WWW.IJRPR.COM

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Judicial Approach on Elections in India

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1. Introduction

One of the biggest issues facing the largest democracy in the world is the lack of free and fair elections, which allows for a variety of unethical behavior, corruption, voting rights manipulation, and a crisis of healthy and competitive political competition in favor of the display of brute force.[1] Changes are the only surefire way to save the crumbling status of Indian democracy, even in the face of rigorous Election Commission regulations and decisions from the Supreme Court. The idea of "equal political rights," which are prioritized over "social and economic rights," is fundamental to the idea of free and equitable justice. This is so that one can strive for economic and social equality, which will result from the process of good governance itself, starting with the freedom to pick one's leader. A robust democracy is derived from the universal adult franchise, which is why every great country has empowered its citizens through it before claiming to be great. This is exemplified by the one man, one vote premise.

The Election Commission has numerous obstacles and difficulties in conducting fair and impartial elections. Both the Representation of the People Act of 1951 and the Indian Penal Code of 1860 list the electoral offenses. These have to do with how elections are conducted. A few crimes may also be committed during the design, reevaluation, and modification of the voter list. The Representation of the People Act, 1950 prescribes them separately. The IPC lists the election-related offenses under the heading "Of Offenses Relating to Elections" in Chapter IXA of that Code. When the idea of elections was first established in some statutory organizations under the Government of India Act 1919, more than 85 years ago, in 1920, this chapter was added to the Code by the Indian Elections Offences and Inquiries, Act 1920. Although the severity of the punishment, especially the fine, stipulated by some of the chapter's provisions may seem incredibly minor in the current context, it was seen to be a strong deterrence at the time. It is believed that in order to satisfy the expectations of the current voter, the punitive provisions for these electoral offenses need to be reevaluated, with some of these offenses requiring harsher penalties.

2. The Supreme Court Judgment: Lily Thomas

In *Lily Thomas* v. *Union of India and Others*,[2] Section 8(4) of the Representation of People Act, 1951 was declared ultra vires of the Constitution by the Supreme Court because it violates every citizen's fundamental right to equality. As a result, the legislators' protection from disqualification from contesting, which has been in place even after their conviction was withdrawn, remains in place.

2.2.1 Supreme Court ADR Judgment, May 2002

The judiciary issued a landmark decision in reaction to the widespread criminalization of politics. In response to a writ petition (No. 7257 of 1994) filed by the Association for Democratic Reforms, the Delhi High Court ruled on November 2, 2000, that the Election Commission furnish voters with details regarding the criminal records, assets, and any other information that sheds light on the candidates' suitability and competence, enabling them to make an informed selection of their representatives. In an appeal, the Union of India took the case to the Supreme Court. In *Union of India* v. *Association for Democratic Reforms and Anor*,[3] The Supreme Court upheld the High Court's ruling, ordering the Election Commission to issue orders compelling all candidates running for office in state and federal legislatures to provide information about their educational background, assets (including those of their spouses and dependents), liabilities to public financial institutions and government dues, and any criminal convictions they may have had. In response to this ruling, on June 28, 2002, the Election Commission issued an order establishing a format that candidates running in all elections were required to provide this data in. Due to this, Parliament amended the 1951 Act on August 24, 2002, adding two new sections that stated that candidates could only provide information about cases in which charges had been brought for offenses carrying a two-year or longer prison sentence, or about convictions

1 *Legal Services Times*, March 2019, II Year, Issue No. 09, p.5.

2 2013 (5) SCJ 613.

3 AIR 2002 SC 2112.

carrying a one-year or longer sentence. They also stated that candidates could not provide any other information, regardless of a court order or Election Commission directives.

The People's Union for Civil Liberties and the Association for Democratic Reforms petitioned the Supreme Court once more, arguing that the changes to the statute were meant to thwart the Election Commission's and the Supreme Court's mandated disclosure obligations. The Supreme Court invalidated Section 33B, which stated that candidates were not required to furnish under the modified act, in a ruling dated March 13, 2003. The Court reaffirmed that the candidates were required to provide information on all outstanding cases, assets, duties, and educational background, and instructed the Commission to issue a new order in this regard. As a result, on March 27, 2003, the Election Commission issued an order outlining the format in which candidates were required to provide the necessary data. Currently, in order for voters to know who to vote for, candidates running in all elections are required to provide this information, and the Commission makes sure that it is shared as widely as possible.[43]

People with criminal backgrounds are entering politics despite the laws designed to prevent them from doing so. According to the Association of Democratic Reforms, if we use the data from the 17 Lok Sabah elections, almost half of the newly elected members of the 17th Lok Sabha are facing criminal charges, a 26% rise from 2014. 233 MPs, or 43% of the 539 victorious candidates the ADR examined, are facing criminal accusations. According to the ADR, the BJP has 116 MPs, or 39% of its elected candidates, with criminal convictions. The Congress has 29 MPs (57%), the JDU has 13, the DMK has 10, and the TMC has nine (41%). 112 Members of Parliament and 185 Lok Sabha members (34%) have severe criminal cases against them in 2014. According to the report, 162 (almost 30%) of the 543 Lok Sabha MPs faced criminal accusations in 2009, while 14% faced serious charges. According to the non-governmental organization, rape, murder, attempted murder, and crimes against women account for approximately 29% of the cases in the new Lok Sabha.

2.2.2 Supreme Court Judgement (State Bank of India Versus Association for Democratic Reforms and Others :

In a decision dated February 15, 2024[4], this Court ruled that the Election Bond Scheme and the Finance Act 2017's amendments to the Representation of People Act 1951 and the Income Tax Act 1961 were unconstitutional because they violated citizens' constitutional right to information by withholding information about political party funding, as stated in Article 19(1)(a) of the Constitution. The Finance Act 2017 made revisions to the Companies Act 2013 that allowed corporate companies to support political parties indefinitely. These amendments were deemed to be arbitrary and in violation of Article 14 of the Constitution.

This Court directed the State Bank of India[5], which was the authorized bank to deal with Election Bonds under the Election Bond Scheme, to submit details of the Election Bonds purchased by the contributors and redeemed by political parties between 12 April 2019 (the date on which this Court passed an interim order directing the Election Commission of India[6] to collect details of the contributions) and 15 February 2024 (the date of the judgment) in order to give full effect to the judgment rendered by the Constitution Bench.

This Court ordered the SBI to provide the following information to the ECI by March 6, 2024:

a) Information about each electoral bond that is purchased, including the date of purchase, the buyer's name, and the denomination of the bond; and

b) Information about each electoral bond that political parties redeem, along with the date of encashment and the denomination of the bond.

By March 13, 2024, the ECI is to compile the data that the SBI is required to send and post it on its website. Below is an excerpt of this court's directives:

i. The issuing bank shall immediately cease issuing Election Bonds;

ii. SBI shall furnish the ECI with a list of all Election Bonds purchased from the date of this Court's Interim Order, dated April 12, 2019, until the present. The information will include the date each electoral bond was purchased, the name of the bond buyer, and the denomination of the bond;

iii. SBI will provide the ECI with a list of political parties that have received contributions through electoral bonds from the time this court issued its interim order on April 12, 2019, to the present. Every election bond that political parties cash in must have its details disclosed by SBI, including the date of encashment and the bond's denomination;

iv. The ECI will post the information shared by the SBI on its official website within one week of receiving the information, i.e., by March 13, 2024;

v. Electoral bonds that are still within their fifteen-day validity period but have not yet been cashed by the political party will be returned to the issuing bank by either the purchaser or the political party, depending on who is in possession of the bond. SBI must submit the aforementioned

42024 INSC 113

5“SBI”

6“CBI”

information to the ECI within three weeks of the date of this judgment, or by March 6, 2024. When the legitimate bond is returned, the issuing bank will credit the buyer's account with the full amount.

Two days prior to the deadline passing, the SBI filed a Miscellaneous Application with this Court, requesting an extension of time till June 30, 2024, for following the instructions. The Communist Party of India (Marxist) and the Association for Democratic Reforms4 filed a case before this court, claiming that SBI had intentionally disregarded the court's decision, thus triggering this court's contempt jurisdiction.

We have heard senior counsel Mr. Harish N. Salve in support of the SBI's plea. Mr. Salve argued that in order to achieve the fundamental goal of the Electoral Bond Scheme, the information acquired by the SBI was kept in two distinct silos and was kept with the highest confidentiality. The acquired Senior counsel stated that the information contained in the two distinct silos mentioned in the operative directives (b) and (c) may be disclosed without any problem. According to the attorney, this exercise can be finished in three weeks. Nonetheless, it is argued that SBI's difficulties stemmed from the way it interpreted this Court's instruction, which called for it to link donor and bond details with matching information about political party encashment.

At this point, it would be appropriate to discuss some of the most important features of the Scheme while assessing the SBI's response. According to Clause 7(4) of the Electoral Bond Scheme, the authorized bank will treat the information provided by the buyer of an electoral bond as confidential and will only disclose it upon a court's order or when a law enforcement agency registers an offense. Accordingly, SBI is required by the conditions of the Electoral Bond Scheme itself to provide information upon a court's request. The question of whether SBI is right in asking for a longer period of time needs to be examined.

It would be relevant at this point to consult the SBI's FAQs on electoral bonds, which stipulate that the buyer is required to submit the "Know Your Customer" documents every time they purchase an electoral bond, regardless of whether they have a verified SBI account6 through KYC. In other words, an individual can only purchase one Electoral Bond7 using a single set of paperwork, which includes the application form, KYC documents, and pay-in slip. Contributors who do not need to submit the KYC paperwork, the Electoral Bond application, or proof of payment via NEFT, demand draft, or check are those who already have an SBI account.[7] As a result, the information about the Election Bonds that have been bought and that this Court has ordered to be revealed is easily accessible.

Similar to this, each political party may only open one current account for the purpose of redeeming Election Bonds, according to the SBI's FAQs on the subject.[8] The political party was limited to opening current accounts at twenty-nine specially designated branches around the nation. Thus, only these branches would have easily available records regarding a political party's encashment of electoral bonds. The pay-in slip and other documentation must be sent to the main office by the approved branches. The fact that this procedure was correctly followed is undeniable.

ADR has filed a contempt petition in addition to the SBI's application for a time extension. In the petition, ADR claims that the SBI can easily disclose the information that this court ordered be disclosed due to the unique number printed on the Election Bond. Whatever the outcome of the case regarding the unique identification number—which is invisible to the unaided eye—the SBI's application submissions clearly show that the information this Court has ordered to be disclosed is easily accessible.

The SBI's Miscellaneous Application, which requested a deadline extension until June 30, 2024, for the disclosure of information on the purchase and redemption of electoral bonds, is dismissed in light of the conversation. SBI has been instructed to release the information by the end of work hours on March 12, 2024. ECI must gather the data and post the specifics on its official website by no later than March 15, 2024, at 5 p.m.

7FAQ Question 19: I don't have an account with any State Bank of India branch. How can I buy bonds for elections? A buyer of an electoral bond who does not have an account with State Bank of India may do so by using. Payable at the local clearing house, the check or demand draft should be made out to the authorized SBI branch.

Steps taken:

i. At an authorized SBI branch, the buyer submits the electoral bond application form, pay-in slip, citizenship and KYC documentation, and a check or demand draft. In order for the Authorized SBI Branch to have clear funds available for the issuing of Election Bonds, the same must be filed at least three working days before to the scheme's closing. In order for the Authorized SBI Branch to have clear funds available for the issuing of Election Bonds, the same must be filed at least three working days before to the scheme's closing. If DD is used for payment, a confirmation letter in the required format from the DD issuing branch must also be submitted.

ii. The State Bank of India A/c Electoral Bond Scheme-2018 should be the beneficiary of the check or direct deposit.

iii. The instrument will be forwarded for clearing as soon as the citizenship and KYC certificates have been confirmed. The applicant will receive the torn-off portion of the pay-in slip.

8FAQ Question No. 4: Can a Political Party open a Current Account with Any Bank in order to redeem an Electoral Bond? No. Only the following four SBI branches that are now authorized will be able to open current accounts:

Main branches in Chennai (00800) and Kolkata (00001) are located at 84, Rajaji Salai, Chennai – 600001 and 1, Strand Road, Kolkata – 700001, respectively.

ECI filed its statements, which have been kept in the Court's possession, in accordance with the interim order issued by this Court during the period that the proceedings before the Constitution Bench were pending. The ECI Office will save copies of the statements that were submitted by the ECI to this Court. ECI will immediately post on its official website the specifics of the data that was provided to this Court in compliance with the interim instructions. In accordance with the aforementioned instructions, the SBI will submit an affidavit from its chairman and managing director. Given the application that was filed for a delay in proceedings, we are not willing to use the contempt jurisdiction at this time. However, we put SBI on notice that if it doesn't follow the guidelines provided by this Court in its judgment dated February 15, 2024, by the deadlines specified in this order, this Court may take action against it for intentional disobedience of the judgment.

In light of this, the Miscellaneous Application for Extension of Time shall be dismissed. At this point, the contempt petitions will be handled in the manner described above.

2.2.3 Supreme Court Judgement (N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and four Others)[9]

SUMMARY OF THE CASE

The appellant submitted his nomination form from the Namakkal Assembly Constituency in Salem District for election to the (then) Madras Legislative Assembly. On November 28, 1951, during the nomination document inspection, the Returning Officer rejected his nomination paper for a number of reasons. Enraged by the Returning Officer's decision to reject his nomination paper, the appellant filed a motion in the Madras High Court under Article 226 of the Constitution, requesting that the Returning Officer include his name to the list of candidates who have been duly nominated.

The High Court denied the writ petition, citing Article 329 (b) of the Constitution as grounds for its lack of authority to override the Returning Officer's decision.

After that, the appellant filed the current appeal with the Supreme Court. The Supreme Court upheld the High Court's decision by dismissing the appeal as well.

According to the Supreme Court, the term "election" in Article 329(b) refers to the entire electoral process, which starts with the publication of the notice calling for the election and ends with the announcement of the results. Once the electoral process has begun, courts are not permitted to intervene at any point during the process.

Articles 226 and 329 (b) of the Indian Constitution (1950) grant the High Court jurisdiction over cases pertaining to the Returning Officer's order rejecting a nomination paper for the State Assembly election, unless specifically excluded by Article 329 (b).

According to Article 226 of the Constitution, the High Court lacks authority to consider cases pertaining to the Returning Officer's wrongful rejection of candidates' nomination papers for the State Assembly or the House of Parliament. Regarding situations covered by Article 329, which encompasses all "electoral matters," the High Court's jurisdiction under Article 226 has been excluded.

According to the structure of Part XV of the Constitution and the Representation of the People Act, 1951, any issue that could potentially taint an election should only be brought up before a special tribunal at the proper time and in the proper manner; it should not be brought up before any court at any other point in the process. The sole importance of a nomination document rejection under the election law is that it can be used as justification to put the election into question. According to what is obvious, Article 329(b) was passed to specify the process and point at which this and other legal grounds for calling a questionable election may be made. The wording of this clause naturally implies that those grounds cannot be raised in any other way, before any other Court, or at any other point.

Appeal under Article 132 of the Indian Constitution from the decision and order of the High Court of Judicature at Madras (Subba Rao and Venkatarama Ayyar, JJ.) dated December 11, 1951, in Writ Petition No. 746 of 1951.

JUDGMENT

Faiz Ali - This is an appeal of a Madras High Court ruling that denied the appellant's request for a write-of-certiorari.[10]

The appellant was one of the candidates from the Namakkal Constituency in the Salem District who submitted nomination papers to run for the Madras Legislative Assembly. The nomination papers submitted by the candidates were examined by the Returning Officer for that constituency on November 28, 1951. That same day, he rejected the appellant's nomination paper for reasons that are not relevant to the issue at hand in this appeal and do not need to be stated. Following that, the appellant moved the High Court under Article 226 of the Constitution, requesting a writ of certiorari to overturn the Returning Officer's decision to reject his nomination paper and order the Returning Officer to add his name to the list of legitimate nominations that

9https://indiankanoon.org/doc/181440373/

10https://ceojk.nic.in/pdf/LandmarkJudgementsVOLI.pdf

would be made public. The High Court denied the appellant's application, citing Article 329 (b) of the Constitution as the reason it lacked jurisdiction to overturn the Returning Officer's decision.

The first point, which centers on how Article 329 (b) is to be constructed, deserves careful thought, but the second argument may, in my opinion, be addressed quickly right away. It should be noted that what the appellant prefers to refer to as an anomaly is more accurately defined as hardship or prejudice, and Wallace, J., in Sarvothama Rao v. Chairman[11], Municipal Council, Saidapet1, explained what their nature will be in strong words:

It is evident that there is no post-election remedy that can provide the relief that the petitioner is seeking, which is a stay of the currently publicized election until he can run for office. Telling him he can run in another election is not a comforting gesture. Telling him to wait for the election to finish before filing a petition to have it revoked and ordering a new one is not a viable course of action. There might be completely different rules for the new election, and there might be a wide range of new contenders. An order to stay the election was imperative, unless the petitioner's requested relief was to be refused in limine. The petitioner can only receive his due relief if the planned election without him is postponed until his rejected nomination is reinstated. It will undoubtedly be difficult for the aggrieved party in most cases of this type to file a lawsuit in time to stop the alleged wrong from being done, but even if he is successful, the court cannot stultify itself by permitting the alleged wrong to be done while it is trying the lawsuit.

However, these observations only provide one side of the story; in a later case (Desi Chettiar v. Chinnasami Chettair)[12], the same erudite Judge provided the opposite side of the story as follows:

The petitioner still has access to his remedy. We hear he has already submitted an election petition, which is his remedy. He argues that the remedy that would allow him to completely stop the election is more effective than one that would only allow him to set aside an election that has already taken place. To support this claim, certain observations from Sarvathama Rao v. Chairman, Municipal Council, Saidapet1 are cited on page 600. First of all, we fail to understand how the petitioner's inability to stop the election and the fact that he can only seek a remedy after it has concluded through an election petition gives him the authority to seek a writ. Secondly, the purpose of these observations was to examine the appropriateness of an injunction in a civil lawsuit—a subject unrelated to our discussion here. And lastly, it should be noted that these statements were made a few years ago, back when it was less typical for people to intervene in elections to protect their own personal interests. It is evident that there is another aspect of the issue that has to be taken into account, namely the annoyance that local board meetings and elections cause to the public administration when people pursue their personal complaints. We are aware that this petition is the reason the election for this Union's elective seats has been delayed since May 31. As a result, the electorate has been denied any representation on the Board, and the Board is operating—if it is operating at all—with only a small portion of its total membership nominated. The petitioner wants this situation to persist until his personal grievance is addressed.

Let me now explain the reasoning for the use of negative language in Article 329 (b). I believe there is a significant distinction between Article 329 (b) and Article 71 (1). Because Article 71 (1) grants the Supreme Court special jurisdiction that the Court would not have been able to exercise but for this Article, the language of the Article had to be affirmative. On the other hand, the main goals of Article 329 (b) were to establish the exclusive process for contesting elections and to exclude or remove the authority of all courts with respect to electoral concerns. Given that the negative form was more appropriate, it is not unexpected that the decision was made to stick to the pre-existing pattern in which the negative language had also been chosen.

Before I wrap up, let me make reference to a point made vehemently by the appellant's knowledgeable attorney and which one of the High Court's knowledgeable judges reproduced:

"It was further argued that section 36 of Act 43 of 1951 would be ultra vires insofar as it confers on the Returning Officer a jurisdiction which Article 329 (b) confers on a Tribunal to be appointed in accordance with the Article." "It was next contended that if nomination is part of election, a dispute as to the validity of nominating is a dispute relating to election and that can be called in question only in accordance with the provisions of Article 329 (b) by the presentation of an election petition to the appropriate Tribunal.

This argument shows a great deal of dialectical creativity, but it is unrelated to the outcome of this appeal, which I believe can be addressed in a brief response. The Returning Officer is tasked with determining whether to accept any objections to a nomination and carefully reviewing the nomination papers to make sure they adhere to Act criteria, as stated in section 36 of the Representation of the People Act, 1951[13]. It is obvious that many candidates may run for office without adhering to the Act's requirements if this task is not carried out correctly, which could lead to a significant lot of misunderstanding. The Returning Officer does not challenge any election in the course of performing the statutory obligation that has been placed upon him. Examining nomination documents is just one step in the electoral process, albeit a crucial one. It is one of the necessary tasks that must be finished before the election can be declared over, and anything done to see the election through to the end cannot in good conscience be construed as casting doubt on the results. The argument's error is that it treats a single action made to advance an election as though it were an election itself. However, the outcome of this appeal depends on how the comprehensive phrase "no election shall be called in question" is interpreted in its context, taking into account the

11AIR 1923 MADRAS 475

12Air 2004 SC 541

13https://en.wikipedia.org/wiki/Representation_of_the_People_Act,_1951

structure of Part XV of the Constitution and the Representation of the People Act of 1951.[14] This is rather than how the single word "election" is interpreted. It seems that this approach—which I believe is the only proper one—to the question raised in this appeal is unaffected by the argument.

We have learned that, in addition to the Madras High Court, seven other State High Courts have ruled that, in accordance with Article 226 of the Constitution, they are not authorized to consider cases pertaining to incorrect rejection of nomination papers. I think this point of view is valid and has to be supported. Thus, the appeal is denied and must fail. Given the significance and severity of the issues brought up in this appeal, there shouldn't be a cost order.

3. Delhi Bar Association & Others vs Delhi High Court Bar Association

The order dated October 31, 2013, issued by this court's learned single judge in CS(OS) 2111/2013 and IA No. 17553/2013, is the subject of this appeal. Eight plaintiffs filed the lawsuit. The Delhi Bar Association, the New Delhi Bar Association, the Rohini Court Bar Association, the Shahdara Bar Association,[15] the Saket Bar Association, and the Dwarka Court Bar Association were the plaintiffs number one through six. Plaintiffs Nos. 7 and 8 consisted of two lone advocates. The Delhi High Court Bar Association (Defendant No. 1), the Delhi Bar Council (Defendant No. 2), and Mr. Mohit Mathur, Honorary Secretary, Delhi High Court Bar Association (Defendant No. 1A), were the defendants. The following prayers were requested in the litigation, among other things:

a) "In light of this, it is humbly requested that this Honorable Court grant the following decrees:

b) a Decree of Declaration in favor of the Plaintiffs and against Defendant No. 1, thereby declaring the amended Rules void, non-existent, and inconsequential in the eyes of the Law, and not binding until approved by the General House.

c) A permanent injunction was granted in favor of the Plaintiffs Associations and against Defendant No. 1, prohibiting its office bearers and Executive Committee from acting in any way related to the altered regulations or putting them into effect.

d) A decree of permanent injunction against defendant no. 1 and in favor of the plaintiff associations, prohibiting them from acting in accordance with the 26.10.2013 election timetable in light of purportedly changed rules.

e) A mandatory injunction decreed in favor of the plaintiffs and against Defendant No. 1 to ensure that the latter performs its duties and adheres to the original rules as they existed during the last elections in December 2011; additionally, a mandatory injunction decreed against Defendant No. 2 to ensure that the former fulfills its obligations and acts in accordance with the original rules as existed during the last elections held in December 2011.

e. Decree of mandatory injunction in favour of the plaintiffs and against the defendants thereby directing the defendant no. 1 to allow the members to deposit arrears of subscription by giving reasonable time as per the practice adopted in the previous elections to enable them to cast vote in the elections."

In addition to the aforementioned lawsuit, the plaintiffs had filed IA No. 17553/2013 under Order 39 Rules 1 & 2 CPC, seeking the following ad interim reliefs: "Therefore, it is deeply requested that this Honorable Court grant an ad-interim injunction favoring the plaintiffs and against the defendants no. 1, prohibiting its office bearers, executive committee members, and other responsible members from acting in any way or for any purpose whatsoever based on alleged amended rules and bye laws while the lawsuit is pending, without first receiving approval from the General House."

b. Give defendant no. 1 instructions to act and conduct elections in accordance with the original procedures used for the December 2011 elections. c. A mandatory injunction decreed in favor of the plaintiffs and against the defendants, directing defendant no. 1 to permit members to deposit subscription arrears within a reasonable time frame in accordance with the precedent set by past elections, so enabling them to cast ballots.

d. This Hon'ble Court may graciously issue any additional orders in favour of the plaintiffs and against the defendant no. 1 that it may find appropriate and fitting given the facts and circumstances of the case."

3. In the lawsuit, the learned single judge issued a summons that was accepted by each defendant by virtue of an order dated October 31, 2013. Additionally, the learned single judge ordered that the written statement and the original papers be filed together within 30 days, and that any replication be filed with the original documents within 30 days after that. The suit is to be listed before the Joint Registrar for document admission or denial on January 15, 2014, and before the court for issue framing on February 25, 2014, according to the learned single judge's additional directive.

4. Nevertheless, the learned single judge ruled prior to the suit's summons being issued that plaintiffs Nos. 1 through 6 (the six bar associations) were neither legitimate nor essential parties, and as such, they should be removed from the list of parties and the corrected memo of parties should be filed within a week. The learned single judge believed that the dispute being raised in the lawsuit had to do with the Delhi High Court Bar Association's (DHCBA) alleged modification to the election rules. The learned sole judge noted that the bar associations were neither suitable nor required parties because they were not members of the DHCBA.The learned counsel for the plaintiffs contended that since many members of the bar associations were

14https://www.drishtiias.com/to-the-points/Paper2/representation-of-people-s-act-part-i/print_manually

15https://www.casemine.com/judgement/in/56090f66e4b014971117ecc7

also DHCBA members, the bar associations had a vital interest in the DHCBA and were, therefore, necessary and/or proper parties. The learned single judge rejected this argument, which we believe was correct. In regards to the issues at hand in the current lawsuit, the learned single judge rightly concluded that the aforementioned associations were unfamiliar to DHCBA since they were distinct legal entities. We concur with the learned single judge's opinion that the six bar associations mentioned above, each of which has its own set of rules and membership, have no bearing on the question of what the DHCBA's rules are or whether they have been appropriately amended. Therefore, we concur with the experienced single judge's assessment that the six bar associations—who were initially grouped as plaintiffs 1 through 6—are not at all required for the efficient and thorough resolution of the suit's concerns. The appellants' learned counsel has refuted any arguments to the contrary, and we support the decision of the learned single judge to remove the aforementioned plaintiffs from the list of parties. We also reaffirm the directive that the amended memo of parties be filed within a week following the removal of the aforementioned plaintiffs, who are appellant Nos. 1 through 6 in the current appeal.

5. This brings us to the primary issue of contention in this appeal: the decision made by the learned single judge in IA No. 17553/2013, which was a request for ad interim orders made by the plaintiffs under Order 39 Rules 1 and 2 CPC. Regarding the aforementioned application, the learned single judge had sent out a notification, which the defendants' learned attorney accepted. On behalf of DHCBA, Mr. A.S. Chandhiok, Senior Advocate and President, was heard. After taking note of the arguments made by both sides, the learned single judge noted that notice had already been given to the elections based on the contested amended rules on October 26, 2013, and that since the election process had already begun before the lawsuit was filed, interference with it at this time was not necessary. Even so, the learned single judge said, it did not seem necessary to intervene at that point because the concept of "one bar one vote" had been essentially introduced by the contested amended rules, as the Supreme Court Bar Association and several other bar associations had already embraced it. .The learned single judge cited the Supreme Court's affirmation of the concept's acceptance in Supreme Court Bar Association v. B.D. Kaushik:[16] and Supreme Court Bar Association v. B.D. Kaushik:[17] as supporting evidence in this regard.

6. Taking note of the aforementioned, the learned single judge noted that the question of whether the adoption and application of the amendment rules was lawful or not was undoubtedly one that needed to be addressed and would be taken up by the court following the conclusion of the pleadings and the presentation of evidence by the parties. The learned single judge noted that, at that point in the proceedings, the court had to decide where the balance of convenience lay and whether or not the parties would suffer irreversible harm or loss in the event that an interim order of injunction was granted or denied. The learned single judge came to the conclusion that, at that point, it would be more convenient to deny the temporary injunction. Thus, the knowledgeable sole Judge came to the following conclusion:

"As previously mentioned, even though the amended rules were in place—they had been added to the court file since January 2013—the current petition was only filed after the election process had begun. Mr. Rajiv Khosla, a well-known member and leader of the bar, learned of them on August 30, 2013. Importantly, he is a signatory to the resolutions that are a part of the writ suit that defendant No. 1 filed and a member of the Delhi Bar Council. As previously mentioned, the modified regulations are essentially putting the "one bar one vote" theory into practice, which has also received Supreme Court approval. Election procedures have already started. Consequently, I believe that at this point the plaintiff is not entitled to any kind of ex parte ad interim injunction.

List to be reviewed on February 25, 2014."

7. The appellants/plaintiffs' grouse, as expressed to the learned single judge and to us as well, is that the contested rule revision was not implemented in line with the protocol outlined in the rules themselves. The learned single judge was made aware of this, but he chose not to address the significance of the submission or the claim that Rules 33 and 65 had not been adhered to at all. This would be clear from the following passage in paragraph 6 of the contested judgment:

"As mentioned above, the claim of the plaintiff is with reference to the adoption and execution of the altered election rules which, essentially, have the effect of implementing the "one bar one vote" principle. The principal argument put up by Mr. Singh, the plaintiffs' learned senior counsel, is that the regulations have not been amended in compliance with the process outlined in the rules themselves. Rule 33 and Rule 65 have been mentioned in relation to this. These regulations essentially stipulate that a majority of two thirds is required to approve amendments in a general meeting. In order to prove that the defendant association hasn't called a general body meeting to alter the aforementioned regulations in accordance with regulations 33 and 65, my attention has been referred to a number of facts and documents. I don't think it's necessary to go into the specifics of the papers and materials used for the aforementioned purpose at this time. I should point out, nevertheless, that on January 15, 2013, the defendant association filed the amended rules in CS(OS) No.2883/2011, which is the case of Nevedita Sharma v. Delhi High Court Bar Association & Ors[18]. As a result, starting on January 15, 2013, the aforementioned rules were included in the court's official records."

(Added underlining)

8. Mr. Khosla further argued that the case [CS (OS) 2883/2011], which is the one that was stated in the paragraph above, involved collusive litigation between the plaintiffs (Nivedita Sharma v. Delhi High Court Bar Association & Others). According to the order issued in the aforementioned lawsuit on August 30, 2013:

162011 (13) SCC 774

17 2012 (8) SCC 589

18https://indiankanoon.org/doc/1443396/

30.08.2013 IA.No. /2013 and CS(OS) No.2883/2011 Mr.Mittal, the plaintiff's attorney, has submitted an application to the court today. The purpose of registry is to number and register the application.

The Delhi High Court Bar Association and Mr. Sunil K. Mittal, the plaintiff's attorney, as well as Chandhiok, the defendant's experienced senior counsel, have called the court's attention to the orders made on June 8, 2012, June 9, 2012, October 18, 2012, and November 29, 2012. Sunil K. Mittal, the attorney, adds that since the regulations have been updated, they ought to be documented.

In the application handed over in court today, the applicant/ plaintiff has made the following prayers:

(a) the said Constitution and Rules, etc. may be taken on record;

(b) directions may be issued to the Defendants to abide by the same and hold election in terms thereof;

We are of the opinion that the case arising out of IA No. 17553/2013 should be remanded to the learned single Judge for a new consideration and for a definitive determination of the appellant's said application for interim relief after having heard the counsel for a considerable amount of time and carefully considering all relevant factors. This is due to a number of factors. First and foremost, we believe that the learned single judge should not have dismissed the appellants' arguments regarding violations of Rules 65 and 33 of the DHCBA Rules, 1993 by simply stating that the amended rules had been entered into the record as a result of the order dated August 30, 2013, in the case of Nevidita Sharma v. Delhi High Court Bar Association & Others. Since the appellants were not parties to the lawsuit, it did not stop them from contesting the modified regulations even though they had been entered into the record in that case. The learned single judge was also free to analyze the arguments made in reference to the aforementioned DHCBA Rules, 1993, 65 and 33. The appellants presented separate arguments, which the learned single judge should have taken into account.

Second, the learned single judge should not have placed the application for review so long after the election, even though he first believed that an interference with the application under Order 39 Rules 1 and 2 CPC was not needed. The next date specified in the aforementioned application is 25.02.2014, with the election planned for December 13, 2013.In our opinion, the learned single judge should have listed the application for disposal as soon as possible so that he could decide on it before the election date if he felt that the defendants' reply was required before making a decision on the application. He should also have given the defendants a short window of time to respond to the application. The application was listed on February 25, 2014, more than two months after the election date of December 13, 2013, rather than being rejected by the learned single judge. It is important to remember that the application included petitions for an injunction to prevent the DHCBA from implementing the modified rules and to hold elections in accordance with the 1993 DHCBA Rules. The election would have taken place by February 25, 2014, at which point the application would become infructuous. Therefore, in our opinion, the learned single Judge had an obligation to decide how to proceed with the application, in line with the law, and preferably as soon as possible—that is, before the poll date.

Finally, we believe that the knowledgeable single Judge was mistakenly under the notion that once the electoral process was underway, it could never be tampered with. N.P. Punnuswami v. The Returning Officer Supreme Court[19] rulings:

Elections "to either House of Parliament or to the House or either House of the Legislature of a State" were at issue in Mohinder Singh Gill v. The Chief Election Commissioner [20], Election Commission of India v. Ashok Kumar[21] , and the cases mentioned above). and as a result, the Constitution's Article 329(b) requirements were applicable. Article 329(b) prohibits interfering with such an election other than through an election petition filed in accordance with any applicable statute passed by the relevant Legislature. Since this election exclusively concerns the election of association office bearers, Article 329(b) is not applicable. However, as this court noted in the Yachting Association case (above), the legal guidelines pertaining to elections of the kind specified in Article 329(b) have also been applied to general elections, as demonstrated by the case of an election to a society's managing committee in Shri Sant Sadguru Janardan Swami v. State of Maharashtra:[22]. For such elections as are outside the scope of According to Article 329(b), courts have, out of caution, typically taken a hands-off stance while an election is ongoing. However, it does not have the absolute bar that Article 329(b) mandates And for this reason, the Supreme Court noted in B.D. Kaushik (above) that courts shouldn't often intervene in elections by issuing injunctions. According to Ashok Kumar (above), the court must proceed with extreme care and caution when intervening in an electoral process and considering an election dispute that does not fall under the purview of Article 329(b).

"5) Any election dispute brought before the court while election processes are still ongoing, even if it is not subject to Article 329(b)'s ban, requires the court to exercise extreme prudence and circumspection. It is important to make sure that no attempt is made to take advantage of the court's indulgence by filing a petition that appears innocent on the surface but is actually a ruse or pretext to achieve a secret or hidden goal. It goes without saying that given the circumstances, the court would only act reluctantly and would only do so in the event that a compelling case for its intervention had been made by making the petitions with specificity and detail and providing the required evidence to back them up."

19AIR 1952 SUPREME COURT 64, 1990

20(AIR 1952 SC 64)

21(AIR 1978 SC 851

22 (2001) 8 SCC 509

37. Fourthly, Mr. Chandhiok has firmly promised that the written statement will be filed within two days, and the factual matrix and chronology of events, as submitted by him and documented by us in this order, are now available. When the learned single judge issued the contested order, these facts were not known. We believe it would be acceptable for the knowledgeable single judge to weigh the issue against the context of the case's factual matrix.

For these reasons, we are returning the case to the knowledgeable single judge so that they can render a "conclusive" ruling regarding the appellant's application (IA No. 17553/2013). When making a decision on an interim application, the learned single judge will take into account the three essential factors: the strength of the case, the convenience factor, and the issue of irreversible harm or injury. While doing so, the learned single judge would also take into account whether or not this is an exceptionally unique case that warrants meddling in the electoral process.

We have been informed that four candidates, out of all the contenders, have been deemed elected because they faced no opposition. We make it plain that any orders made by the learned single judge in the aforementioned suit CS(OS) 2111/2013 would, in any case, apply to the election of those candidates as well as any other candidates who might be elected in the current elections, assuming they were held. The defendants have thirty days to submit their written statements in accordance with the impugned ruling. Nevertheless, we accept Mr. Chandhiok's pledge that the defendant No. 1 (DHCBA) will file its written statement within two days, even if the DHCBA hasn't yet done so, and we let the DHCBA to do so. The application, IA No. 17553/2013, will be listed before the learned single judge on December 5, 2013, rather than February 25, 2014, as previously instructed in the contested ruling. This will allow for a new consideration of the application, with a focus on the parameters mentioned above, before the poll date of December 13, 2013. The appeal is now closed in light of these observations and recommendations.

There shall be no order as to costs.

4. Critical Appraisal

The judicial approach to elections in India emphasizes the protection of democratic values, the enforcement of fair and transparent electoral processes, and the safeguarding of citizens' rights. The Indian judiciary has played a significant role in interpreting and enforcing election laws, ensuring that the electoral system operates in accordance with constitutional principles.

Courts in India have consistently upheld the importance of free and fair elections, often intervening to rectify electoral malpractices, ensure equitable representation, and protect the rights of voters and candidates. Judicial decisions have also addressed issues such as campaign finance, disqualification of candidates, electoral fraud, and the conduct of political parties.

The judiciary has been instrumental in setting precedents and guidelines for conducting elections, ensuring that electoral authorities adhere to legal provisions and maintain the integrity of the electoral process. Additionally, courts have actively addressed disputes related to elections, providing legal remedies and upholding the rule of law to resolve electoral conflicts.

In conclusion, the judicial approach to elections in India reflects a commitment to upholding democratic values, ensuring accountability, and promoting the fairness and transparency of the electoral system. Through its interventions and rulings, the judiciary has contributed significantly to strengthening the electoral framework and protecting the democratic rights of citizens.