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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

JAN HITAI — Appellant

Vs.

CHIEF ELECTION OFFICER, U.P.SACHIVALAYA, LUCKNOW AND
OTHERS — Respondent

(Before : Pradeep Kant, J and Shri Narayan, J)

Writ Petition No.1921 (M/B) of 2008

Decided on : 09-05-2008

- Representation of the People Act, 1951 - Section 2(1)(e), Section 62(1), Section 62(5)

A. Representation of People Act, 1951 — Section 62(5) — Right to Vote vs. Right to Contest Elections — Elector Definition — A person confined in prison or in lawful police custody does not have the right to vote as per Section 62(5) of the Act. However, this suspension of the right to vote does not automatically disqualify such a person from contesting elections. (Paras 1, 6, 25)

B. Representation of People Act, 1951 — Section 2(1)(e) — Elector — Meaning and Scope — The definition of 'elector' relates to a constituency, requiring the person's name to be on the electoral roll for that constituency and not being subject to disqualifications under Section 16 of the Representation of People Act, 1950. It does not state that a person debarred from voting due to Section 62(5) ceases to be an elector. (Paras 14, 15, 16, 17)

C. Constitution of India, 1950 — Article 14 — Equality before Law — Discrimination — The argument that allowing names of persons whose voting rights are suspended (due to confinement) on the electoral roll alongside those with active voting rights amounts to discrimination under Article 14 is not

substantiated. This does not constitute treating unequals as equals or adversely prejudice those with voting rights. (Paras 9, 28)

D. Statutory Interpretation — Legislative Intent — Courts should not introduce words or meanings into legislation that were not intended by the lawmakers. The suspension of voting rights for those in custody is a specific provision that does not imply a further disqualification from contesting elections. (Paras 25, 26, 29)

E. Role of Judiciary vs. Legislature — Electoral Reforms — The issue of persons with criminal antecedents contesting elections, even if in jail, is a matter for the Parliament to address through legislative amendments, not for judicial imposition of additional disqualifications where none exist in the current law. (Paras 32, 33)

JUDGMENT

1. This writ petition in the nature of Public Interest Litigation poses the following question for consideration:

Should an elector, whose right to vote has been suspended in terms of Section 62 subclause (5) of the Representation of People Act, 1951, be allowed to contest the elections, despite his inability to cast his vote?

2. The petitioner is a Society, registered under the provisions of Societies Registration Act, 1860, named 'Jan Hitai'. This Society provides a forum for taking up righteous causes with a view to securing social justice to the people for redressing their grievances; to provide a forum for combating corruption in various walks of life by building up opinion and taking such other measures as may be necessary to fight corruption etc. Securing social justice to the people for redressing their grievances is one of the main objects of the Society.

3. By means of this writ petition, concern has been shown with respect to election of candidates, who are in jail or in police custody but who are allowed to contest the elections and those who hold the offices of Member of Parliament, Member of Legislative Assembly etc.

4. The petition raises an important question about the enforcement of the democratic principles and, of course, about the qualification of the persons, who represent public will in the Parliament as well as in the Assembly.

5. Sri Satya Narain Shukla, learned counsel for the petitioner, greatly emphasized upon the need of putting a check upon the candidature of such persons in contesting the elections, who otherwise are not entitled to vote under the provisions of the Representation of People Act, 1951, as no restriction has been imposed upon them in contesting the elections.

6. The cause of filing the petition appears to be and has been stated by Sri Shukla, is that the Parliament and the Assembly should be manned and represented by those persons, who are having unblemished record and who are not involved in criminal activities and if such persons are allowed to occupy such august offices i.e. Parliament and the Assemblies, it will be against the principles of rule of law and the good governance. Submission is that the persons, who are being tried for serious offences or who are in jail or in police custody, should not be allowed to play the role of public representative nor they can be expected to represent the will of the people. In support of his plea, he has relied upon the provisions of Section 62 of the Representation of People Act, 1951, which reads as under:

62: Right to vote (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in Section 16 of the Representation of People Act, 1950 (43 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for the constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police;

Provided that nothing in this subsection shall apply to a person subjected to preventive detention under any law for the time being in force.

(6) Nothing contained in subsection (3) and (4) shall apply to a person who has been authorized to vote as proxy for an elector under this Act in so far as he votes as a proxy for such elector.

7. He also placed reliance upon Article 173 of the Constitution, which deals with the qualification for membership of the State Legislature and also Article 84, which prescribes the qualification for membership of Parliament.

8. Interpreting the provision of subsection (5) of Section 62, submission has been made that since a person, who is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police, does not have a right to vote, therefore, his name cannot be allowed to remain on electoral roll/voter list so long

he remains in confinement in a prison and for that period, his name should be deleted from voter list.

9. Stressing further, an argument has been raised that the electoral roll, which is prepared under the provisions of Representation of People Act, 1950 read with Registration of Elector Rules, 1960, is supposed to contain the names of such persons, who are 'electors' and who have a right to vote. The nondeletion of names of such persons, who have no right to vote, because of the aforesaid provision of subsection (5) of Section 62 and continuance of their names alongwith the names of the persons, who are valid voters, amounts to discrimination, leading to violation of Article 14 of the Constitution, as it amounts to treating unequals as equal.

10. The next argument is that in view of the definition given of 'elector' in various dictionaries, namely, Oxford Dictionary of Law i.e. 'a person entitled to vote at an election' and the Law Lexicon (Second Edition), which defines the 'elector' as 'one who elects, or one who has right to choice and also one who exercises the right of election', the name of the person who does not have a right to vote, should be deleted from the electoral rolls.

11. Further argument has been raised that intention of the Constitutional provisions as well as Representation of People Act, 1950 is gathered from the constitutional debates and for that matter, he quotes in Para 20 of the writ petition, the speech made by Dr. Ambedkar, while interpreting Article 68A of the Draft Constitution (corresponding to Article 84).

To quote 'Sir, the object of the Article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally the rule is that a person who is a voter, merely by reason of fact that he is a voter, becomes entitled to stand as a candidate for the election. In this Article it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new Article 68A'. (Constituent Assembly Debates Vol. VII dated 18.5.99).

The said view was also supported by Sri T.T. Krishnamachari who said, 'So there is no great sin in having one set of qualifications for candidates and another set of qualifications less rigid for the voter'.

12. The meaning, import and the concern shown in the aforesaid speeches and the qualification suggested between the candidate for contesting election and a voter, cannot be put to any debate. What the Court has to see is that whether in the present set of Act and the Rules and the Constitutional provisions (i) is it obligatory for the Electoral Registration Officer to delete the names of those persons, who are in jail in terms of subsection (5) of Section 62; and (ii) whether those persons who are not entitled to vote during their continuance/detention in jail, can be allowed to contest the elections or not.

13. Who would be an elector has been defined in Representation of People Act, 1951.

14. Section 2(1)(e) defines 'elector' as follows:

(e): elector in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950).

15. The aforesaid definition defines 'elector' not in general terms, but in relation to a constituency and specifies that a person whose name is entered in the electoral roll of that constituency for the time being in force, meaning thereby that at the relevant time, if his name is enrolled in that constituency, then he would be an elector, subject to the further condition that he should not be having any disqualification as mentioned in Section 16 of the Representation of People Act, 1950.

16. The definition, therefore, can be seen in following parts.

(i) The elector would be in relation to a constituency; (ii) name of such person should be entered in the electoral roll of that constituency for the time being in force; and (iii) he should not be a person who incurs disqualification mentioned in Section 16 of the Act.

17. It does not say anywhere that if a person is debarred or has no right to vote being in jail or in police custody in view of subsection (5) of Section 62, then he would not be an elector within the definition of the aforesaid term.

18. In the case of Pampakavi Rayappa Belagali v. B.D. Jatti and others, AIR 1971 SC 1348, the question before the Supreme Court was regarding the qualification of a candidate to contest the elections of Legislative Assembly, where it had an occasion to consider the provisions of Section 5(c), 2(1)(e) and Chapter III of Part II of the Representation of People Act 1950 and also Sections 16 and 19(b) thereof alongwith Article 173 of the Constitution.

19. The Apex Court in Para 6 of the report, observed that 'in order to stand for election to a legislative assembly of a State of person must be an elector for any assembly constituency in that State and he must not be subject to any of the disqualifications mentioned in Section 16 of the Act of 1950 or the disqualifications given in Chapter III of Part II of the Act of 1951'.

20. The definition of elector, which makes a person entitled for contesting the elections and also for exercising his right to vote, cannot be given any expanded meaning as against the meaning given in the definition itself.

21. The aforesaid provision of Section 2(1)(e) when is read with subsection (1) of Section 62, makes it abundantly clear that there is no ambiguity or conflict between the aforesaid two provisions nor there is any anomaly so as to be sorted out by the Court.

22. Section 62 subsection (1) itself creates an exception with respect to right to vote from amongst the persons, whose names are entered in electoral roll. It says that no person, who is not and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

23. The phrase 'no person who is not' followed by the phrase 'and except as expressly provided by this Act' means that but for the persons who fall in the aforesaid two categories, any person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

24. Subclause (2) of Section 62 is one such exception, which prohibits the voting rights to a person who suffers from any of the disqualifications referred to in Section 62 of the Act of 1950 and likewise subclause (5) is one more exception covered by the aforesaid provision of subsection (1), which puts an embargo upon right to vote for a person who is under sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police.

25. That being so, the right to contest the elections and right to vote, cannot be taken to be a substitute for each other nor they will depend upon the existence of one right or the other right. Right to contest the election would flow from the provisions, as aforesaid and unless a person is debarred or specifically prohibited from contesting the elections because of the disqualification prescribed under the Constitution or under the Representation of People Act, merely because he is in jail or is confined in lawful custody of the police, he would not lose the right to contest the elections. The deletion of name from the electoral list would also not be required, as it would be a mere suspension of his right to vote for the period of such confinement, but he cannot be treated not to be an elector from that constituency where his name has been entered in the electoral roll. Such a person would though remain an elector and his name would remain in the electoral roll for the period of such confinement, but he would not be given right to vote.

26. Suspension of right to vote thus, is a special provision, deliberately and consciously enacted without prescribing any further disqualification for such a person from contesting the election and, therefore, the Court would not import or introduce any words so as to give a different meaning to the provision of the Constitution or that of the Act, which otherwise have not been intended to, by the framers of the law.

27. The dictionary meaning of the word 'elector' on which reliance has been placed also loses all significance, in view of the definition of 'elector' being given in the Act itself, which is clear, specific and unambiguous. Assistance from the dictionary or any other external help, normally is not to be taken, when the meaning of the term is clear and well defined.

28. The plea that allowing the names of the persons who have a right to vote to remain on

the electoral roll alongwith names of the persons who did not have right to vote or whose right has been suspended, is discrimination and hit by Article 14 of the Constitution, which treats the unequals as equal, is not only a far fetched argument but also does not stand substantiated from the provision of Article 14. Merely because the names of such electors who have a right to vote alongwith the persons whose right to vote is suspended on electoral roll, it would not mean treating unequals as equal nor the persons who are having a right to vote, are adversely or otherwise prejudiced by their names being on the electoral roll alongwith the names of the persons, who do not have right to vote temporarily.

29. A plea has been raised in the context of the arguments that such persons whose vote right has been suspended, should not be allowed to contest the elections and since their names are maintained in the electoral roll, therefore, they are entitled to contest the elections but while considering the aforesaid plea one has to keep in mind that the statutory provisions and the Constitutional provisions cannot be given a meaning, which does not flow from them. If the Constitutional provisions do not prescribe and the provisions of the Act do not specify any prohibition in contesting the elections and specifically protect the right of such person to contest the elections, the Court would be loath and absolutely reluctant in interfering with such matters.

30. May be in view of existing provisions, plea of the petitioner regarding violation Article 14 fails but it requires consideration that whether it would be an infringement of human right of a person, who intends to contest the election, with no criminal record, but has to take challenge against a person who is having criminal antecedents and is in jail or in lawful custody of police.

31. Ambit of human rights has been enlarged. In the case of Ganpat Bhai Manjhi Bhai Solanki v. State of Gujrat and others, (Civil Appeal No.1727 of 2008) decided on 4.3.08, the Apex Court took notice of the case of Smith v. Kvaerner Cementation Foundations Ltd. (Bar Council Intervening), 2006 (3) All ER 593, wherein the Court of appeal condoned the delay on the ground that the appellants therein had a human right to get his lis adjudicated before an independent and impartial tribunal and as the Judge was biased, delay in preferring the appeal was condoned.

32. Learned counsel lastly very aptly argued that Sri T.T. Krishnamachari while supporting the view expressed by Dr. Ambedkar, stated that qualifications for a voter can be less rigid as against the one prescribed for contesting the election, but the provisions aforesaid have done just the reverse i.e. right to vote has been curtailed by making it more rigid i.e. suspending it where the person is in confinement, but it is very liberal for those who intend to contest the election, even if they are in jail or in lawful custody of the police.

33. It is thus, for the Parliament so to say, for the public representatives, who have been entrusted the work of framing laws and rules for having a healthy democratic set up and for the betterment of the society and, of course, for which it cannot be disputed that the Parliament should be represented by the persons, who are having spotless career without

criminal antecedents, and have a clean image, to consider and make appropriate provisions and for that matter, it is well advised that the petitioner and the like minded people, may make an appeal to the Parliament.

34. Since we have already observed that whole reading of the provisions relied upon by the counsel for the petitioner does not substantiate the plea of the petitioner, in view of our finding above, not the election of the private respondents can be challenged on this ground, consequently no writ of quo warranto can be issued, we dismiss the writ petition, summarily.

(Petition dismissed)