

SUPREME COURT OF INDIA

K. Venkateswara Rao

Vs.

Bekkam Narasimha Reddy

C.A.No.1864 of 1967

(M. Hidayatullah, C.J.I. and G. K. Mitter, J.)

13.08.1968

JUDGEMENT

MITTER, J.:-

1. On April 6, 1967 the appellant before us, filed an Election petition in the High Court of Andhra Pradesh challenging the election of the first respondent, B. N. Reddi to the Andhra Pradesh Legislative Assembly from the Kollapur Constituency inter alia on the ground of corrupt practices committed by him, his election agent, polling agents and other workers mentioned in the schedule to the petition with his consent and praying for a declaration that the second respondent, K. Ranga Das was duly elected from the said constituency. The third respondent was another candidate who had contested the election but had fared very badly. The first respondent secured 25,321 votes at the election overtopping the votes polled by the second respondent by approximately 1,600. The petitioners stated in paragraph 5 of the petition that one V. K. Reddi who had filed his nomination payer had been made to withdraw his candidature by the first respondent on payment of an illegal gratification of a sum of Rs. 10,000. This allegation was repeated in paragraph 10. The first respondent was also charged with other corrupt practices in diverse other paragraphs of the petition.

2. The first respondent put in his written statement on 28th June, 1967; the second respondent put in his counter affidavit on June 26, 1967. The issues were settled on July 24, 1967. On August 4, 1967 the petitioners filed Application No. 161/1967 for impleading V. K. Reddi. Thereafter they wanted to withdraw that application when the examination of witnesses had commenced. On August 7, 1967 this application was dismissed. On August 8, 1967 the first respondent filed Application No. 169/1967 praying for dismissal of the petition on the ground that although V. K. Reddi had been charged with corrupt practices he had not been impleaded as a party to the petition which was liable to be dismissed under the provisions of Section 82 (b) of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') in compliance with S. 86 (1). The election petitioners filed Application No. 187 of 1967 for withdrawing the allegations against V. K. Reddi, or, in the alternative to implead him as a respondent. They also filed Application No. 186/1967 for condoning the delay in seeking to implead V. K. Reddi in Application No. 187/1967. The second respondent filed a number of applications of which it is necessary to take note of a few only. Application No. 174/1967 was filed for condoning the delay in seeking to implead V. K. Reddi in Application No. 175/1967. Application No. 175/1967 was for the purpose of impleading V. K. Reddi as a party respondent to the election petition.

3. The learned trial Judge held that the allegations contained in the election petition amounted to an imputation of corrupt practice to V. K. Reddi and although of the view that the prayer in Application No. 169/1967 for condonation of delay was allowable in suitable cases, he felt himself bound by the decision of Kumarayya, J., in Applications Nos. 150-155/1967 in Election Petition No. 11 of 1967 and dismissed the amendment application No. 169/1967.

4. Before us a faint attempt was made to argue that the allegation against V. K. Reddi did not amount to a charge of corrupt practice but that it was the first respondent who was guilty of such a practice by making the payment of illegal gratification. The argument has only to be set down to be rejected. In paragraph 5 of the petition the definite averment was that V. K. Reddi had been made to withdraw his candidature by the first respondent on payment of an illegal gratification of Rs.10,000/-. If the payment of Rs. 10,000 amounts to an illegal gratification the taint attaches not only to the payer, the first respondent but also to the payee, V. K. Reddi.

5. The second point urged was that the learned Chief Justice's view in regard to the power of condonation of delay in impleading V. K. Reddi was correct and although he could not give effect to his own view because he felt himself bound by the decision of Kumarayya, J., we ought to accept the appeal and uphold his view. This argument was developed as follows. An election petition was in essence an application to the High Court for the purpose of the Indian Limitation Act and as such Section 29 (2) of the Act of 1963 was applicable to such petitions drawing in its chain the applicability of Section of the Act giving the Court the power to admit the same if it was satisfied that the applicant had sufficient cause for not preferring the application within the prescribe period of limitation.

6. The Act as it now stands provides by Section 80A that the Court having jurisdiction to try an election petition shall be the High Court. Under Section 81 (1) "an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days, but not earlier than, the date of election of the returned candidate."

7. Section 82 runs as follows:-

"A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

8. Section 83 lays down inter alia that an election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such practice.

9. Section 86 (1) provides that :

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

The last mentioned Section relates to the giving of security for costs. Sub-section (4) of Section 86 gives any candidate not already a respondent, a right to be fined as one upon application to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made. Under sub-section (5),

"The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

Sub-sections (6) and (7) aim at the speedy disposal of the election petitions. Section 87 (1) provides that :

"Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits."

The proviso to the sub-section gives the High Court discretion to refuse, for reasons to be recorded in writing, to examine any witness. Sub-section (2) makes the provisions of the Indian Evidence Act applicable in all respects to the trial of an election petition. Section 98 shows the nature of the order to be made by the High Court at the conclusion of the trial of an election petition. Section 99 makes it obligatory on the High Court while making an order under Section 98 in cases where any charge is made in the petition of any corrupt practice having been committed at the election, to record a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice as also the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. There is a proviso to the Section which lays down that a person who is not a party to the petition shall not be so named unless he has been given notice to appear before the High Court and to show, cause to the contrary. In case he does so, he is further given the right to cross-examine any witness already examined by the High Court and to give evidence in his defence.

9A. Entry 72 of List I of the Seventh Schedule vests in Parliament the exclusive power to make laws with respect to elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President as also the Election Commission. Under Article 329 (b)

"Notwithstanding anything in this Constitution-

(a) * * * * *

(b) no election to either House of Parliament or to the House of either House of the Legislature of a

State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

10. In order to determine whether an election petition launched for the purpose of contesting the validity of an election is an application within the meaning of the Indian Limitation Act, it is necessary to examine the nature of the rights and liabilities involved therein and of the provisions of law which govern such determination. The right of citizens to elect representatives of their choice either to the House of the People or to a Legislative Assembly of a State, the process of election beginning from the notification of general elections and the nomination of candidates, the general procedure at elections, taking of the poll and counting of votes and the publication of election results are all matters dealt with and covered by different provisions of the Act. The right to the elect is statutory and so are all the processes connected with the election. There is no element of any common law right in the process of election. Part VI of the Act deals with disputes regarding election. The second chapter of this part shows how elections may be called in question, which Courts have jurisdiction to try election petitions, how such a petition is to be presented, who are to be parties to the petition, what are to be the contents of the petition as also the relief which may be claimed by the petitioner. The third chapter of this part deals with the trial of election petitions. The first Section of this group makes it incumbent on the High Court to dismiss an election petition straightaway if it does not comply with certain statutory requirements. The next Section is a guide to the procedure to be adopted by the High Court in the trial of an election petition. This Section does not equate an election petition with a suit but merely shows that subject to the provisions of the Act and of any rules made thereunder, the trial is to conform as nearly as possible to the trial of a suit under the Code of Civil Procedure. This means that (a) the contestants have a right to file written statements, (b) both parties must disclose the documents on which they rely; (c) they must examine witnesses orally, if necessary, to substantiate the charges levelled or the defences raised in the petition; and (d) the evidence to be adduced must comply with the requirements of the Indian Evidence Act. There are however certain limitations as to the questions which may be put to a witness contained in Ss. 94 and 95; the returned candidate has a right to recriminate under the provisions of Section 97. The High Court does not pass a decree as in the case of a suit but has to make an order in terms of Section 98 which gives the nature of the orders to be made. The High Court has to communicate the substance of its decision to the Election Commission and the Speaker or the Chairman as the case may be of the House of the People or of the State Legislature. Chapter IV deals with withdrawal and abatement of election petitions. Chapter IV-A deals with appeals from the decisions of the High Court and Chapter V deals with costs and security for costs.

11. The above brief analysis is sufficient to show that the trial of an election petition is not the same thing as the trial of a suit. As was pointed out by this Court in the case of *Kamaraja Nadar v. Kunju Thevar*, 1959 SCR 583 at p. 596 = (AIR 1958 SC 687 at p. 693), the provisions of the Act

"go to show that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law.." The Court also emphasised on the peculiar character of an election petition by quoting from the observations of *A. Sreenivasan v. Election Tribunal, Madras*, (1955) 11 ELR 278 at p. 293. Reference was also made to the *Tipperary* case,

(1875) 3 O'M and H 19, 25 where Morris, J., said :

" a petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested."

12. This aspect of an election petition was emphasised again in the case of Mallappa Basappa v. Basavaraj Ayyappa, 1959 SCR 611=(AIR 1958 SC 698) where it was held that the provisions of O. 28 R. 1 of the Code of Civil Procedure do not apply to election petitions and it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission.

13. Even though Section 87 (1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election petition. Under O. 6, R. 17 C. P. C. a Court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the Court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of Limitation. But S. 86 (5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of O. 1, R. 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86 (1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.

14. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the Court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment: the extent of such application is governed by Section 29 (2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.

15. Before the recent amendment of the Representation of the People Act, election petitions had to be presented to the Election Commission and it was the Commission which was empowered under Section 85 to dismiss the petition if the then provisions of Section 81, Section 83 and Section 117 were not complied with. It is only when the petition was not so dismissed that the Election Commission had to appoint an Election Tribunal for the trial of the petition. Under Section 85 the Commission had power to admit a petition presented after the prescribed period if it was satisfied that there was sufficient cause for the failure. Section 90 (4) of the Act of 1951 empowered the Tribunal to dismiss an election petition even if it had not been so dismissed by the Election Commission.

16. The Act as amended in 1966 gives the jurisdiction to try on election petition to the High Court of a State. The provision for appeal in Section 116-A was introduced in the Act for the first time in 1956 providing for an appeal from every order of the Tribunal under Section 98 or Section 99 to the High Court of the State in which the Tribunal was situate. By sub-section (2) of Section 116-A of the Act as amended in 1956 the High Court was, subject to the provisions of the Act, to have the same powers, jurisdiction and authority and was to follow the same procedure with respect to an appeal under this Chapter (Chapter IV-A) as if the appeal were an appeal from an original decree passed by a Court situate within the local limits of its civil appellate jurisdiction. Sub-section (3) fixed the time limit for filing the appeal to a period of 30 days from the date of the order complained of. The proviso to this sub-section gave the High Court discretion to entertain an appeal after the expiry of the period of 30 days if it was satisfied that the appellant had sufficient cause for not preferring the appeal within such period. This Section was amended again in 1966 and Section 116-A (1) now provides for an appeal from an order of the High Court under Section 98 or Section 99 to the Supreme Court on any question, whether of law or fact. Sub-section (2) of the new Section is on the same lines as the old sub-section (3) excepting that the Supreme Court has been substituted for the High Court and the High Court for the Tribunal in the old section.

17. While the Act of 1956 was in force this Court had to go into the question as to whether Section 29 (2) of the Limitation Act of 1908 would be applicable to an appeal preferred to the High Court from an order of the Tribunal. In *Vidyacharan Shukla v. Khubchand Baghel*. 1964-6 SCR 129 = (AIR 1964 SC 1099) the main question before this Court was whether for the purpose of computing the period of 30 days prescribed under Section 116-A (3) of the Act, the provisions of Section 12 of the Limitation Act could be invoked. The High Court had proceeded on the basis that Section 29 (2) applied to the case of appeals under Section 116-A of the Act and on that basis had held that the appeal was within time if it was computed after making the deductions permitted by Section 12 of the Limitation Act. There was a good deal of discussion in the case about the scope and extent of Section 29 (2). We are not concerned with that in the present appeal. According to the learned Chief Justice and Ayyangar, J.

"even on the narrowest construction of the words 'different from those prescribed therefor in the first schedule' occurring in the opening part of S. 29 (2), the exclusion of time provided for by

Article 12 of the Limitation Act would be permissible in computing the period of limitation for filing the appeal to the High Court. "

Subba Rao, J., (as he then was) took the view, that Section 116-A did not provide an exhaustive and exclusive code of limitation and did not exclude the general provisions of the Limitation Act. The majority view was that though the right of appeal was conferred by Sec. 116-A of the Act of 1951 it was still an appeal under the Code of Civil Procedure and to attract Article 156 of the First Schedule to the Limitation Act, it was not necessary for an appeal to be an appeal under the Code of Civil Procedure in that the right to prefer the appeal should be conferred by the said Code. In our view, sub-section (2) of Section 116-A empowered the High Court to treat an appeal under that Section presented to it as if it were an appeal from an original decree passed by a court within the local limits of its civil appellate jurisdiction. Consequently, the jurisdiction, powers and authority of the High Court would be the same as in an appeal from an original decree of a lower court. In other words, in entertaining the appeal and disposing of it the High Court could exercise the same powers as were available to it in an appeal from a decree of a lower Court.

To such an appeal the powers of the High Court under Section 12 of the Limitation Act would necessarily be attracted.

18. Mr. Ram Reddy attempted to press that decision to service in the appeal before us. In our view, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no Section in the Act as it now stands which equates an order made by the High Court. under S. 98 or S. 99 to a decree passed by a civil Court subordinate to the High Court. An appeal being a creature of a statute the rights conferred on the appellant must be found within the four corners of the Act. Sub-section (2) of the present Sec. 116 A expressly gives this Court the discretion and authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117.

19. It was argued that if a petition were to be thrown out merely because a necessary party had not been joined within the period of 45 days no enquiry into the corrupt practices alleged to have been committed at certain elections would be possible. This is however a matter which can be set right only by the Legislature. It is worthy of note that although the Act has been amended on several occasions, a provision like Section 86 (1) as it now stands has always been on the statute book but whereas in the Act of 1951 the discretion was given to the Election Commission to entertain a petition beyond the period fixed if it was satisfied as to the cause for delay no such saving clause is to be found now. The legislature in its wisdom has made the observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition.

20. It is to be noted however that even though the Indian Limitation Act, 1963 does not apply to an

election petition provisions like Sections 9 and 10 of the General Clauses Act, 1897 providing for computation of time which are in pari materia with Sections 12 (1) and 4 of the Limitation Act would apply to such a petition.

21. The last submission of counsel for the appellants was that the failure to implead V. K. Reddi did not make the election petition liable to dismissal under Section 86 (1). It was argued that after V. K. Reddi had withdrawn from contest he was no longer a candidate within the meaning of Section 79 (b) or 82 (b) of the Act. In our opinion it is not open to him to argue that point in view of the decision of this Court in *Har Swarup v. Brij Bhushan*, 1967-1 SCR 342 = (AIR 1967 SC 836). It is to be noted that this decision does not stand by itself. In *Mohan Singh v. Bhanwarlal*, 1964-5 SCR 12 = (AIR 1964 SC 1366) an attempt was made to get the election petition dismissed in limine on the ground that one of the candidates at the election, namely, Himmat Singh, against whom allegations of corrupt practice were made in regard to withdrawal of his candidature was not joined as a respondent. It was held by this Court that a mere offer to help in getting employment was not an offer of gratification within the meaning of Section 123 (1) (B) of the Act. The Court however observed :

"If therefore the petition contained any imputation of corrupt practice made against Himmat Singh it could not be regarded as properly constituted unless he was impleaded as a respondent, for by the definition of 'candidate' in S. 79 (b), the expression 'any other candidate' in Section 82 (b) must include a candidate who had withdrawn his candidature." (see at p.18 of SCR) = (at p. 1369 of AIR). Reference may also be made to *Amin Lal v. Hunna Mal*, 1965-1 SCR 393 = (AIR 1965 SC 1243).

22. It was however sought to be argued that Section 99 enjoined upon the High Court to name all persons who had been proved at the trial to have been guilty of any corrupt practice and where such a person was not a party to the petition, he was not to be so named unless he had been given notice to appear before the High Court and asked to show cause why he should not be so named and if he chose to appear, he was to be given an opportunity of cross-examining any witness already examined by the High Court and of calling evidence in his own defence and of being heard. This provision, to our mind, only enjoins upon the High Court to give an opportunity to a person sought to be held guilty of a corrupt practice if he was not a party to the petition, but it does not apply to a person who is a necessary party thereto. An obvious case for the use of powers under Section 99 would be that of an agent guilty of commission of a corrupt practice with the consent of the candidate. Such a person would not be a necessary party to the petition but he must have an opportunity of showing cause and of being heard before the High Court can name him as guilty of a corrupt practice while making an order under Section 98.

23. In our opinion, the appeal has no merits and must be dismissed with costs.

Appeal dismissed.

