

PETITIONER:
ELECTION COMMISSION OF INDIA

Vs.

RESPONDENT:
N.G. RANGA AND ORS.

DATE OF JUDGMENT 17/08/1978

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
KOSHAL, A.D.
SEN, A.P. (J)

CITATION:
1978 AIR 1609 1979 SCR (1) 210
1978 SCC (4) 181

ACT:
A.D. KOSHAL AND A. P. SEN, JJ.]

HEADNOTE:

Constitution of India, 1950, Arts, 84, 101, 102. 103(2) and 104-Scope of- Powers of the Election Commission under Sections 10A, 146 (1) (2) of the Representation of the People Act, read with Art. 103 (2) of the constitution.

Respondent No. 2 who is a voter in the Srikakulam Constituency submitted a petition to the President of India under Articles 84, 101. 102. 103 and 104 of the Constitution of India alleging that respondent No. 1, a returned candidate to the Lok Sabha on April 28, 1967 in a bye-election from that constituency, had become subject to the disqualifications contained in Article 102(1). The President. exercising his powers under Article 103(2) of the Constitution. sought the opinion of the appellant by an order dated May 18, 1968. The appellant issued a notice dated June 6, 1968 to respondent No. 1 calling upon him to submit his reply to the allegations contained in respondent's petition to the President. Earlier to this, the appellant condoned the delay in submission; of account of election expenses by respondent No. 1.

On June 26, 1968, respondent No. 1, therefore, filed a Writ Petition in the Andhra Pradesh High Court asking for a writ of prohibition forbidding the appellant from taking further action pursuant to the Notice dated June 6 and for a declaration that the appellant had no jurisdiction to inquire into the petition submitted by respondent No. 2 to the President. The High Court allowed the petition and issued a writ of Prohibition. It has granted to the appellant a certificate of fitness under Article 133(1)(c) of the Constitution.

Allowing the appeal, the Court

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HELD: 1. The President acted both in the exercise of constitutional authority and in the discharge of his constitutional obligation in referring the question raised by respondent No. 2's petition for the opinion of the

appellant. Upon the presentation of a petition by respondent 2 to the President of India;,. alleging that respondent 1 had become subject to the disqualifications mentioned in article 102(1) of the Constitution, a question clearly arose as to whether respondent 1 had truly become subject to any of the disqualifications mentioned in that article. By clause (2) of article 103 the President was bound to obtain the opinion of the appellant before giving' his decision on the question. Not only that, but the President was further bound to act according to the opinion given by the appellant. [213D-E]

2. The Election Commission, by reason of the provisions of Section 146(1) and (2) of the Representation of the People Act, 1951, had the power and authority to require respondent 1 to furnish information on matters which were relevant to the subject matter of the inquiry, namely, the allegations contained in the petition presented by respondent 2 to the President of India.. [214B-C]

(a) The Representation of the People Act, 1951, confers extensive powers on the Election Commission in regard to inquiries pertaining to the questions referred by the President for its opinion under Article 103 of the Constitution. [213F-G]

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(b) Art. 103(2), as it stood then, required the President to obtain the opinion of the Election Commission before deciding the question referred to in clause (1) of that article. The President was bound to act according to the opinion given by the Commission. By the Forty-second Amendment Article 103(2) requires the President to consult the Election Commission. The Amendment Article expressly confers power on the Commission to make? for that purpose, "such inquiry as it thinks fit". The implication of the unamended Article was in truth and substance the same namely. that since the Commission was charged with the obligation to tender its opinion to the President, it had the power to make such inquiry as it thought fit in order to enable it to express its opinion. which under the law as it stood then, was binding on the President. The Forty-second amendment expressed clearly what was necessarily implicit in the old provision. If the Constitution envisages that the Commission should have the power to make such inquiry as it thinks fit even when its opinion is not binding on the President who is merely required to "consult" the Commission, it cannot be that the Commission could tender its binding opinion without the right and pay the duty, of making, the necessary inquiry. [214D-G]

(c) Article 103(1) gives finality to the President's decision which, under old provision, had to be in conformity with the opinion of the Election Commission. Before giving an opinion which thus had finality, the Commission acted but fairly in asking respondent 1 to submit his say. In giving to respondent 1 an opportunity to submit his explanation. the appellant, far from acting beyond the scope of the statutory and constitutional powers acted in conformity with the principles of natural justice. [215B]

3. In the instant case? though respondent 2 was not in a position to make a categorical assertion in his petition that respondent 1 had incurred a specific disqualification, he did make allegations, generally, in regard to disqualifications said to have been incurred by respondent 1. Upon the making of those allegations a question arose as contemplated by Article 103(1)(a) of the Constitution and the President had to obtain the opinion of the Election Commission on that question. Respondent 2's petition could

not have been rejected by the President without reference to the Election Commission on the ground that the allegations made by respondent 2 were unfounded or unsubstantial. The High Court was not correct when it held that the question whether respondent 1 had become subject to any disqualification under Section 10A of the Representation of the People Act did not arise on the facts stated in the petition by respondent No. 2. [215H, 216A-B]

Brundeban Nayak v. Election Commission of India and Anr., [1965] (3) S.C.R. 53; discussed and applied.

(b) By Section 10A of the Representation of the People Act, the Election Commission has the power to declare a person to be disqualified if it is satisfied that he has failed to lodge an account of election expenses within the time and in the manner required by or under the Act and has no good reason or justification for the failure. A declaration of disqualification made in pursuance of power conferred by section 10(A) is a declaration made by the Election Commission under a law made by Parliament. It, therefore, attracts Article 102(1) (e) and consequently article 103(1) of the Constitution. The High Court therefore misdirected itself in reaching the conclusion that the appellant acted beyond

its jurisdiction in issuing notice to respondent 1 in calling upon him to submit his explanations in regard to the allegations made by respondent No. 2 in his petition to the President. [215C-D, F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1265 of 1969. From the Judgment and order dt. 3-1-1969 of the Andhra Pradesh High Court in Writ Petition No. 2763 of 1968.

S. V. Gupte, Att. General of India, K. N. Bhatt and R. N. Sachthey for the Appellant.

P. A. Chowdhary and B. Kanta Rao for Respondent No. 1.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J.-Respondent 1, Shri N. G. Ranga, was declared elected to the Lok Sabha on April 28, 1967 in a bye-election. From Srikakulam Constituency, defeating respondent No. 3, Shri B. Rajagopalarao. The Election Commission of India, the appellant herein, called upon respondent 1 by a notice dated July 7, 1967 to show cause why he should not be disqualified for failure to lodge the account of his election expenses within the time and in the manner required by law. Accepting the explanation submitted by Respondent 1, the appellant condoned the delay caused in submitting the account of election expenses and sent a communication dated August 16, 1967 informing respondent 1 that it was decided not to take any further action in the matter.

Respondent 2, who is a voter in the Srikakulam constituency, thereafter submitted a petition to the President of India under Articles 84, 101, 102, 103 and 104 of the Constitution alleging that respondent 17 who was a sitting member of the Lok Sabha, had become subject to the disqualification mentioned in Article 102(1). The President, exercising his powers under Article 103(2) of the Constitution, sought the opinion of the appellant by an order dated May 18, 1968. The appellant issued a notice dated June 6, 1968 to respondent 1 calling upon him to submit his reply to the allegations contained in respondent 2's petition to the President.

On June 26, 1968 respondent 1 filed writ petition No. 2763 of 1968 in the High Court of Andhra Pradesh asking for a writ Prohibition forbidding the appellant from taking further steps pursuant to the June 6 notice and for a declaration that the appellant had no jurisdiction to inquire into the petition submitted by respondent 2 to the President of India. By its Judgment dated January 3, 1969 the High Court allowed the writ petition and issued a writ of Prohibition as prayed for. It has granted to the Election Commission certificate of fitness under Article 133(1)(e) of the Constitution to appeal to this Court.

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The narrow question for consideration is whether the appellant had jurisdiction to issue the notice to respondent 1 calling upon him to submit his explanation in regard to the allegations contained in the petition presented by respondent 2 to the President of India who, in turn, had referred the petition for the opinion of the appellant. Article 103 of the Constitution read thus at the relevant time:

"103(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

Upon the presentation of a petition by respondent 2 to the President of India, alleging that respondent 1 had become subject to the disqualifications mentioned in Article 102(1) of the Constitution, 2 question clearly arose as to whether respondent 1 had truly become subject to any of the disqualifications mentioned in that Article. By clause (2) of Article 103, the President was bound to obtain the opinion of the appellant before giving his decision on the question. Not only that, but the President was further bound to act according to the opinion given by the appellant. The President therefore acted both in the exercise of constitutional authority and in the discharge of his constitutional obligation in referring the question raised by respondent 2's petition for the opinion of the appellant.

The next question for consideration is whether, on receiving the President's communication asking for its opinion, the appellant committed any error of law or acted beyond its jurisdiction in seeking the explanation of respondent 1. The Representation of the People Act 43 of 1951, "the Act", confers extensive powers on the Election Commission in regard to inquiries pertaining to questions referred by the President for its opinion under Article 103 of the Constitution. Section 146(1) of the Act provides, in so far as material, that where in connection with the tendering of any opinion to the President under Article 103, the Election Commission considers it necessary or proper to make an inquiry and if it is satisfied that on the basis of documents produced by the parties it cannot come to a decisive opinion on the matter which is being inquired into, it shall have for the purposes of inquiry the powers which a civil court has while trying a suit in respect, inter alia, of summoning and enforcing the attendance of

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any person, examining him on oath, the discovery and production of any document and receiving evidence on

affidavits. Sub-section (2) of section 146 which is more to the point provides:

"The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for. Or relevant to, the subject matter of the inquiry."

We see no doubt that the Election Commission, by reason of these provisions, had the power and authority to require respondent 1 to furnish information on matters which were relevant to the subject matter of the inquiry, namely, the allegations contained in the petition presented by respondent 2 to the President of India.

Article 103(2), as it stood then, required the President to obtain the opinion of the Election Commission before deciding the question referred to in clause (1) of that Article. The President was bound to act according to the opinion given by the Commission. By the Forty second Amendment, Article 103(2) requires the President to consult the Election Commission. The Amended Article expressly confers power on the Commission to make, for that purpose, "such inquiry as it thinks fit". The implication of the unamended Article was in truth and substance the same, namely, that since the Commission was charged with the obligation to tender its opinion to the President, it had the power to make such inquiry as it thought fit in order to enable it to express its opinion, which under the law as it stood then, was binding on the President. The Forty-second amendment expressed clearly what was necessarily implicit in the old provision. If the Constitution envisages that the Commission should have the power to make such inquiry as it thinks fit even when its opinion is not binding on the President who is merely required to "consult" the Commission it cannot be that the Commission could tender its binding opinion without the right and, nay the duty, of making the necessary inquiry.

Respondent 1 rushed to the High Court some what hurriedly, thinking probably that the appellant having already condoned the delay which had occurred in filing the return of the election expenses, he had not incurred or become subject to any disqualification as mentioned in Article 102(1) of the Constitution and therefore the appellant had no justification for calling upon him to submit his explanation. That however is a different thing from saying that either the President of India or the appellant exceeded his or its jurisdiction when the

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former referred the matter for the opinion of the latter and the latter sought an explanation from respondent 1. The appellant could and should have in the first instance verified from its own record whether there was any justification for the grievance made by respondent 2. But in giving to respondent 1 an opportunity to submit his explanation. the appellant, far from acting beyond the scope of its statutory and constitutional powers, acted in conformity with the principles of natural justice. Article 103 (1) gives finality to the President's decision which, under the old provision, had to be in conformity with the opinion of the Election Commission. Before giving an opinion which thus had finality, the Commission acted but fairly in asking respondent 1 to submit his say. As stated above, it had the power to ascertain what explanation respondent 1 had to give an answer to respondent 2's allegations.

The High Court misdirected itself in reaching the conclusion that the appellant acted beyond its jurisdiction in issuing the notice to respondent 1 calling upon him to submit his explanation in regard to the allegations made by respondent 2 in his petition to the President. According to the High Court, "facts leading to disqualification under section 10A" of the Act, "cannot be the subject matter of inquiry and decision under Article 103 of 'the Constitution'". It is impossible to accept this statement of law in view of the express provision contained in Article 103(1) (a) that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Article 102(1), the question shall be referred for the decision of the President. Article 102(1) provides by sub-clause (e) that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament. By section 10(A) of the Act, the Election Commission has the power to declare a person to be disqualified if it is satisfied that he has failed to lodge an account of election expenses within the time and in the manner required by or under the Act and has no good reason or justification for the failure. A declaration of disqualification made in pursuance of power conferred by section 10(A) is a declaration made by the Election Commission under a law made by Parliament. It, therefore, attracts Article 102(1)(e) and consequently Article 103(1) of the Constitution.

The High Court thereafter proceeded to hold that the question whether respondent 1 had become subject to any disqualification under section 10(A) of the Act did not arise on the facts stated in the petition by respondent. We do not see our way to accepting this statement.

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Though respondent 2 was not in a position to make a categorical assertion in his petition that respondent 1 had incurred a specific disqualification he did make allegations generally in regard to disqualifications said to have been incurred by respondent 1. Upon the making of these allegations a question arose or contemplated by Article 103(1)(a) of the Constitution and the President had to obtain the opinion of the Election Commission on that question. Respondent 2's petition could not have been rejected by the President without reference to the Election Commission on the ground that the allegations made by respondent 2 were unfounded or unsubstantial.

A similar question arose before this Court in *Brundaban Nayak v. Election Commission of India* and *Anr.* (1) Article 191(1) of the Constitution provides that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State if, inter alia, he is so disqualified by or under any law made by Parliament. Article 192(1), as it then stood, provided that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final. By Article 192(2) the Governor had to obtain the opinion of the Election Commission before giving his decision and he was also under an obligation to act according to the Commission's opinion. These provisions correspond to Articles 102 and 103 respectively with which we are concerned. While dealing with an argument as to whether it could be said that the question as contemplated by Article

192(1) had arisen, Gajendragadkar, C.J. speaking on behalf of the Court observed that the first clause of Article 192(1) P did not permit of any limitations and that all that the clause required was that a question should arise. How the question arose, by whom it was raised and under what circumstances it was raised were not relevant for the purpose of the application of the clause. The Court took notice of the fact that complaints made to the Governor could be frivolous or fantastic, but it held that if they were of such a character, the Election Commission would have no difficulty in expressing its opinion that they should be rejected. That however did not mean that a question as contemplated by Article 192(1) did not arise. Lastly it was urged in that case that it is the Governor and not the Election Commission who had to hold the enquiry since the Constitution required the Governor to decide the particular question. This contention was rejected on the ground that it was the opinion of the

(1) [1965] (3) S.C.R. 53.

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Election Commission which in substance was decisive and therefore it was legitimate to assume that when the complaint received by the Governor was forwarded by him to the Election Commission, the latter had the power and the jurisdiction to go into the matter which meant that it had the authority to issue notice to the person against whom the complaint was made, calling him to file his statement and produce evidence in support of his case. The High Court was in error in seeing "nothing" in this decision which was contrary to its view. ;

For these reasons we allow the appeal filed by the Election Commission and direct that the writ petition filed in the High Court by respondent 2 shall stand dismissed. There will be no order as to costs.

S.R.

Appeal allowed.

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