

ALLAHABAD HIGH COURT

Sheo Kumar

Vs.

V.G. Oak

Civil Misc. Writ No. 96 of 1953

(Sapru and Chaturvedi, JJ.)

19.03.1953

JUDGMENT

Sapru, J.

1. This is an application under Article 226 of the Constitution of India praying that this Court may be pleased to issue a writ of certiorari quashing the order passed on 13-11-1952, by opposite parties 1 to 3 and a writ of prohibition directing opposite parties 1 to 3 not to proceed with the election - *Salig Ram Jaiswal v. Sheo Kumar*¹.

2. The facts which have given rise to this petition may be stated briefly.

3. The first general elections under the Constitution of India were held in the district of Allahabad in January 1952. The Sirathu-Manjhanpur constituency from which the applicants were seeking election in this district was a double-member constituency with a seat reserved for scheduled caste candidate. For the election there were as many as nine candidates, viz. opposite parties 4 to 15. Sri Sheo Kumar Pandey and Sri Sukhi Ram Bhartiya were among the duly nominated candidates for the Uttar Pradesh Legislative Assembly. Both of them were standing on the Congress tickets. Sri Salig Ram Jaiswal and Shrimati Sushila Devi were set up as candidates on behalf of Kisan Mazdoor Praja Party.

4. Election at the aforesaid constituency was held on 28-1-1952, and after the counting of votes petitioners 1 and 2 were declared elected on 9-2-1952. Thereafter Salig Ram Jaiswal, opposite party 4, presented an election petition challenging the election of the petitioners, before the Election Commissioner of India, New Delhi. That election petition was sent for disposal to the Allahabad Election Tribunal consisting of opposite parties 1 to 3 with opposite party 1 as Chairman. One Ganga Prasad has also filed his nomination which was scrutinized and accepted by the Returning Officer. He, however, withdrew his candidature subsequently and did not

contest the election. The petition filed by opposite party 4 was objected to by the petitioners on the ground, inter alia', that inasmuch as the petitioners had failed to implead this Ganga Prasad as a party the petition was liable to be dismissed. This question was decided by the Tribunal by its judgment dated 13-11-1952. The Election Tribunal having held that it was unnecessary for opposite party 4 to implead Ganga Prasad, the petitioners have now come up to this Court under Article 226 of the Constitution.

5. Before considering the various points which have been raised in the case, reference may be made to the fact that it is conceded by both the parties that the Election Tribunal which is functioning in Allahabad is subject to the jurisdiction of this Court under Article 226 of the Constitution. Article 324 of the Constitution vests, 'inter alia', the powers of appointing election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States in the Election Commission. Article 329 lays down that an election to the Union or State Legislature can be questioned only 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 appropriate Legislature. The Act has laid down the constitution of the Election Tribunals to which petitions may be referred for disposal by the Election Commission to try the petitions. No provision in the Constitution takes away the power of superintendence which this Court exercises under Article 227 or the power of issuing writs to an Election Tribunal once it has been constituted to hear a petition. It is unnecessary to dilate on this point further as it is the common case of both the parties that this Court has jurisdiction to entertain a writ petition against an Election Tribunal.

6. The case of the petitioners is that even though Ganga Prasad withdrew his candidature on the date of scrutiny, he remained a duly nominated candidate and that it was not competent to the Election Tribunal to hear the election petition without Ganga Prasad having been impleaded. The short question, therefore, in this petition is whether the failure of opposite party 4 to implead Ganga Prasad is fatal to the maintainability of the election petition presented by opposite party 4.

7. On the date of the nomination as many as nine candidates were nominated. Among them was one Ganga Prasad. He survived his scrutiny under Section 36, Representation of the People Act, 1951, (hereinafter called the Act), but withdrew his candidature under Section 37 of the Act on the date fixed under clause (c) of Section 30. The question that has to be considered is whether, under these circumstances, he can be said to have remained a duly nominated candidate on the date of polling.

8. As much controversy has centred round Section 82 of the Act, we consider it necessary to reproduce it. It runs as follows:

" 'Parties to the petition'. - A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so

nominated."

9. It is contended that Section 82 must be read in the context of Section 79. Both Sections 79 and 82 occur in Part VI. The heading of this part is "Disputes Regarding Elections" and Chap. 1 has the heading "Interpretation". It is urged that the words "at the election" in Section 82 really are synonymous with "for the election" and that they are wide enough to include a candidate who was a duly nominated candidate on the date of the nomination but who ceased to be a candidate on the date when the polling actually took place. Section 79 is in the nature of a definition clause and defines a "candidate" as meaning

"a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

Clearly a wide definition had to be given to the word "candidate" as the object appears to have been to prevent corrupt or improper practices. The words "at any election" in Section 79, would in cases in which an actual election takes place, have reference to the exact time when the polling takes place. It is vital to note that the definitions given in Section 79 are subject to the context otherwise requiring. On this part of the case, we may invite particular attention to Section 52 in Chap. III of Part V which brings out the difference contemplated by the Legislature between the position of a candidate who withdraws his candidature on the date of scrutiny and a candidate who dies before the actual polling takes place. If a duly nominated candidate dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer is under an obligation, upon being satisfied of the fact of the death of the candidate, to countermand the poll and report the fact to the Election Committee. In such a case all proceedings with reference to the election have to be commenced anew in all respects as if for a new election. Even a candidate who has withdrawn his candidature can have himself denominated under those circumstances as a candidate for the election.

10. A perusal of Section 52 of the Act will show that the consequences which ensue when a duly nominated candidate dies before the election takes place are very different from those which follow the withdrawal of a duly nominated candidate from the election. In the former case proceedings have to begin afresh, while in the latter case the candidate simply goes out of the electoral picture and the election takes place from among the other duly nominated candidates as if he had never sought election.

11. It has been pointed out that Part V of the Act deals with the conduct of elections. Chapter I lays down the rules and procedure for the nomination of candidates. Under Section 30 the Election Commission has to appoint the last date for making nominations, the date for the scrutiny of nominations, the last date for the withdrawal of candidature and the date or dates on which a poll shall, if necessary, be taken. Each of these four acts has to be done after giving a

notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for the election and specifying the place at which the nominations are to be filed. Now, under Section 32 it is open to any person to have himself nominated as a candidate for election to fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the constitution of this Act. Clause (1) of Section 33 lays down the manner in which each candidate shall, either in person or by his proposer or seconder, between the hours fixed in that section deliver to the Returning Officer at the place specified in that behalf, in the notice issued under Section 31 a nomination paper completed in the 'prescribed' form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-S.(2) as proposer and seconder. Section 33(2) enables any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in Section 16 of the Act, to subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more, subject to the proviso contained therein. Clause (3) of Section 33 requires that the nomination paper delivered under sub-S.(1) must be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under the Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed. It is to be noted that under this clause no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper. Sub-Clause (5) makes it incumbent on the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are, subject to the correction of any clerical error, the same as those entered in the electoral rolls. Clause (6) of this section enables the Returning Officer to require the person presenting the nomination papers to produce, if his name is not registered in the electoral roll of the constituency for which he is the Returning Officer, either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll. Section 34 lays down that a candidate, in order to be deemed to be duly nominated, must deposit or cause to be deposited a certain sum in the Reserve Bank of India or in a Government Treasury.

It will be seen that the fulfillment of these conditions is necessary for being a duly nominated candidate. Section 35 deals with notice or nominations and the time and place for their scrutiny. Section 36 deals with the important question of scrutiny and nomination papers and casts upon the Returning Officer a duty to refuse any nomination on any of the grounds mentioned in Section 36 (2), Clauses (a) to (e). Section 36 enables a candidate to withdraw his candidature either himself by a certain date fixed under clause (c) of Section 30, by a notice in writing in person or by his proposer, seconder or election agent authorized to withdraw the candidature. It is vital to note that under sub-S.(2) no person, who withdraws his candidature, is allowed to cancel the notice of his withdrawal. It is equally vital to note that under Sub-section (3) the Returning Officer, on receiving a notice of such a withdrawal, has to cause a notice of the withdrawal to be affixed in some conspicuous place in his office. Under Section 38, the Returning Officer, after the scrutiny and withdrawal have taken place, has to prepare and publish a list of valid

nominations in such manner as may be prescribed. It is clear from the scheme outlined above that it is only from among the list of duly nominated candidates who have not withdrawn their candidature and taken back their deposit that the list of valid nominations can be drawn up. It will also be seen that for the purpose of the election the candidate who allows himself to be nominated with due formalities, who survives the scrutiny of his nomination paper but withdraws his nomination before or on the date fixed for the withdrawal of the deposit ceases to be any kind of candidate at the election.

12. Now it must be noticed that what Section 82 does is to lay down that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself, if he is so nominated. The right of presenting petition on one or more of the grounds specified in sub-Sections (1) and (2) of Section 100 and Section 101 to the Election Commission has been given under Section 81 to any candidate at such election or any elector in such form and within such time, but not earlier than the date of publication of the name or names of the returned candidate or candidates as such election under Section 67, as may be prescribed.

13. Mr. Gopalji Mehrotra's contention is that the candidates referred to in Section 82 are the candidates who were duly nominated, regardless of the fact whether they withdraw their candidature or not. He contends that notwithstanding the fact that the candidate has withdrawn his candidature and his name does not appear in the list of valid nominations, he still remains a duly nominated candidate and therefore, must be impleaded as a necessary party. Mr. Gopalji Mehrotra has strenuously argued that there is a distinction between a candidate who is duly nominated and a candidate who is validly nominated. According to him a candidate becomes a validly nominated candidate after his name appears in the list of nominations published by the Returning Officer. But so far as the duly nominated candidate is concerned he is merely a person whose nomination has been accepted as laid down in the manner enumerated above by the law. The argument is that the withdrawal of a duly nominated candidate has no effect so far as the obligation of the petitioner to make him a party to the petition is concerned. Now it strikes us that this argument ignores the fact that the expression used by the Legislature is not "all the candidates who were duly nominated" but "all the candidates who were duly nominated 'at the election'." Great significance has to be attached to the words "at the election". If the object of the Legislature was that all candidates, whose nominations had been accepted by the Returning Officer regardless of the fact whether they withdrew their nominations and contested the election or not, should be made parties to an election petition, it is hard for us to understand why the expression "candidates who are duly nominated" is qualified by the words "at the election." It strikes us that the distinction between a "candidate for election" and "Candidate at an election" is one which cannot be ignored. It is well-known that long before the election takes place a candidate nurses his constituency. A person may be nominated, proposed and seconded, may deposit the necessary security and yet on the date of scrutiny, after calculating his chances, may come to the conclusion that the best thing for him to do is to withdraw himself from the contest and not allow the electorate any opportunity of recording votes for or against him. During the

period that he was holding himself out as a candidate he was a candidate for election. But after he withdraws from the contest, intimates his withdrawal and gets back the security he cannot be said to be a candidate 'at the election'. The words "at the election" have reference to the actual time when the voting takes place. Assuming election to be a continuous process with nomination as a preliminary requisite for standing as a candidate, the words "at the election" would seem, 'in the context in which they are used' in Section 82, to refer to the period when the actual polling takes place. Incidentally we may note that the word "election" is defined in Murray's Dictionary in the following manner:

"The formal choosing of a person for an office, dignity, or position of any kind; usually by the votes of a constituent body The choice by popular vote of members of a representative body (in the United Kingdom, chiefly of members of the House of Commons); the whole proceedings accompanying such a choice".

14. We may also quote the definition of the word "election" given in the Shorter Oxford English Dictionary, Ed.2, which is as follows:

"The choice by popular vote of members of a representative assembly, e.g. the House of commons. The exercise of deliberate choice".

15. We may, on this part of the case, refer to an unreported decision of Chagla C.J. and Dixit, J. of the Bombay High Court in - '*Sitaram Hirachand v. Yograjsing Shankarsing*', with which we are in agreement.

16. Now it has been argued that the word "candidate" has been defined in Section 79 (b), that the definition is wide enough to include a duly nominated candidate who withdraws his candidature and that that is the interpretation we should give to that word under Section 82. Now it strikes us that it is not until the Returning Officer publishes the list of valid nominations under Section 38 that everybody knows which among the duly nominated candidates are the candidates "at the election". Section 79 gives a definition of the words "Candidate" and "returned candidate". But there is no definition of the words "duly nominated" in Section 79. That has to be gathered from the other sections to which reference has been made by us. On a survey of the relevant provisions the inference appears to us to be irresistible that the words "at the election" have been used in Section 82 in its popular sense.

17. We cannot understand how and why a person who completely wipes himself off so far as the election is concerned, by withdrawing himself from the contest should be regarded as vitally interested in the election in the same manner as other duly nominated candidates who contest the election. His position cannot be higher than that of any voter at an election. Indeed, it is possible to imagine that in the party or groups he belongs to, some persons may have, because of their standing with their group or party, a more living interest in the election than the withdrawn

candidate. Now it is open to a voter to present an election petition but the law does not make it obligatory on him to implead all the voters to an election petition. We are totally unable to understand why an exception should be made in the case of a withdrawn candidate.

18. Learned counsel for the opposite parties has drawn our attention to several sections in which the distinction between "at the election" and "for the election," has not been borne in mind and the words have been used interchangeably. We are free to say that the Act does not appear to have been artistically drawn up. We, however, think that the proper course for us is to give to the words "at the election" a natural meaning. It was sought to be argued that a candidate who allowed himself to be duly nominated and thereafter withdrew his candidature should be placed on a higher footing than an average voter inasmuch as a petition can be filed by him even if he is not a voter in the constituency. We are unable to discover any provision in the Act which would enable a withdrawn candidate who is not a voter to present such an election petition. Reliance is placed for the above proposition upon Section 81. But here it is obvious that the words "any candidate" are qualified by "at such election". They cannot obviously include a person who withdrew himself from the contest before the election was over. Nomination may be an essential prerequisite to election and may be process in election but it does not constitute the whole process of election. Our interpretation of Section 81 is that the candidate must be a person, if the polling takes place, who continues as a candidate right up to the time that the election is held.

19. References were made to the decisions of certain election tribunals. We allowed them to be cited before us but we do not think it necessary to consider them at length. We are

¹(since reported in AIR 1953 Bom 293)

unable to agree with the view expressed by one of those election tribunals that a duly nominated candidate who has withdrawn himself from the contest has an interest in the election as his withdrawal may have been due to the fact that he wanted by such withdrawal to help the candidature of some other candidate of his by way of persuasion. The fact is that the withdrawn candidate is no candidate at all. He has simply gone out of the picture. We, therefore, think that the Tribunal has taken a correct view of the meaning of Section 82. In our opinion, Ganga Prasad was not a necessary party.

20. The question as to what the proper meaning of the words "duly nominated candidate at the election" in Section 82 is, is a question of law on which the Election Tribunal's view should be regarded as final. It is well known that 'certiorari' and prohibition are not granted to rectify pure errors of law. We may refer on this part of the case to the recent case of - *'Parry and Co. Ltd. Dare House, Madras v. Commercial Employees' Association Madras*^{2'}, where the Supreme Court has held that the High Court cannot issue a writ of 'certiorari to quash a decision passed with jurisdiction by a Labor Commissioner under the Madras Shops and Establishments Act, 1947, on the mere ground that such decision is erroneous in law. The appellant before the Supreme Court, was a limited liability company carrying on business in Madras. The respondent was the Association of Clerical Employees including those under the appellant. A petition was presented

by the respondents before the Labour Commissioner, Madras, under Section 51, Shops and Establishments Act for a determination of certain questions relating to the rights and privileges of the employees of the appellant. Notice was issued by the Commissioner calling upon the appellant to appear and answer the contention raised on behalf of the employees. After hearing the parties and considering the evidence which had been adduced before him the Labour Commissioner made his decision on six separate issues, two of which are relevant for the purposes of this case. Pointed attention may be drawn to them. They were as follows:

Issue No.5: Whether there has been an increase in working hours from 6 to 6½ on week days from 12-10-1948, and the increase is permissible?

Issue No.6: Whether overtime wages at twice the ordinary rates should not be paid for work done by the employees after the normal working hours?

21. The view of the Labour Commissioner was that the business hours of the Company were six and half prior to 1-4-1948 when the Act came into force and they continued to be so even after the Act. As regards issue No.6 the finding of the Labour Commissioner was that the employees in the company would be entitled to overtime wages only when the statutory hours were exceeded. The finding of the Labour Commissioner was challenged in a writ petition before the High Court. The learned Judges of the High Court allowed the petition in part and quashed the order of the Labour Commissioner in so far as it decided that the employees would be entitled to overtime wages only when the statutory hours were exceeded. This view of the Madras High Court did not find favour with the Supreme Court. On the above facts their Lordships of the Supreme Court came to the conclusion that there was no error apparent on the face of the proceedings or any irregularity in the procedure by the Labour Commissioner going contrary to principles of natural justice. For those reasons they held that there was no ground which could justify a superior Court in issuing a writ of 'certiorari' for the removal of an order or proceeding of

² AIR 1952 SC 179

an inferior tribunal vested with powers to exercise, judicial or quasi-judicial functions. We find it hard to distinguish that case from the present one.

22. Reference may also be made to the earlier case of - '*Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi*³', In that case it was pointed out by Mahajan, J., who delivered the judgment of the Supreme Court that the Legislature had not limited the jurisdiction of the Custodian General providing that such exercise would depend on the existence of any particular state of facts as he had been constituted an appellate Court under Section 24, Administration of Evacuee Property Act in words of the widest amplitude. The law as laid down by the Supreme Court in the case is that ordinarily a Court of appeal has an inherent jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties. Such a jurisdiction is inherent in its very constitution as a Court of appeal. Whether an appeal is competent, whether a party has 'locus standi' to prefer it, whether the appeal in substance is from

one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate Court so constituted. The question whether Ganga Prasad continued to be after his withdrawal a duly nominated candidate and for that reason a necessary party to the election petition was thus in the nature of a preliminary issue which it was competent for the Election Tribunal to determine. The fact that the tribunal was a tribunal of restricted jurisdiction in the sense that it had been constituted only to try election cases referred to it makes no difference so far as the generality of the law relating to the powers of Court to interfere in 'certiorari' is concerned.

23. Reference was made by learned counsel for the applicants to certain observations of the Court of Appeal in the case of *R. v. Northumberland Compensation Appeal Tribunal*⁴, where it was held that 'certiorari' could be used to quash the decision of a statutory tribunal, not only where the tribunal had exceeded its jurisdiction, but also where an error of law appeared on the face of the record. Apart from the fact that there is no error of law apparent on the face of the record and the law has, in our opinion, been correctly interpreted by the Election Tribunal, it is unnecessary to consider the full implications of this case as this Court is bound by the decisions of the Supreme Court. We have indicated clearly that an error of law in the decision of the preliminary issue which an Election Tribunal was competent to determine is, according to the law laid down by the Supreme Court, no ground for quashing the order of the Tribunal in the exercise of our powers of issuing a writ of 'certiorari'.

24. It was strenuously contended by Mr. Gopalji Mehrotra that the question of impleading Ganga Prasad was in the nature of a collateral fact upon the existence of which the jurisdiction of the Court to hear the election petition depended. We are satisfied that there is no substance in this argument. The question whether Ganga Prasad should be impleaded or not was not in the nature of a collateral fact upon the existence of which the jurisdiction of the Court to hear the election petition depended, but was a preliminary issue which the Court was competent to determine and that being so, even on the assumption that the tribunal has taken a wrong view- and we have indicated that it has not - the view of the tribunal must be held to be final. For this reason alone, apart from the

³ AIR 1952 SC 319

⁴(1952) 1 All England Reporter 122

other reasons to which we have invited attention, this application must fail.

25. We accordingly dismiss this application with costs which we assess at Rs. 300/-.
Application dismissed.