Ingle v. State Board of Elections
JOHN J. INGLE v. STATE BOARD OF ELECTIONS JOHN J. INGLE v. STATE BOARD OF ELECTIONS.

226 N.C. 454
Supreme Court of North Carolina
Decided June 05 1946

226 N.C. 456Briggs & West and Ingle, Bucker & Ingle for petitioner, appellant.

Attorney-General McMullan and Assistant Attorney-General Moody for respondents, appellees.

* * *

¶1 The question for decision is whether the notice of candidacy filed by the petitioner with the State Board of Elections complies with the provisions of the Primary Election Law. The trial court answered in the negative, and we approve.

¶2 It is provided by G. S., 163-147, that in any primary election when there are two or more vacancies for Chief Justice and Associate Justices of the Supreme Court to be filled by nominations, "all candidates shall file with the state board of elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective 226 N.C. 457 candidate is asking the nomination." And further: "All votes east for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein."

¶3 The motion for judgment on the pleadings admits, for the purpose, the allegation in the answer that at the time of filing notice of candidacy the petitioner failed to designate to which of the two vacancies he was asking the Republican nomination. Barnes v. Comrs., 135 N. C., 27, 47 S. E., 737. This constitutes a fatal defect in his notice of candidacy. McLean v. Board of Elections, 222 N. C., 6, 21 S. E. (2d), 842.

¶4 The very real quandary presented to the State Board of Elections was, that if the petitioner were asking the Republican nomination for the vacancy occurring by reason of the expiration of the term of office presently occupied by Associate Justice "Winborne, an election would be necessary to determine the nominee as between the petitioner and Herbert F. Seawell, Jr., who had previously given notice of his candidacy as nominee of the Republican Party for the same vacancy. On the other hand, if the petitioner were seeking the Republican nomination for the vacancy occurring by reason of the expiration of the term of office presently occupied by Associate Justice Barnhill, no party election would be necessary as no other person had given notice of his candidacy as nominee of the Republican Party for this vacancy. G. S., 163-128. The problem thus presented was one which the statute required the petitioner to solve at the time of filing notice of his candidacy. It is conceded that in this respect his notice falls short of the statutory requirements.

¶5 It is contended, however, that the provisions of the Primary Law run afoul of Art. IV, sec. 21, of the Constitution, which provides that the Justices of the Supreme Court shall be elected by the qualified voters of the State, "as is provided for the election of members of the General Assembly." The basis of the contention is, that the nomination constitutes an integral part of the election, Nixon v. Herndon, 273 U. S., 536, and that the regulation in question does not apply to the nomination of members of the General Assembly. Even so, the Justices of the Supreme Court are voted on in the general election in the same manner as members of the General Assembly. The method of selection of nominees, which applies alike to all political parties, does not purport to reach into and control the general election. It goes only to the official ballot. G. S., 163-128. The constitutionality of the Primary Election Law was assailed and sustained in McLean v. Board of Elections, supra. A similar result must follow here. The present statute was enacted in 1921, and all candidates of all political parties for nominations to vacancies occurring on the Supreme Court have consistently observed its provisions since its enactment. It was born of experiences in the Democratic primary of 1920 when two vacancies on the Supreme Court were to be 226 N.C. 458 filled and both nominations were required to be voted upon, albeit there was but a single candidate seeking the nomination for one of the vacancies and a number of candidates seeking the other. The enactment was intended to avoid similar situations and to clarify the regulations governing primary elections when two or more vacancies on the Supreme Court are to be filled by nominations in the same primary.

¶6 Finally, it is to be remembered that mandamus lies only to enforce a clear legal right, and not a doubtful one. The party seeking the writ must have a clear legal right to demand it, and the party to be coerced must be under a legal obligation to perform the act sought to be enforced. Poole v. Board of Examiners, 221 N. C., 199, 19 S. E. (2d), 635; Warren v. Maxwell, 223 N. C., 604, 27 S. E. (2d), 721; White v. Comrs. of Johnston, 217 N. C., 329, 7 S. E. (2d), 825; Hayes v. Benton, 193 N. C., 379, 137 S. E., 169; Umstead v. Board of Elections, 192 N. C., 139, 134 S. E., 409. It is rarely, if ever, proper to award a mandamus where it can be done only by declaring an Act of Assembly unconstitutional. Person v. Doughton, 186 N. C., 723, 120 S. E., 481; McIntosh on Practice, 1079, et seq. In the instant case the writ was properly denied. The petitioner has failed to make manifest his right to the relief sought.

¶7 The judgment appealed from will be upheld.

¶8 Affirmed.