4 - Ladakh 7-5-1996 6 - Jammu (Tuesday)Phase-II 1 - Baramulla 23-5-1996  
3 - Anantnag (Thursday)Phase-III 2 - Srinagar 30-5-1996 5 - Udhampur  
(Thursday)##

7. The Commission has considered and decided that it is not necessary to make revised recommendations to the President for the issue of notifications under Section 14 of the Representation of the People Act, 1951, one for Parliamentary constituencies in the rest of the country and another for those in J&K, for accommodating the request of re-scheduling of poll in the State of J&K. The Commission under its powers, under Section 153 of the Representation of the People Act, 1951, is competent to issue and revise the schedule of poll, without separate notifications for the State of J&K. The Commission shall do so at the appropriate time.

8. Even while initially programming the dates of poll in the State of J&K, the Commission had considered the extended period of campaigning that would be entailed but had so decided taking into account the improvement in the ground situation in the State and the assurance of the Government of India that law and order has improved and that the atmosphere is conducive to the holding of free and fair elections in the State.

9. In the light of the foregoing the Commission affirms its recommendations made to the President, vide its letter No. 464/96/812 dated 20-3-1996 for issuing a notification under Section 14 of the Representation of the People Act, 1951 calling upon all the Parliamentary constituencies in the country to elect members in accordance with the provision of the Representation of the People Act, 1951 and Rules made thereunder."

6. At the hearing yesterday the contentions raised in the writ petition were reiterated on behalf of the writ petitioner. The learned Attorney General, appearing for the Union of India, strongly supported the writ petitioner insofar as he pleaded that the period of canvassing in the State of Jammu and Kashmir should not be as large as 55 days. He offered to place before us the latest intelligence reports to support the plea. Mr. G.L. Sanghi, the learned counsel for the Election Commission, submitted that the Election Commission had reached its decision after taking into account all relevant factors, including the need for deployment of security personnel at the time of the elections in the rest of the country and in the State of Jammu and Kashmir. He submitted that if candidates in that State apprehended danger to themselves they could curtail the period during which they canvassed for themselves.

7. We were not impressed by the argument faintly pressed in regard to the constitutionality of Section 30(b), for reasons which we shall presently state.

8. We were very concerned that the Union of India shared the perception of the writ petitioner about the possibility of grave consequences of an election campaign spread over 55 days in the Srinagar and Udhampur constituencies. The danger to candidates, we realised, would commence upon the

day they announced their candidature and remain until the polls were held, regardless of how long each of them actually campaigned. Since the gravity of the situation could only be assessed upon the basis of secret intelligence and other reports, it was appropriate, we thought, that the date of the poll be preponed. This was something that the Election Commission had itself appeared to visualise when it said in its letter dated 25-3-1996, that it was competent to revise the date of the polls and would do so at the appropriate time. We thought, therefore, that the matter would be best resolved by fresh discussions between the Union of India and the Election Commission and we directed accordingly, adjourning the matter to the next day, that is, today.

9. The Attorney General has today read out to us a statement signed on behalf of the Election Commission of India and the Government of India, which reads thus :

"Pursuant to the Supreme Court's order dated 4-4-1996 in Writ Petition No. 227 of 1996 (Prof. Bhim Singh v. Election Commission of India SCC), officials of the Union Government and the Election Commission met on April 3 and April 4, 1996 and thoroughly discussed the issue.

There was agreement that the polls in various constituencies of J&K should be held on 7th, 23rd and 30th May, 1996, as already announced by the Election Commission of India. There was also agreement that it would have been advantageous to limit the canvassing period to around the minimum prescribed period in each of the constituencies. The possibilities of reducing the period were explored and reviewed. In view of the fact that notifications under Sections 14 and 30 of the Representation of the People Act, 1951 have already been issued, it was felt that under the provisions of the Act it is not possible at the present stage to change the dates for filing of nominations, scrutiny of nominations and withdrawal of candidatures. Therefore, it was agreed that we should continue with the present schedule announced vide Election Commission of India's Press Note dated 25-3-1996."

10. We are not a little surprised that the Union of India, after its statements in the counter-affidavit and the submissions on its behalf at the Bar yesterday, should have agreed as it has done. We must assume that overnight, according to the perception of the Union of India, the security position in the State of Jammu and Kashmir has vastly improved and that the apprehensions that the Union of India had yesterday have been allayed. We must act upon the basis that the Union of India and the Election Commission are fully conscious of their responsibilities and obligations and have acted accordingly, knowing full well where the blame for serious adverse consequences, if there should be any, will lie.

11. Having due regard to the ground realities, we must emphasise that functionaries in any manner concerned with directing the conduct, supervision and control of free, fair and peaceful elections to the House of the People and the Legislative Assemblies of the States need to adopt a realistic, pragmatic and flexible approach to ensure that the country shall be governed in its true, secular, socialist, democratic perspective.

12. In the light of the joint statement of the Election Commission and the Union of India afore-quoted our intervention would be uncalled for.

13. Article 324 of the Constitution of India vests the conduct of elections to Parliament and to the legislature of every State in the Election Commission. Section 30 of the Act, so far as is relevant,

reads thus :

"30. Appointments of dates for nominations, etc. - As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint -

(a) the last date for making nominations, which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twentieth day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

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Section 14 states that a general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution. Sub-section (2) of Section 14 reads thus :

"14. (2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all Parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder :"

14. There can be little doubt that the aforesaid provisions read together require close consultation between the Union of India and the Election Commission in the matter of fixing the election programme. It is clearly both impossible and undesirable that any outer limit should be placed in Section 30(d) for the date of the poll. The fixation of the date of the poll would depend upon a variety of circumstances, all of which have to be taken into account by the Election Commission acting in consultation with the Government of India, which would have the necessary material in this behalf. We do not, therefore, find Section 30(d) arbitrary or unconstitutional.

15. The writ petition is disposed of accordingly. There shall be no order as to costs.