

CASE NO.:
Election Petition 1 of 2002

PETITIONER:
Charan Lal Sahu

RESPONDENT:
APJ Abdul Kalam & Ors.

DATE OF JUDGMENT: 11/12/2002

BENCH:
G.B.PATTANAIK CJI & V.N.KHARE & K.G.BALAKRISHNAN & ASHOK BHAN & ARUN KUMAR

JUDGMENT:
JUDGMENT

Election Petition No. 1 2002
WITH
SPECIAL LEAVE PETITION (CIVIL) NO.22385 OF 2002

DELIVERED BY:
ASHOK BHAN, J.

Bhan, J.

It is regrettable that in spite of being cautioned four times by this Court not to challenge election of the President of India in a cavalier and light hearted manner, the petitioner, who is an advocate has filed the present election petition challenging the election of Dr. A.P.J. Abdul Kalam (respondent No.1) as President of India on the same/similar grounds of challenge which stand concluded against him

in petitioner's own cases by several decisions of this Court. Our regret is compounded by the fact that petitioner is an advocate. He does, we presume, know the value of earlier binding precedents declaring the law by the highest court of the land.

This judgment shall dispose of Election Petition No.1 of 2002 and Special Leave Petition No.22385 of 2002. The facts are being stated from the Election Petition which covers and takes care of the points raised in the special leave petition as well.

Petitioner has challenged the election of Respondent No.1 to the office of the President of India which was held in pursuance to the notification dated 11th June, 2002 published by the Returning Officer Shri R.C.Tripathi, Secretary General, Rajya Sabha. The said election was conducted under the provisions of Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as 'the Act'), and the Presidential and Vice-Presidential Election Rules, 1974 (hereinafter referred to as 'the Rules').

In all 54 nomination papers were filed within the time prescribed. Respondent No.1 was nominated by the ruling National Democratic Alliance and its allies and the main opposition party, i.e, the Indian National Congress(I) and its allies whereas Captain Lakshmi Sehgal, respondent No.2, was sponsored and nominated by CPI(M) and its allied parties.

Scrutiny of the nomination papers in connection with the

Presidential Election, 2002 was conducted on 26th of June, 2002 by the Returning Officer. Nomination papers of all candidates other than respondent Nos. 1 & 2 were rejected. Nomination paper of the petitioner was rejected on the ground that the same was not accompanied by a certified copy of the entry relating to the candidate in the electoral roll and that the requirements of law were incomplete for want of proposers and seconders. Petitioner had filed his written objections to the two sets of nomination papers filed by respondent No.1 which were duly considered and rejected being without any substance. The poll for the contest between respondent Nos. 1 & 2 took place on 15th July, 2002. Respondent No.1 was declared elected as the President of India having received majority of votes. The result of the said election was declared in extraordinary gazette of India of 18th July, 2002 declaring Dr. A.P.J. Abdul Kalam, respondent No.1, as elected to the office of the President of India. Respondent No.1 took oath of the office of the President of India on 25th July, 2002.

On 10th of July, 2002, petitioner filed C.W.P. No.4119 of 2002 under Article 226/227 of the Constitution of India in the High Court of Judicature at New Delhi challenging the rejection of his nomination paper and the acceptance of the nomination papers of respondent Nos. 1 & 2 herein and the constitutional validity of various provisions of the Act and the Rules and Section 29A of the Representation of Peoples Act, 1951 being violative of Articles 14, 21, 38, 54, 71(1)(3), 79, 80(1) and 324 of the Constitution of India. The said writ petition was dismissed by a Division Bench of the High Court of Delhi by a detailed order on 12th July, 2002. Special leave petition (Civil) No.22385 of 2002 arises from the said decision of the High Court of Delhi.

The election petition No.1 of 2002 has been filed seeking a declaration that the result of the election declaring respondent No.1 as the duly elected President of India be declared void for illegal rejection of the nomination paper of the petitioner and the illegal acceptance of the nomination paper of the respondent No.1. The various provisions of the Act and the Rules being ultra vires the Constitution of India to which the challenge was laid before the High Court in the writ petition has been laid in the election petition as well.

Part II of the Act (Sections 3 to 12) contains provisions relating to the conduct of Presidential and Vice-Presidential Elections. Section 3 provides that the Election Commission for the purpose of each election of the President and Vice-President shall, in consultation with the Central Government, appoint a Returning Officer having his office in New Delhi and may also appoint one or more Assistant Returning Officers. Under section 4(1) the Election Commission by notification is to issue the election programme prescribing the last date for filing the nominations, the date for scrutiny of nominations, last date for the withdrawal of candidature and the date on which a poll shall, if necessary, take place. Section 5 provides for giving of a public notice of election by the Returning Officer after the issuance of the notification under sub-section (1) of section 4. Section 5A prescribes that any person may be nominated for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution. Section 5B provides for presentation of nomination papers and lays down the requirement for a valid nomination. Sub-section 1 of Section 5 requires that nomination papers completed in the prescribed form must be subscribed by candidate as assenting to the nomination. In clause (a) of Section 5 (1), as it stood prior to 5.6.1997, prescribed that in case of Presidential Election, the nomination papers shall also be subscribed by at least ten electors as proposers and at least ten electors as seconders. Section 5B (2) lays down that each nomination paper shall be accompanied by a certified copy of the entry relating to the candidate in the electoral roll

for the parliamentary constituency in which the candidate is registered as an elector. Any nomination paper which is not accompanied by the certified copy is required to be rejected under section 5B(4). Section 5C, prior to 5.6.1997, prescribed 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. Section 5E makes provisions for scrutiny of nomination papers by the Returning Officer. Ground (c) of section 5E(3) provides for rejection of a nomination paper if it is not subscribed by the required number of proposers or seconders and ground (e) provides for rejection of the nomination papers on the ground of failure to comply with any of the provisions of section 5B or section 5C. Section 8 lays down the procedure in contested and uncontested elections. Section 9 provides for manner of voting at the elections and section 10 deals with counting of votes. Section 11 provides for declaration of results on the completion of counting of votes.

By Act 35/97 in clause (a) of section 5B instead of 10 proposers and 10 seconders, provisions have been made that in the case of election to the office of President there should be at least 50 electors as proposers and at least 50 electors as seconders. In Section 5C the deposit amount was increased from Rs.2500/- to Rs. 15,000/-.

Part III of the Act (Section 13 to 20) contains provisions relating to disputes regarding elections. Section 13(a) defines "candidate" to mean a person who has been or claims to have been duly nominated as a candidate at an election. Section 14(1) provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section 2. This Court has been specified as the authority to try the election petition. Sub-section 1 of section 14(A) lays down that an election petition can either be presented by any candidate at such election, or in the case of Presidential election, by twenty or more electors joined together as petitioners. Section 18 prescribes the grounds on which the election of a returned candidate can be declared to be void. Clause (c) of section 18 with which we are concerned provides that the election can be declared to be void if the nomination of a candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted.

We did not deem it necessary to issue notice in these petitions as the points raised in the election petition as well as in the special leave petition already stand concluded by the previous judgments of this Court.

Section 14 of the Act provides that no election shall be called in question except by presenting an election petition to the authority specified in sub-section (2). Sub-section (2) specifies that the Supreme Court of India shall have the jurisdiction to try an election petition. Sub-section (3) provides that 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. Part VII, Order XXXIX of the rules made by this Court, known as Supreme Court Rules, 1966, contains rules relating to election petition filed under Part III of Section 14 (3) of the Act. Rule 2 of the Order XXXIX lays down that 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 34 provides that subject to the

provisions of this Order or any special order or directions of the Court, the procedure in 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 plaintiffs, applies to the proceedings commenced

by election petitions after reading the word "petition" for "plaint". Rule 6 of these Rules 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". Since the points raised in this petition stand concluded by the previous judgments of this Court we have not deemed it necessary to issue notice and dispose of the petition at the preliminary stage. The points which arise for consideration before us are:

(1) Does the petitioner have a locus standi to maintain his election petition, or in other words, is he duly nominated candidate in accordance with provisions of Sections 5B and 5C of the Presidential and Vice Presidential Elections Act?

(2) Has the petition put a valid challenge to the validity of Sections 5B and 5C of the Act or any other provisions of the Act and the Rules?

(3) Is the petition maintainable?

Article 54 of the Constitution of India provides that the President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. The manner of election of the President is based on proportional representation by means of a single transferable vote by secret ballot. Article 71 lays down as follows:

"71. Matters relating to, or connected with, the election of a President or Vice-President.- (1) 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 the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) 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.

(4) 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."

To carry out the purpose of Article 71(3) of the Constitution of India 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 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 in the case of Presidential election by 20 or more electors joined as petitioners. Section 13 (a) of the Act defines the 'candidate' to mean a person who has been or claims to have been duly nominated as a candidate at an

election.

The petitioner admits in his petition that he was not duly nominated as per requirement of the provisions of Section 5B of the Act which provides 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 fifty electors as proposers and at least fifty electors as seconders;

(b) in the case of Vice-Presidential election, also by at least twenty electors as proposers and at least twenty electors as seconders:

Provided that no nomination paper shall be presented to the Returning Officer on a day which is a public holiday.

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Again Section 5C provides that:

"5C. (1) A candidate shall not be deemed to be duly nominated for election unless he deposits or causes to be deposited a sum of fifteen thousand rupees;

Provided that where a candidate has been nominated by more than one nomination paper for the same election, not more than one deposit shall be required of him under this sub-section.

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Nomination paper of the petitioner was rejected on the ground that it was not proposed and seconded by the requisite numbers of proposers and seconders. This point was examined exhaustively by this Court in the case of very petitioner now before us against the former President Neelam Sanjeeva Reddy reported in Charan Lal Sahu Vs. Neelam Sanjeeva Reddy, 1978 (2) SCC 500 and it was held that:

"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 Presidential of India. The effect of the provision of Sections 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."

Again in Charan Lal Sahu Vs. Giani Zail Singh, 1984 (1) SCC 390, the point raised by the petitioner on the second limb of Section 13 (a) of the Act defining the candidate to mean; "claims to have been duly nominated as a candidate" was rejected. Rejecting the said contention this Court observed:

"The petitioners, however, contend that even if it is held that they were not duly nominated as candidates, their petitions cannot be dismissed on that ground since they "claim to have been duly nominated". It is true that, in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who, in fact, was duly nominated. But, the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirements of Section 5-B (1)(a) of the Act. That is to say, a person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nominated. Such a claim can only be made by a person who can show that his nomination paper conformed to the provisions of Section 5-B and yet it was rejected, that is, wrongly rejected by the Returning Officer. To illustrate, if the Returning Officer rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector, the petitioner can claim to have been duly nominated if he proves that the said proposer was in fact an 'elector'.

Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by Section 5-B (1)(a) of the Act, cannot claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also contend that he "claims to have been duly nominated as a candidate".

The question regarding locus standi was examined for the third time in the election petition filed by the petitioner in Charan Lal Sahu Vs. K.R. Narayanan & Ors., 1998 (1) SCC 56, it was again reiterated that:

"In view of the decisions referred to above, it must be held that neither of the petitioners was a "candidate" as the said expression is defined in Section 2 (d) of the Act since neither of them had been duly nominated nor could he claim to have been nominated as a candidate inasmuch as the nomination papers filed by both of them did not comply with the mandatory requirements of

Section 5 B (1)(a) of the Act and the nomination paper of Petitioner 2 was filed without complying with the requirements of Section 5 B (2) of the Act. On that view it must be held that neither of the petitioners has the locus standi to maintain the petition."

In view of the authoritative pronouncements of this Court the petitioner cannot be regarded as a person who had been nominated or can claim to have been duly nominated as candidate at the election in question. His nomination papers were thus rightly rejected by the returning officer and the petition on his behalf is, therefore, not maintainable.

Question regarding the constitutional validity of Sections 5B and 5C before its amendment by Act No. 35 of 1997 which provided that there should be at least ten electors as proposers and ten electors as seconders was examined in Fakruddin Ali Ahmed's case (supra) and Neelam Sanjeeva Reddy's case (supra). The validity of these two sections as they existed then was upheld. The validity of amending Act No. 35 of 1997 amending Sections 5B and 5C providing for at least fifty electors as proposers and seconders instead of ten proposers and seconders as provided prior to the amendment was questioned in K.R. Narayanan case (supra). The same was rejected and these two provisions were held to be intra vires. It was held:

"As regards the submission urged on behalf of the petitioners regarding the validity of the provisions of Sections 5-B and 5-C as they stood prior to 5-6-1997, it may be stated that the validity of the said provisions has been upheld by this Court in Charan Lal Sahu V. Fakruddin Ali Ahmed; Charan Lal Sahu v S. Neelam Sanjeeva Reddy and Charan Lal Sahu V. Giani Zail Singh. Petitioner 1 was a party to all these decisions. The challenge to the validity of the amendments introduced by the Ordinance and the Amendment Act has been negatived by this Court in the three writ petitions referred to above, two out of which were filed by Petitioner 1. The petitioners have urged that in this petition the challenge to the validity of Section 5-B is based on the ground that it violates the principle of secrecy of ballot incorporated in Article 55 (3) of the Constitution and that this ground has not been considered in the earlier decisions. We do not find any merit in this contention. The requirement in Section 5-B (1)(a) about the nomination paper being subscribed by a particular number of electors as proposers and seconders does not, in any way, involve the infringement of the secrecy of ballot at the election inasmuch as the elector who has subscribed the nomination paper of a person as a proposer or as a seconder is free to cast his vote in favour of any candidate and is not bound to vote for the person whose nomination paper he has subscribed as a proposer or seconder. The identity of the candidate in whose favour he has cast his vote is not to be disclosed."

The contention on the question as to whether there was a conflict between Articles 58 and 71 of the Constitution of India was also rejected in Neelam Sanjeeva Reddy's case (supra) by observing thus:

"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 Section 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. They prima facie imposed 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."

Every conceivable challenge of these provisions has already been upheld by this Court in the aforesaid three judgments in the petitioner's own case and in Mithilesh Kumar Sinha Vs. Returning Officer for Presidential Election, 1993 (Supp. (4) SCC 386. We need not examine these points any further in view of the consistent view of this Court with which we respectfully agree.

Another contention which just needs to be noticed and rejected is regarding the validity of the procedure prescribed under the Act and the Rules for holding the election of the President and Vice-President or its being ultra vires the Constitution of India. The procedure laid under the Act and the Rules has already been upheld in the judgments, already referred to.

Objections to the validity of the nomination paper filed by respondent No.1 which was rejected by the returning officer are so frivolous that they do not require attention of this Court. In our opinion, returning officer rightly overruled the objections filed by the petitioner questioning the validity of the nomination paper filed by respondent No.1.

Before we conclude, we would like to advert to an aspect which was specifically pointed out by this Court in K.R. Narayanan's case (supra) which cannot be ignored rather needs to be highlighted again. It was observed that before filing the said election petition the petitioner had earlier filed four election petitions challenging the election of the returned candidates in the Presidential elections held in the years 1974, 1977, 1982 and 1997. All these election petitions were dismissed on the ground that the petitioner had no locus standi to maintain the election petition. This Court in K.R. Narayanan's case (supra) after referring to the observations made in the earlier judgments that frivolous election petitions on the same very ground should not be filed, while dismissing the petition, imposed the cost of Rs. 10,000/-. Coming down heavily against the filing of such frivolous election petitions it was observed:

"We find that these observations have had no effect. This election petition which has been jointly filed by the two petitioners shows no improvement. It suffers from the same defects as the earlier petitions filed by the petitioners. It seems that the petitioners are obsessed with a desire that they should find a place in some Book of Records. They find the temptation to file an election petition after the Presidential election too difficult to resist. It is a matter of regret that Petitioner 1, who happens to be an advocate

himself, has been persisting in his pastime knowing well that such conduct on his part amounts to an abuse of the process of law. This Court has so far refrained from imposing costs in the election petitions that were filed by the petitioners earlier. It is high time that the petitioners who have persisted in filing this petition in spite of the law laid down authoritatively by this Court in the earlier decisions are saddled with costs."

It seems that the petitioner, although an advocate, has not learnt any lesson from the observations made by this Court in the earlier judgments and that is why we have begun the judgment with the observation that such a conduct on the part of the petitioner who happens to be an advocate is regrettable. We hope he does not do so again.

For the reasons stated above, we do not find any merit either in the election petition or in the special leave petition against the judgment of the High Court of Delhi and dismiss them with costs which are assessed on Rs. 25,000/- in each case. The costs so deposited shall be transferred to the Supreme Court Legal Services Committee. It is also directed that no petition filed by the petitioner-in-person shall be entertained in this Court till the amount of costs imposed is deposited.