

The Indian Law Reports

FULL BENCH

Before Mehar Singh, Daya Krishan Mahajan and H. R. Khanna, JJ.

HAR GOVIND,—Petitioner.

versus

PALOO RAM AND OTHERS,—Respondents.

Civil Writ No. 807 of 1963.

Election cases—Stay of the order of the Tribunal—When to be granted—Principles to be considered in such cases stated.

1963

November, 19th

Held, that no general rule can be laid down as to in what cases the stay should be granted and in what cases it should be refused. In each case, the question will have to be examined, with reference to the facts of that case. However, there are certain general principles which the Court should keep in view while determining, in each particular case, the question of stay, whether the matter comes to the High Court in its appellate jurisdiction or in its extraordinary jurisdiction under Article 226 of the Constitution. These general principles are:—

- (1) That stay should not be granted as a matter of course because the matter has been admitted for examination by the High Court.
- (2) The right to get elected is neither a fundamental right nor a common law right. It is a special right created by the statute. To put it in other words, it is not a constitutional right, but is merely a legal right. Therefore, it is not a right to or in property which is protected by Article 19 of the Constitution. Therefore, the consideration that *status quo* should not be disturbed during appeal or in proceedings under Article 226 of the Constitution should not form the basis for the purpose of determining the question of stay.
- (3) The Court must take into account whether there is a *prima facie* case made out for the grant of stay, for it is elementary that the party asking for stay has to make out a strong case for stay. It is axiomatic that while determining whether there is a *prima facie* case, the Court must

always take into account as to in whose favour the balance of convenience lies and also as to what benefit or harm will accrue in the event of its being granted or refused.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 23rd May, 1963, to a larger Bench for decision owing to the importance of the question of law involved in the case. The Full Bench consisting of the Hon'ble Mr. Justice Mehar Singh, the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice H. R. Khanna, after deciding the question referred to them, returned the case to the Single Judge on 19th November, 1963, and the case was finally decided by the Hon'ble Mr. Justice D. K. Mahajan, on 10th November, 1964.

R. SACHAR, H. L. SARIN AND MOHINDERJIT SINGH SETHI, ADVOCATES, for the Petitioner.

P. C. JAIN, H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND H. L. SIBAL, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH.

Mahajan, J.

MAHAJAN, J.—This order relates to Civil Miscellaneous No. 1278 of 1963 in Civil Writ No. 807 of 1963 and Civil Writs Nos. 866 and 867 of 1963.

In pursuance of my order of reference dated the 23rd May, 1963, this Full Bench has been constituted. The matter which has to be considered is whether some principles should be laid down in the matter of grant of stay or refusal thereof in election cases. The question of stay arises in three types of cases.—

- (1) those arising under the Representation of the People Act, 1951, where the Election Tribunal sets aside the election of a returned candidate and he challenges the order of the Tribunal in an appeal under the Act to this Court;
- (2) those under statutes other than the Representation of the People Act where to certain bodies constituted by Statute representatives are chosen by election. For instance, the Municipal Act, the Punjab Gram Panchayat Act, the Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), etc. These statutes or rules made

thereunder generally provide for an election petition to challenge the election of a returned candidate on certain specified grounds, and either provide an appeal or do not. When no appeal is provided the order of the Tribunal setting aside the election of a returned candidate is challenged in this Court under the provisions of Article 226 of the Constitution; and

Har Govind
v.
Paloo Ram and
others

Mahajan, J.

- (3) where after the election of a returned candidate is set aside and for that constituency it is decided to hold a fresh election in order to fill up the vacancy.

When the matter came up before me on the 23rd May, 1963, distinction was sought to be drawn by the learned counsel appearing for the parties between these three types of cases to determine the considerations which should prevail with the Court in the matter of granting or refusing stay.

We have ^a examined the matter in all its various aspects and are firmly of the view that no general rule can be laid down in what cases the stay should be granted and in what cases it should be refused. In each case, the question will have to be examined with reference to the facts of that case. It is seldom that the facts of two cases are identical. This is so because of the diversity in human nature and human affairs. However, there are certain general principles which the Court should keep in view while determining, in each particular case, the question of stay and we ~~have~~ rest ourselves content in merely stating those general principles. In our opinion for the purposes of stay, it hardly matters whether the matter has come to this Court in its appellate jurisdiction or in its extraordinary jurisdiction under Article 226 of the Constitution. The general principles are:—

- (1) That stay should not be granted as a matter of course because the matter has been admitted for examination by this Court.
- (2) The right to get elected is neither a fundamental right nor a common law right. It is a special right created by the statute. To put it in other words, it is not a constitutional right, but is

Har Govind
v.
Paloo Ram and
others

Mahajan, J.

merely a legal right. See in this connection, the decision of the Supreme Court in *Jamuna Prashad Mukhariya v. Lachhi Ram* (1). Therefore, it is not a right to or in property which is protected by Article 19 of the Constitution. Therefore, the consideration that *status quo* should not be disturbed during appeal or in proceedings under Article 226 of the Constitution should not form the basis for the purpose of determining the question of stay.

- (3) The Court must take into account whether there is a *prima facie* case made out for the grant of stay, for it is elementary that the party asking for stay has to make out a strong case for stay. It is axiomatic that while determining whether there is a *prima facie* case, the Court must always take into account as to in whose favour the balance of convenience lies and also as to what benefit or harm will accrue in the event of its being granted or refused.

A few decided cases were cited before us. It is not necessary to deal with them because in neither of them an attempt was made to lay down a firm rule in such matters. Each one of them proceeded on its own facts.

We accordingly answer the reference with these observations that the Court while granting stay should keep the aforesaid general principles in view and it is not advisable or practicable to lay down any hard or fast rules in the matter of stay in election cases. Each case will have to be determined on its own facts.

We are further of the view that a rule should be made and added to rules framed by this Court regarding the petitions under Article 226 of the Constitution of India relating to election matters. The Rule should provide for service by publication and by registered post to the opposite party and a copy of the petition should go with the notice sent by registered post, requiring the opposite party to file its return within 15 days of the service of the notice

and the petition should be disposed of as far as possible within 2 months of its filing.

Har Govind
v.

Paloo Ram and
others

The cases in which the reference has been made to this Full Bench will now be placed before the learned Single Judge for final decision on the matter of stay.

Mahajan, J.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

H. R. KHANNA, J.—I also agree.

Khanna, J.

B. R. T.