

CHARAN LAL SAHU

v.

NEELAM SANJEEVA REDDY

February 15, 1978

[M. H. BEG, C.J., Y. V. CHANDRACHUD, P. N. BHAGWATI, V. R. KRISHNA IYER, JASWANT SINGH, V. D. TULZAPURKAR AND D. A. DESAI, JJ.]

Constitution of India 1950, Arts. 54, 55, 58 and 71—Scope of Art. 58—Whether the Presidential Vice-Presidential Elections Act (Act 31), 1952 made under Art. 71(1) is in conflict with Art. 58.

Constitution of India 1950—Article 14 whether ss. 5B and 5C of the Presidential and Vice-Presidential Elections Act, 1952 violates Art. 14.

Candidates for elections and his locus standi to file election petition under the Presidential and Vice-Presidential Elections Act, 1952—Scope of s. 13(a) r/w ss. 5B, 5C and s. 14A r/w Order XXXIX rules 2, 5 and 34 of the Supreme Court Rules, 1966.

The petitioner filed his nomination papers as a candidate for the Presidential elections held on 19th July, 1977, which was not supported by the deposit prescribed under s. 5C and not subscribed by any voter as a proposer and as a seconder, as required by s. 5B of the Presidential and Vice-Presidential Elections Act (Act 31), 1952 made under Art. 71(1) of the Constitution of India. The Returning Officer rejected his nomination papers for non-compliance with the provisions of ss. 5B and 5C of the Act. The respondent was duly elected and the petitioner challenged the said election u/s. 14 of the Act.

Dismissing the petition the Court.

HELD: 1. Article 58 only provides the qualifications or conditions for the eligibility of a candidate. It has nothing to do with the nomination of a candidate which requires ten proposers and ten seconders. In the case of an election to such a high office as that of the President of India, it is quite reasonable to lay down the conditions that a person who is allowed to contest the election as a candidate must have at least ten proposers and ten seconders from amongst hundreds of electors who are legislators. The subject-matter of ss. 5B and 5C of Act 31 of 1952 is completely covered by the provisions of Art. 71(1) of the Constitution. [6 E-F]

2. Sections 5B and 5C of the Presidential or Vice-Presidential Elections Act, 1952 are not in conflict with Art. 14 of the Constitution. The conditions laid down in ss. 5B and 5C apply to all persons who want to be candidates at a Presidential election without any discrimination. They *prima facie* impose reasonable conditions to be observed by any person who wants seriously to contest at a Presidential election. Hence, these provisions would be valid apart from Art. 71(3) of the Constitution. [6 F-G]

3. The impugned amendment of the Constitution in 1974 introducing Art. 71(3) only refers to a law by which Parliament may regulate matters connected with the Presidential election, including those relating to election dispute arising out of such an election. It cannot be said to take away the jurisdiction of the Supreme Court to decide any matter which may be pending before it. All it does is to provide that the validity of any law falling under Art. 71(i) will not be called in question in any Court. Inasmuch as Supreme Court has been constituted the authority of Tribunal before which the election of the President can be questioned the effect of Art. 71(3) is only to give effect to a well-known

A general principle which is applied by this Court that a court or tribunal functioning or exercising its jurisdiction under an enactment will not question the validity of that very enactment which is the source of its powers. The Supreme Court functions as an election tribunal set up under a law made by Parliament under Art. 71(1) of the Constitution. Sections 5B and 5C of the Act and the Constitution Amendment 1974, which introduced Art. 71(3) are valid. There is also no invasion of any basic structure of the Constitution. [7 A-F]

B *Indira Nehru Gandhi v. Raj Narain* [1976] 2 SCR 347 referred to.

C 4. In an election petition, the petitioner must come within the four corners of the procedure or manner for questioning the Presidential election, in order to have a *locus standi* to challenge the Presidential election to be able to maintain the petition. If he neither is nor can claim to be a candidate, he would be lacking the right to question the election. The effect of the provisions of ss. 14(1), 14(2) and 14(3) and 14A(1) of the Act, r/w. Order XXXIX rules 2 and 5 of the Rules of the Supreme Court Rules, 1966 is that the petition, in this case, is barred because the petitioner has not got the required *locus standi* to maintain it. [7 G-H, 8 A]

5. In the instant case, the petitioner is not a candidate within the meaning of s. 13(a) of the Act 31 of 1952, either duly nominated or one who could claim to be so nominated, and as such his nomination paper was rightly rejected by the Returning Officer acting under s. 5E of the Act. [6 A]

D 6. It is obligatory upon the Court to reject a petition outright and not to waste any more time upon a plaint or petition if the provisions of law bar or shewen to bar proceedings. Indeed, it is not even necessary to issue a notice to any opposite party or parties in such a case. But, where the petition or plaint of the petitioner is rejected under Order XXIII Rule 7 of Supreme Court Rules, 1966, the "Court shall record an order to that effect with the reasons for the order." [3 G-H, 4 A]

E In the instant case, the petition is barred by the provisions of ss. 14(1) and (3) r/w. ss. 5B and 5C, s. 14A of the Act and Order XXXIX rules 2 and 5 of the Supreme Court Rules 1966 framed under Part III mentioned in s. 14(3) of the Presidential and Vice-Presidential Elections Act, 1952. [8 C]

State of Rajasthan v. Union of India [1978] 1 SCR p. 1 followed : *Charan Lal Sahu v. Fakhruddin Ali Ahmed* Election Petition No. 1 of 1974 dated 14-10-74 reiterated : *Nazi Ahmed v. Emperor* AIR 1936 P.C. 256(2) referred to.

F ORIGINAL JURISDICTION : Election Petition No. 1 of 1977.

Charan Lal Sahu (in person)

P. Ram Reddy, O.C. Mathur, J. B. Dadachanji, C.S.R. Rao and A. V. V. Nair for the respondent.

G *S. V. Gupte*, Attorney-General and *R. N. Sachthey*, for the Attorney-General & Returning Officer.

The Judgment of the Court was delivered by

H BEG, C.J. This is a petition under section 14 of the Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as the Act), challenging the election of Shri Neelam Sanjeeva Reddy as a President of India at the Presidential election held on 19th July, 1977. Section 14 and the relevant part of section 14A of the Act read as follows :

"14. (1) No election shall be called in question except by presenting an election petition to the authority specified in sub-section (2).

(2) The authority having jurisdiction to try an election petition shall be the Supreme Court.

(3) Every election petition shall be presented to such authority in accordance with the provisions of this Part and of the rules made by the Supreme Court under article 145.

14A. An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election, or—

(i) in the case of Presidential election, by twenty or more electors joined together as petitioners."

Among the rules made by this Court, Part VII, Order XXXIX contains rules relating to election petitions made under Part III mentioned in section 14(3) of the Act, Rule 2 of Order XXXIX lays down :

"2. An application calling in question an election shall only be by a petition made and presented in accordance with the provisions of this Order."

Rule 5 of order XXXIX provides :

"5. The petition shall state the right of the petitioner under the Act to petition the Court and briefly set forth the facts and grounds relied on by him to sustain the reliefs claimed by him."

Rule 34 of Order XXXIX says :

"34. Subject to the provisions of this order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction."

Thus the procedure contained in Part III of the Rules of this Court, including Order XXIII relating to the institution of suits by plaints, applies to the proceedings commenced by election petitions after reading the word "petition" for "plaint". Among these rules is rule 6 which provides that this Court after, the plaint has been presented to the Registrar and numbered, shall reject the plaint "where it does not disclose a cause of action", or where "the suit appears from the statement in the plaint to be barred by any law". It is obligatory upon the Court to reject it outright and not to waste any more time upon a plaint or petition if the provisions of law bar or shewn to bar proceedings. Indeed, it is not even necessary to issue a notice to any opposite party or parties in such a case. But, where the petition or plaint of the

A petitioner is rejected, Order XXIII, rule 7 requires that "the Court shall record an order to that effect with the reasons for the order."

B It is only after the issue and service of summons under Order XXIV and the filing of a written statement under Order XXV that the question of framing issues need arise in a case. However, as notice was issued and an affidavit in opposition was filed by Shri Neelam Sanjeeva Reddy himself in this case where preliminary objections to the maintainability of the election petition were taken, and the petitioner asked for issue to be framed, this Court framed issues on these preliminary objections. They were as follows :

- C
- (1) Has the petitioner a *locus standi* to maintain his election petition, or, in other words, is he a duly nominated candidate in accordance with provisions of section 5B and 5C of the Presidential and Vice-Presidential Elections, Act?
 - (2) Is the petition maintainable ?
 - (3) Is it open to the petitioner to challenge the validity of section 5B and 5C of the Act?
 - D (4) If so, are the two provisions mentioned in issue No. 3 valid?

E If, however, the petitioner could not get beyond the stage of the first issue on his *locus standi*, it was no use considering other issues. In this case, however, the four issues or questions in issue framed above are so interconnected that we propose to deal with them by means of a single judgment and order stating our reasons for coming to the conclusion that this petition is barred by the provisions of law so that it must be rejected on this ground. We are also of opinion that it is neither open to the petitioner to challenge the validity of section 5B and 5C of the Act nor are these provisions in any way invalid. The petitioner went so far as to challenge the validity of the constitutional amendment introduced in 1974 by which the jurisdiction of any Court to question the validity of an Act made under Article 71(1) of the Constitution was barred. The relevant constitutional provisions and the provisions of the Act are set out below :

Article 54 lays down as follows :

G "54. Elections of President—The President shall be elected by the members of an electoral college consisting of—

- (a) The elected members of both Houses of Parliament : and
- (b) the elected members of the Legislative Assemblies of the States."

H The manner of election of the President, in accordance with the system of proportional representation by means of a single transferable vote by secret ballot, is provided for by Art. 55 of the Constitution. The first three clauses of Art. 71 lay down as follows :—

"71. Matters relating to or connected with the election of a President or Vice-President-(1) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President, including the grounds on which such election may be questioned;

Provided that the election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

(2) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by such authority or body and in such manner as may be provided for by or under any law referred to in clause (1).

(3) The validity of any such law as is referred to in clause (1) and the decision of any authority or body under such law shall not be called in question in any Court."

To carry out the purposes of Art. 71(1) of the Constitution the Presidential and Vice-Presidential Election Act 1952 was enacted by Parliament. The grounds on which the election can be questioned as well as the mode of questioning it were laid down by the Act. Section 14A of the Act provides the only manner in which the election of a President can be called in question by an election petition presented to the Supreme Court either by a candidate or by 20 or more electors joined as petitioner.

Section 13(a) of the Act says :

"Candidate 'means a person who has been or claims to have been duly nominated as a candidate at an election'".

The petitioner admits in his plaint that he was not nominated as provided by section 5B of the Act which enacts that each candidate shall "deliver to the Returning Officer at the place specified in this behalf in the public notice issued under section 5 a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination, and

(a) in the case of Presidential election, also by at least ten electors as proposers and at least ten electors as seconders."

Again, section 5C provides that :

"A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of two thousand five hundred rupees."

Now, the petitioner also admits in his petition that he had not deposited this sum of money as required by section 5C of the Act. Thus, on the very admissions in the petition or plaint, the petitioner was not

A a candidate either duly nominated or one who could claim to be so nominated. Hence, his nomination paper was rightly rejected by the Returning Officer acting under section 5E of the Act.

B Now, the petitioner's contention is that Article 58 of the Constitution lays down the qualifications for a candidate to be elected so that a law made under Article 71(1) could not be in conflict with what is provided by Article 58, which reads as follows :

“(1) No person shall be eligible for election as President unless he : —

- C (a) is a citizen of India
 (b) has completed the age of thirty-five years, and
 (c) is qualified for election as a member of the House of the People.

D (2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or Government of any State or under any local or other authority subject to the control of any of the said Governments.

E Explanation—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.”

F It is clear to us that Article 58 only provides the qualifications or conditions for the eligibility of a candidate. It has nothing to do with the nomination of a candidate which requires ten proposers and ten seconders. We think that in the case of an election to such a high office as that of the President of India, it is quite reasonable to lay down the condition that a person who is allowed to contest the election as a candidate must have at least ten proposers and ten seconders from amongst hundreds of electors who are legislators. We think that the subject matter of sections 5B and 5C is completely covered by the provisions of Article 71(1) of the Constitution set out above. We also think that there is no force in the contention that sections 5B and 5C of the Act are in conflict with Article 14 of the Constitution. The conditions laid down in sections 5B and 5C apply to all persons who want to be candidates at a Presidential election without any discrimination. The *Prima facie* impose reasonable conditions to be observed by any person who wants seriously to contest at a Presidential election. Hence, this provision would be valid even apart from Article 71(3) of the Constitution.

H When Article 71(3) of the Constitution was pointed out to the petitioner, he contended that it was introduced by an amendment in 1974 which was invalid. When we questioned the petitioner about the grounds of its alleged invalidity, he maintained that it constituted an invasion of the basic structure of the Constitution, and contended that this Court had invalidated a similar amendment of the

Constitution in the case of *Shrimati Indira Nehru Gandhi v. Raj Narain*⁽¹⁾. We think the provisions of the Constitutional amendment which was invalidated there cannot be said to be similar to Article 71(3) of the Constitution. In *Shrimati Indira Nehru Gandhi's* case (supra), this Court had struck down Article 329A(4) of the Constitution mainly on the ground that it violated the basic structure of the Constitution in as much as Parliament, in exercise of its powers of amendment of the Constitution, under Article 368, could not exercise a judicial power of decision of election disputes pending before this Court. This Court had struck down a provision there which took away the jurisdiction of this Court to decide disputes pending in appeals before it, because Parliament had, after practically deciding these disputes, directed this Court to carry out whatever was laid down in the form of a Constitutional amendment. This Court refused to accept as valid what amounted to an adjudication or what displaced adjudication, without following any judicial or quasi-judicial procedure, by resorting to what was essentially only a legislative power lodged in Parliament. The basic structure of the Constitution, resting on the doctrine of a Separation of Powers, seemed to have been shaken rather rudely by Article 329A(4) which was, therefore, declared void. In the case before us, the impugned amendment of the Constitution only refers to a law by which Parliament may regulate matters connected with the Presidential election, including those relating to election disputes arising out of such an election. It cannot be said to take away the jurisdiction of this Court to decide any matter which may be pending before this Court. All it does is to provide that the validity of any law falling under Article 71(1) will not be called in question in any court. In as much as this Court has been constituted the authority of Tribunal before which the election of the President can be questioned the effect of Article 71(3) is only to give effect to a well known general principle which is applied by this Court that a Court or Tribunal functioning or exercising its jurisdiction under an enactment will not question the validity of that very enactment which is the source of its powers. This Court functions here as an election tribunal set up under a law made by Parliament under Article 71(1) of the Constitution. We are unable to see any force in the attack upon the validity of either section 5B or section 5C of the Act or of the amendment which introduced Article 71(3) of the Constitution.

The result of a careful consideration by us of the provisions mentioned above is that we think that, the procedure or manner for questioning the Presidential election having been laid down, the petitioner must come within the four corners of that procedure in order to have a *locus standi* to challenge the Presidential election and to be able to maintain this petition. If he neither is nor can claim to be a candidate, on assertions made by him in his petition itself, he would be lacking the right to question the election of Shri Neelam Sanjeeva Reddy as President of India. The effect of the provision

(1) [1976] 2 SCR 347.

A of section 14(1), 14(2) and 14(3) and 14A(1) of the Act, read with Order XXXIX, rules 2 and 5 of the Rules of this Court, is that the petition before us is barred because the petitioner has not got the required *locus standi* to maintain it.

For the foregoing reasons, we decide issues(1) to (4) against the petitioner.

B We may mention here that in *State of Rajasthan v. Union of India*(1), this Court had dismissed suits filed in this Court under Article 131 of the Constitution on a preliminary point without framing issues. It was pointed out there, by one of us (Beg. C.J.), that technically more correct order to pass in those cases may have been to reject the complaints *in limine* under Order XXIII, Rule 6 of the Rules of this Court.

C In the case before us, however, it is quite clear that the petition is barred by the provisions of Section 14(1) and (3) read with Section 5B and 5C and Sec. 14A of the Act and Order XXXIX, Rules 2 and 5 of the Rules of this Court framed under Part III mentioned in section 14(3) of the Act.

D We are also in complete and respectful agreement with the judgment of a Constitution Bench of this Court given on 14th October, 1974, on election Petition No. 1 of 1974 *Charan Lal Sahu v. Fakhruddin Ali Ahmed*, where, on a precisely similar election petition by the very petitioner now before us against the former President Shri Fakhruddin Ali Ahmed, this Court had dismissed his petition and rejected the very grounds now repeated before us. In that case also the petitioner had assailed the validity of Section 5B and 5C of the Act and failed. The petition was dismissed *in hmine* on a preliminary objection.

E It could be urged relying upon the well known principle laid down in *Nazir Ahmed v. Emperor* (1936)(2) that, where a mode for doing something is laid down, any other mode is necessarily prohibited, this petition is barred by the provisions of law laying down the procedure for filing an election petition and indicating who are entitled to maintain it. On such a view the petition could be rejected under Order XXIII Rule 6 of the Rules of the Court. On the other hand, it could be said, where he is challenging the very validity of the provisions which bar him from coming to the Court, that he has the *locus standi* to do that until his case is thrown out on the question of validity. Consequently, we think it safer in the case before us to hold that the petition is not maintainable on the view taken by us.

Accordingly, we dismiss this petition but make no order, as to costs.

H S.R.

Petition dismissed.

(1) [1978] 1 SCR 1.

(2) AIR—P.S. 256