

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 10th October, 2014

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LPA 683/2014

SURENDER SINGH KHRUB

..... Appellant

Through: Mr. Avadh Kaushik, Adv.

versus

STATE ELECTION COMMISSION & ORS Respondents

Through: Mr. Sumeet Pushkarna and Mr. Siddhartha Nagpal, Advs. for R-1.

Ms. Meenakshi Midha, Adv. for R-2&3.

AND

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LPA 684/2014

SUDHIR KUMAR PARCHA

..... Appellant

Through: Mr. Avadh Kaushik, Adv.

versus

STATE ELECTION COMMISSION & ORS Respondents

Through: Mr. Sumeet Pushkarna and Mr. Siddhartha Nagpal, Advs. for R-1.

Ms. Meenakshi Midha, Adv. for R-2&3.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. These intra-court appeals impugn the common judgment dated 24th July, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.3199/2012 and W.P.(C) No.3180/2012 filed by the appellants respectively. Having *prima facie* not found any merit on a reading of the

appeals, we have heard the counsel for the appellants extensively at the stage of admission.

2. Each of the appellants had preferred the writ petitions from which these appeals arise for the following identical reliefs:-

- “(a) a Writ of Certiorari or any other writ, order or direction calling for the records of the case and peruse the same;*
- (b) a Writ of mandamus or any other appropriate writ, direction or order quashing the impugned action of respondents no.1 to 3 in shifting the 11 polling stations bearing no.166 to 176 from Ward No.5 to Ward No.19 and declaring the same as illegal, arbitrary and unconstitutional;*
- (c) a Writ of mandamus or any other appropriate writ, direction or order quashing the election process so adopted and election results based on such illegal and arbitrary process and declaring the entire election process of Ward No.19 as void ab initio and thereafter, declaring the election of MCD Councillor for Ward No.19 so held as null and void; (Ward No.05 in the writ petition from which LPA No.684/2014 arises).*
- (d) appropriate writ, direction or order directing the respondents no.1 to 3 to restore the 11 polling stations bearing no. 166 to 176 back to Ward No.5 and thereafter, to conduct fresh elections of MCD Councillor for Ward No.19. (Ward No.05 in writ petition from which LPA No.684/2014 arises).*

(e) *pass any other order or direction that may be deemed fit and proper on the facts and circumstances of the case and in the interest of justice.”*

3. The aforesaid reliefs were claimed contending that the action of the respondents No.1 to 3 (i.e. (i) State Election Commission, NCT of Delhi; (ii) SDM-cum-Returning Officer, Municipal Ward No.17 to 20; and, (iii) SDM-cum-Returning Officer, Municipal Ward No.05 to 08) in shifting the polling stations just prior to starting of the election process of the Delhi Municipal Corporation Elections – 2012 was illegal.

4. The counsel for the respondents raised a preliminary objection to the maintainability of the writ petitions on the ground that election disputes can only be raised by way of an election petition. Reliance in this regard was placed on *N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency* AIR1952 SC 64 and on *Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee* (2006) 8 SCC 487. Faced therewith, the counsel for the appellants / writ petitioners on the one hand relied on *K. Venkatachalam Vs. A. Swamickan* (1999) 4 SCC 526 and on the other hand, to obviate the said objection to the maintainability of the writ petitions, gave up the prayers (a), (c), (d) and (e) aforesaid claimed in the writ petitions

and confined the relief in the writ petitions to as claimed in prayer (b) supra only.

5. The learned Single Judge dismissed the writ petitions, holding:-

- (a) that Article 329(b) of the Constitution of India bars interference by the Courts in electoral matters save by way of an election petition presented in a manner provided for by or under any law;
- (b) Section 15 of the Delhi Municipal Corporation Act, 1957 stipulates that no election for Councillor shall be called in question except by an election petition presented in the manner as provided therefor; the surviving prayer (b) in the writ petitions was a ground under Section 17 of the said Act for declaring the election void and the said prayer should have been raised by the appellants / writ petitioners by way of an election petition;
- (c) the contention of the appellants / writ petitioners that they are confining their relief to prayer (b) is also meaningless as the logical sequitur of granting prayer (b) would be that the election

results of the returned candidates of both the seats of North Delhi Municipal Corporation election would be null and void; and,

- (d) that this Court in *Balzor Singh Vs. Chief Election Commissioner of India* ILR (2009) Supp. (2) Delhi 517 had explained that a writ petition under Article 226 of the Constitution was entertained in *K. Venkatachalam* (supra) as the action of one of the parties to the election in that case amounted to a fraud on the Constitution and which was not the allegation in the subject writ petitions.

The writ petitions were thus dismissed holding that the issue raised therein should have been raised by way of an election petition and cannot be adjudicated by way of a writ petition.

6. The appellants in the present appeals also have confined the relief to allowing the writ petitions in terms of prayer (b) supra of the writ petitions.

7. The counsel for the appellants before us has contended that the appellants are pressing relief (b), only to set right the procedure for future

elections, and not with an intent to seek setting aside of the election of the elected candidates.

8. We have enquired from the counsel for the appellants / writ petitioners, that how, the appellants / writ petitioners having withdrawn the other consequential reliefs claimed in the writ petitions, are entitled to maintain the relief claimed in the prayer (b). We are in this regard reminded of Section 34 of the Specific Relief Act, 1963 which provides that no Court shall make any declaration where the plaintiff being able to seek further relief than a mere declaration, omits to do so. The relief claimed by the appellants / writ petitioners in prayer paragraph (b) of the writ petitions is in the nature of a relief of declaration only. Though the appellants / writ petitioners in the writ petitions originally filed had also claimed reliefs consequential to the said declaration but have withdrawn the same.

9. No plausible answer has been forthcoming from the counsel.

10. In our view the position in law admits of no controversy.

11. A Constitution Bench in ***The State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills*** AIR 1960 SC 378 held that if the statutory provisions impugned are not attracted, there is no occasion to decide on the

vires thereof in as much as any decision on the said question would in such a case be purely academic. It was further held that Courts are and should be reluctant to decide Constitutional points merely as matters of academic importance. Similarly in ***Dr. N.C. Singhal Vs. Union of India*** (1980) 3 SCC 29, in the context of a challenge to promotion granted to the others, finding that the appellant was not qualified for the promoted post even if the same were to fall vacant upon the promotion of others being struck down, it was held that the challenge need not be examined further. Even in the context of the crucial date for determining whether the accused is a juvenile, in ***Arnit Das Vs. State of Bihar*** (2001) 7 SCC 657, in the face of the concurrent findings of the Courts below that on the date of offence the accused was not a juvenile, the reference made to the Constitution Bench was declined to be answered observing that the legal question referred for decision was not arising in the facts of that case and academic question only. Recently also in ***Bholanath Mukherjee Vs. R. K. Mission V. Centenary College*** (2011) 5 SCC 464, finding the issue to have become purely academic on retirement of the appellant during the pendency of proceedings it was held to be not appropriate to go into the question as to whether writ of *quo warranto* would lie or not. It was observed that it would be an exercise in futility as the issue

had become purely academic and that it is not in the interest of anybody to go into the merits.

12. The same has been the view of the High Courts. A five Judge Bench of the High Court of Punjab and Haryana in ***Dr. M.C. Sharma Vs. The Punjab University*** AIR 1997 Punjab & Haryana 87 held that the principles underlying the grant of specific relief to be granted by declaratory decrees and injunctions can be said to be applicable in the cases for the grant of relief of writs under Article 226 of the Constitution of India with certain limitations and conditions as spelt out under the Constitution and circumscribed by legal pronouncements. It was held that the Courts would normally not grant or issue mere declaratory writs unless the person aggrieved has asked for the consequential reliefs available to him. Similarly in ***Luizinho Joaquim Faleiro Vs. State of Goa*** MANU/MH/0347/2002 it was held that the writ jurisdiction is meant for extraordinary relief and limited by conditions; it is intended to be issued for a definite and fruitful purpose for doing substantial justice; it cannot be issued for a mere declaration of right. Reliance was placed on ***Suresh Vs. Vasant*** AIR 1972 SC 1680, ***Balmadies Plantations Ltd. Vs. State of Tamil Nadu*** (1972) 2 SCC 133 and ***Dr. M. Ismail Faruqui Vs. Union of India*** (1994) 6 SCC 360

laying down that while granting relief High Court should keep in view that the issue of writ would not be futile and should not examine the matter purely academic in nature or adjudication whereof has become superfluous and unnecessary. Recently the High Court of Chhattisgarh also in *Udho Ram Verma Vs. State of Chhattisgarh* MANU/CG /0054 /2009 held the petitions seeking writ of *quo warranto* to be not warranting consideration on merits for the reason of the respondent having resigned from the post and the possibility of grant of relief having thus disappeared.

13. The aforesaid proposition applies on all fours to the present appeals which are thus not worthy of consideration and are dismissed.

14. Notwithstanding the appellants having preferred the appeals inspite of giving up the consequential reliefs before the learned Single Judge, we refrain from imposing costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 10, 2014
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