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# NANHOO MAL & ORS.

*v.*

# HIRA MAL & ORS.

*September* 16, 1975

B [A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

*Constitution of India, 1950, Articles 226 and 329—Writ Jurisdiction of High Courts—High Court, if could interfere in matters relating to election.*

*U.P. Municipalities Act, Section 43-B—Notices to members of Municipal Board calling for nomination to the office of President—Validity of procedure adopted by District Magistrate, if could be challenged before High Court under Article 226 of the Constitution.*

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To fill up a casual vacancy in the office of the President of the Municipal Board, Soron in the district of Etah in Uttar Pradesh, the District Magistrate issued notices to the members of the Board informing them that nomination papers should be filed in his office by 20th of September, 1974 and if necessary the election will take place on 1st October, 1974. The 1st respondent thereupon filed a petition under Article 226 of the Constitution challenging the validity of the procedure adopted by the District Magistrate for holding the election and prayed for an order to the District Magistrate not to hold the election D on 1st October, 1974. The objection to the procedure for election was based on the allegation that it did not conform to the provisions of Rule 6 of the U.P. Municipalities (Conduct of Election of Presidents and Election Petitions) Order, 1964. The High Court admitted the Writ Petition and directed that the election would be subject to ultimate decision in the Writ Petition. Consequently the election took place on the 1st of October and the 1st appellant was declared elected. Thereafter the 1st respondent filed an application for impleading the 1st appellant and the Municipal Board as parties and also claimed a further E relief for quashing the election proceedings that took place on the 1st of October, 1974. The High Court allowed the petition and set aside the entire election proceedings relating to the election of the 1st appellant as the President of the Municipal Board.

Allowing the appeal by special leave,

HELD : The right to vote or stand for election to the office of the President of the Municipal Board is a creature of the statute, that is the U.P. Municipalities F Act and it must be subject to the limitations imposed by it. Therefore, the election to the office of the President 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 the Act and in no other way. The Act provides only for one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. [813-E, 814A-B, 814C-D]

*N. P. Ponnuswami* v. *Returning Officer, Namakkal Constituency & Ors.* G [1952] S.C.R. 218 relied on.

*Desi Chettiar* v. *Chinnasami Chettiar* A.I.R. 1928 Mad. 1271 and *Wolverhampton New Water Works Co.* v. *Hawkesford* 6 C.B. (N.S.) 336 referred to.

(ii) These conclusions in *Ponnuswami's case* were arrived at without taking the provisions of Article 329 of the Constitution into account. The provisions of Article 329 are relevant only to the extent that even the remedy under H Article 226 is barred as a result of the provisions. But once the legal effect of the provisions of law contained in Article 329 and in section 43-B of the U.P. Municipalities Act 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.

[814-D.E]

*Quaere* : Can there be any extraordinary circumstances in which the High Courts could exercise their power under Article 226 of the Constitution in relation to elections ? [814-E] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 732 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 19th March, 1975 of the Allahabad High Court in Civil Misc. Writ No. 5935 of 1974. B

*R. K. Garg, S. C. Agarwala, V. J. Francis, T. M. Ansari,* for the Appellants.

*M. C. Bhandare, R. Nagarathnam, S. Bhandare,* for Respondent No. 1. C

The Judgment of the Court was delivered by

ALAGIRISWAMI, J. To fill up a casual vacancy in the office of the President of the Municipal Board, Soron in the district of Etah in Uttar Pradesh, the District Magistrate issued notices to he members of the Board informing them that nomination papers should be filed in his office by 26th of September, 1974 and if necessary the election will take place on 1st October, 1974. The 1st respondent thereupon filed a petition under Article 226 of the Constitution challenging the validity of the procedure adopted by the District Magistrate for holding the election and prayed for an order to the District Magistrate not to hold the election on 1st October, 1974. The election programme had been notified in the U.P. Gazette dated 21-9-74 but it was published in the Gazette dated 24-9-74. D E

The objection to the procedure for election was based on the allegation that it did not conform to the provisions of Rule 6 of the U.P. Municipalities (Conduct of Election of Presidents and Election Petitions) Order, 1964, which reads as follows :

> "6. Appointment of date for nomination, etc.—(1) As soon as may be after the election of members of a board is completed at a general election within the meaning of section 43 of the Act or a casual vacancy occurs in the office of President of a board, the District Magistrate shall, by notification in the official Gazette, appoint for the election to the office of President of the Board : F
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> (a) the date for making nominations which shall be a date at least four days after the date of notification; and G
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> (b) the date for scrutiny of nominations which shall be the date next following the date fixed under clause (a); and
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> (c) the last date for withdrawal of candidatures which shall be the third day after the date fixed for scrutiny of nominations; and H

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(d) the date on which and the hours during which a poll shall, if necessary, be taken :

Provided that the date for taking the poll shall be a date not more than five days after the last date fixed under clause (c).

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(2) On the issue of notification under sub-para (1), the Returning Officer shall give public notice of the election in Hindi in form I by affixing a copy of the notice at his office and another copy at the office of the Board and in such other manner, if any, as he may think fit and shall also cause to be despatched by post under certificate of posting a copy of the notice to the last known address of each member."

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Though there was a prayer in the writ petition for an order to the District Magistrate not to hold the election on 1-10-74, the learned Judges who admitted the writ petition directed that the election would be subject to ultimate decision in the writ petition. Consequently the election took place on the 1st of October and the 1st Appellant was declared elected. Thereafter the 1st respondent filed an application

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for impleading the 1st appellant and the Municipal Board as parties and also claimed a further relief for quashing the election proceedings that took place on the 1st of October, 1974. The learned Judges allowed the petition and set aside the entire election proceedings relating to the election of the 1st Appellant as the President of the Municipal Board.

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We are of the opinion that the whole approach of the learned Judges of the High Court to this problem was mistaken. After the decision of this Court in *N. P. Ponnuswami* v. *Returning Officer, Namakkal Constituency & Ors.*(1), there is hardly any room for Courts to entertain applications under Article 226 of the Constitution in matters relating to elections. Before dealing with this question we may

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set out s. 43-B of the U.P. Municipalities Act, which is the provision of law dealing with cases where the election of the President is questioned :

"43-B. Judicial Officer to decide the question of validity of election to the office of President.—(1) No election of the President shall be called in question except by any election petition presented in accordance with the provisions of this

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Act.

(2) An election petition may be presented by any member entitled to vote at the election or by a candidate who has been defeated at the election on one or more of the following grounds, that is to say—

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(a) that the returned candidate has committed any corrupt practice within the meaning of section 28;

(1) [1952] S.C.R. 218.

(b) that the nomination of any candidate has been wrongly rejected, or the nomination of the successful candidate or any other candidate who has not withdrawn his candidature has been wrongly included;

(c) that the result of the election has been materially affected by—

(i) the improper rejection or refusal of a vote, or

(ii) any non-compliance with the provisions of this Act or of any rules or orders made under this Act.

(3) An election petition shall be presented to the District Judge, or in a district where there is no headquarters of the District Judge, to the Civil Judge, within whose jurisdiction the municipality to which the election petition relates is situate :

Thus the only way by which the election of a President can be called in question is by means of an election petition presented in accordance with the provisions of this Act. The election itself can be questioned only on one of the three grounds mentioned above. The only ground in the present case on the basis of which the election of the appellant was questioned is that there was a non-compliance with the provisions of rule 6, already referred to. Under the Act the non-compliance with any rule or order made under the Act or any provision of the Act does not *ipso facto* result in the election being set aside. That result can be set aside only if the Election Tribunal comes to the conclusion that the result of the election has been materially affected by such non-compliance. The jurisdiction to decide the validity of the election of a President is an exclusive one conferred on the District Judge. In the circumstances there was no room for the High Court exercising its powers under Article 226 in order to set aside the election. In setting aside the election the High Court plainly erred because it did not consider whether the result of the election had been materially affected by non-compliance with the rule in question. In any case that is a matter within the exclusive jurisdiction of the District Judge.

As early as 1928 in its decision in *Desi Chettiar* v. *Chinnasami Chettiar*(1) the Madras High Court observed :

"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. We understand the election for the elective seats in this Union has been held up since 31st May because of this petition, the result being that the electors have been unable since then to have any representation on the Board, and the Board is functioning, if indeed it is functioning, with a mere

(1) A. I. R. 1928 Mad. 1271.

A nominated fraction of its total strength; and this state of affairs the petitioner proposes to have continued until his own personal grievance is satisfied."

These observations were quoted with approval by this Court in *Ponnuswami's case* (supra). In that decision this Court arrived at the following conclusions:

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"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised 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 elec-

C tions 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

D 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."

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In absence of any express provisions in the Act to the contrary these principles are applicable equally to cases of elections to local bodies also. This Court also pointed out 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. It referred to the decision in *Wolverhampton New Water Works Co.* v.

F *Hawkesford*(1) where it had been held:

"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 peculiar form of remedy different from the remedy which existed at com-

G mon 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 not particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where

H a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy

(1) 6 C.B. (N.S.) 336.

> 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."

and after referring to the provisions of the Representation of the People Act pointed out that it will be a fair inference that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. This Court also held that the word 'election' connotes the entire procedure to be gone through to return a candidate whenever we talk of elections in a democratic country.

It follows that the right to vote or stand for election to the office of the President of the 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. Therefore, the election to the office of the President 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 the Act and in no other way. The Act provides only for one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. These conclusions follow from the decision of this Court in *Ponnuswami's case* (supra) 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 etxraordinary circumstances in which the High Courts could exercise their power under Article 226 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.

The appeal is, therefore, allowed and the judgment of the High Court set aside. There will, however, be no order as to costs.

V.M.K. *Appeal allowed.*