

Thammanna

Vs

K. Veera Reddy and Others

Civil Appeal No. 1950 (NCE) of 1979

(R. S. Sarkaria, P. S. Kailasam, JJ)

23.07.1980

JUDGMENT

KAILASAM, J. –

1. This appeal by Shri Thammanna is directed against a judgment, dated April 24, 1979 of the High Court of Andhra Pradesh, whereby the election petition filed by Shri V. Krishna Reddy, respondent 7 herein, against the returned candidate, Shri K. Veera Reddy (respondent 1 herein) was dismissed. The material facts are these :

2. In the elections held for the Andhra Pradesh Legislative Assembly in February 1978 respondents 1 to 4, 6, 7 and the appellant filed their nominations for Amarchinta Assembly Constituency. Polling took place on February 25, 1978, and Shri K. Veera Reddy, respondent 1, was declared elected on February 27, 1978. He secured 34,72 votes while his nearest rival, respondent 2, got 29,419 votes. The appellant obtained 822 votes only.

3. Shri V. Krishna Reddy, (respondent 7 herein), being a voter for 198 Amarchinta Assembly Constituency in Mahabunagar District filed an election petition in the High Court to get the election of the first respondent declared void on the ground that on the date of filing the nomination paper as well as on the date of the election, this respondent had subsisting contracts with the Government of Andhra Pradesh and, as such, he was under Section 9-A of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') disqualified to be chosen to fill the seat. All the candidates who had filed their nominations, were joined in the election petition as respondents. The appellant was impleaded as original respondent 5. The election petition was contested by respondent 1, (K. Veera Reddy), only. The appellant (i.e. original respondent 5) did not file any written statement. He did not lead any evidence, nor did he cross-examine the witnesses produced by respondent 1 or the election-petitioner. He did not participate even in the arguments.

4. A preliminary objection has been raised by the learned counsel for respondent 1. It is submitted that Shri Thammanna is not competent to maintain this appeal, because he does not fulfil the character of a "person aggrieved" by the judgment of the High Court. It is emphasised that it was not necessary for the election petitioner to join Shri Thammanna as a respondent because no relief was claimed against him; that he was impleaded as respondent 5 only as a matter of form; that he did not participate in the proceedings before the High Court; nor joined issue with respondent 1. It is pointed out that according to the judgment of the High Court, the contest was only between the election-petitioner and respondent 1, while the original respondents 2 to 7, including Thammanna, were proceeded against ex parte. In short, the objection is that since the appellant could not be said to be a party adversely affected by the judgment of the High Court, he has no locus standi to prefer

this appeal.

5. In reply, Shri Govindan Nair, learned counsel for the appellant submits that Shri Thammanna was not a mere pro forma respondent but was a person who was entitled to apply and join as a party under Section 86(4) of the Act within fourteen days from the date of commencement of the trial and subject to any order as to security for costs. Such a person is entitled under the law by virtue of his status as a party-respondent to file an appeal against the decision of the High Court, if he feels aggrieved by the same. The very fact that the original respondent 5, has filed this appeal shows that he is a person aggrieved by the decision of the High Court, dismissing the election petition. It is maintained that the mere fact that the appellant did not file any written statement or participate actively in proceedings before the High Court, or that the election-petitioner has not joined him as a co-appellant, is not sufficient to deny him the status of a "person aggrieved". It is argued that in an election petition, the petitioner is not the *dominus litis*, but acts as a representative of the whole body of electors in the constituency, that is why an election-petitioner cannot at his sweet will abandon the election petition or withdraw from it without complying with the procedure prescribed, and if he does so, in view of Sections 109 and 110 of the Act, the court can allow another voter or respondent to continue the petition. According to the counsel, since an appeal is only a rehearing of the original petition any party to the original proceedings who feels aggrieved, is entitled, in accordance with the principle underlying Sections 108 and 109 of the Act, to file an appeal; even if the original election-petitioner neglects or abstains from doing so.

6. Shri Nair further submits that the High Court has wrongly stated that the appellant (being original respondent 5) was also proceeded against *ex parte*; that, in fact, the appellant was present in the High Court on most of the dates of hearing, although he remained quiescent.

7. In the alternative, it is submitted that if it is assumed that the appellant was proceeded against *ex parte* in the High Court, the final determination in the impugned judgment will be deemed to be in the nature of an *ex parte* decree against him. In that view of the matters also, according to the learned counsel, the appellant has the necessary locus to maintain this appeal, against that *ex parte* determination. In support of his contentions, Shri Nair has referred to *K. Kamaraja Nadar v. Kunju Thevar* (1959 SCR 588 : AIR 1958 SC 687 : 14 ELR 270); *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa* (1959 SCR 611 : AIR 1958 SC 698 : 14 ELR 296); *A. Sreenivasan v. Election Tribunal* (1955-56) 11 ELR 278 (Mad HC) and *Adi Pherozshah Gandhi v. H. M. Seervai, Advocate-General of Maharashtra, Bombay* ((1971) 1 SCR 863 : (1970) 2 SCC 484 : AIR 1971 SC 385).

8. Before dealing with the contentions advanced on this preliminary point, let us have a look at the relevant provisions of the Act and the Code of Civil Procedure. Section 87(1) of the Act lays down that 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. In other words, the provisions of the Code of Civil Procedure apply to the trial of an election petition only where there is no express provision in the Act and there is no inconsistency with the Act. Section 98 indicates the categories of orders which the High Court may make at the conclusion of the trial of an election petition. Such an order may be an order :

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

9. Section 99 requires that the High Court shall at the time of making an order under Section 98, in the case where any charge of corrupt practice having been committed at the election is proved, make a further order naming the person or persons guilty of the corrupt practice and also for paying costs.

Section 116-A runs thus :

Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under Section 96 or Section 99.

10. Sub-section (2) prescribes a period of thirty days' limitation within which such an appeal is to be preferred.

11. In the context, Section 116-C may also be seen. It reads as follows :

Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing the determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the court) shall, so far as may be, apply in relation to such appeal.

12. It may be seen that although Section 116-A confers a right of appeal from an "order" made under Section 96 or 99, and Section 116-C from "any final order" passed by the High Court in proceedings in an election petition, neither of these two sections mentions the person or persons who have a right of appeal against such orders. Barring the exceptional provision in Section 116-A, which marks a departure from the Code of Civil Procedure, Section 116-C is substantially analogous to Section 96(1) of the Code of Civil Procedure, 1898 which provides :

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised

Just as the term "decree" in Section 96(1) of the Code means an adjudication which "conclusively determines all or any of the matters in controversy in the suit", the expression "any final order" as used in Section 116-C of the Act contemplates a conclusive determination of all or any of the matters in controversy in the election petition between the parties.

13. Clauses (a), (b) and (c) of Section 98 illustrate such "final orders" which have been made appealable under Section 116-C of the Act. In the instant case, the order sought to be impeached in this appeal is of the category mentioned in clause (a) of Section 98 of the Act. Section 98 also does not specifically mention as to who can appeal against the final orders mentioned therein.

14. Section 116-C of the Act makes the Code of Civil Procedure applicable to the hearing and determination of appeals filed under the Act. Since the substance and principle embodied in Section

96(1) of the Code is not inconsistent with anything in the Act, we may legitimately look for guidance to Section 96(1) and other provisions of the Code and also the general principles which govern the right of appeal thereunder. This being the position, the basic conditions and postulates which govern the right of appeal under Section 96(1) of the Code will apply to an appeal under Section 116-C of the Act, also. As a general proposition, therefore, it may safely be stated that before a person is entitled to maintain an appeal under Section 116-C, all the conditions mentioned below, must be satisfied :

- (1) that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition,
- (2) that the person seeking to appeal has been a party in the election petition, and
- (3) that he is a "person aggrieved", that is a party who has been adversely affected by the determination.

In the present case, these conditions, particularly Nos. (1) and (3), have not been fulfilled. Before the High Court the appellant did not, at any stage join the contest. He did not file any written statement or affidavit. He did not engage any counsel. He did not cross-examine the witnesses produced by the election-petitioner and the contesting respondent 1. He did not appear in the witness-box. He did not address any arguments. In short, he did nothing tangible to participate in the proceedings before the High Court.

15. It was not obligatory for the election-petitioner to join the appellants a respondent. There were no allegations or claims in the election petition which would attract Section 82 of the Act. From that point of view, the appellant was not a necessary party to be impleaded. Of course, if the appellant had made an application within the time prescribed, in compliance with Section 86(4) of the Act, the court would have been bound to join him as a respondent. But the question of Section 86(4) coming into play never arose as the election-petitioner had already impleaded the appellant as respondent 5 in the election petition. Even so, Respondent 5 did not join the controversy. He neither joined issue with the contesting respondent 1, nor did he do anything tangible to show that he had made a common cause with the election-petitioner against respondent 1. In fact, the only parties between whom the matters in controversy were at issue, were the election-petitioner and respondent 1. The other respondents, including the appellant, did not participate or side with either contestant in that controversy.

16. Although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something". As per James, L.J., in *Re Sidebotham* ((1880) 14 Ch D 458) referred to by this Court in *Bar Council of Maharashtra v. M. V. Dabholkar* ((1975) 2 SCC 702 : (1976) 1 SCR 306) and *J. N. Desai v. Roshan Kumar* (AIR 1976 SC 578, 584 : (1976) 1 SCC 671, 681).

17. In the face of the stark facts of the case, detailed above, it is not possible to say that the appellant was aggrieved or prejudicially affected by the decision of the High Court, dismissing the election petition.

18. We are further unable to accept the wide argument, that since an election petition is in the nature of a representative action on behalf of the whole body of electors in the constituency, on neglect or failure of the election petitioner to file an appeal against the order of dismissal of his election petition, any other elector, particularly who is a respondent in the election petition, can, in view of Sections 109/110 of the Act, be substituted for him for the purpose of filing and continuing the appeal. It is true that an election petition once filed cannot be abandoned or withdrawn by the petitioner at his sweet will. Section 109 provides :

(1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under sub-section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition shall be published in the official Gazette.

19. Section 110 provides the procedure for withdrawal of an election petition. Its sub-section (2) mandates that "no application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed". Sub-section (3) lays down that if the application for withdrawal is granted, the petitioner shall be ordered to pay the whole or part of the costs incurred by the respondent. It further requires that notice of withdrawal shall be published in the official Gazette. Clause (c) of sub-section (3) is material. It provides that any person who might himself have been a petitioner, may within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and on compliance with the conditions as to security, shall be entitled to be substituted and continue the proceedings upon such terms as the High Court may deem fit. Section 111 provides for report of the withdrawal by the High Court to the Election Commission. Section 112(1) provides for abatement of election petition on death of the sole petitioner. Sub-section (2) requires the fact of abatement to be published. Sub-section (3) entitles any person who might himself have been a petitioner to apply and be substituted in place of the deceased to continue the proceeding upon such terms as the High Court may think fit. Section 116 makes a similar provision on the death of a respondent.

19a. As pointed out in *Bijayananda Patnaik v. Satrughna Sahu* ((1964) 2 SCR 538, 545 : AIR 1963 SC 1566 : 24 ELR 219) the principle behind these provisions is that an election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public of the constituency also is substantially interested in it, as an election is an essential part of the democratic process. That is why provision is made in election law circumscribing the right of the parties thereto to withdraw. Another reason for such provision is that the citizens a large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt or illegal practices. That is why provision is made for substituting any elector who might have filed the petition in order to preserve the purity of elections.

20. But it is equally clear from the language, setting and scheme of the provisions in Sections 109 to 116, that they do not, either in terms, or, in principle, apply to appeals or the procedure to be followed at the appellate stage before the Supreme Court.

21. Firstly, these provisions are to be found in Chapter IV, under the main caption "Withdrawal and Abatement of Election Petitions". Then, the provisions of these sections, also, repeatedly refer to the withdrawal or abatement of 'election petitions' and also to procedure in respect thereof before the 'High Court'. The provisions relating to appeals in Sections 116-A, 116-B and 116-C, have been included separately, in Chapter 'IV-A', captioned "Appeals".

22. Secondly, Section 116-C, as already noticed, enjoins the Supreme Court to hear and determine every appeal under this Act in accordance with the provisions of the Code of Civil Procedure and the Rules of the Court. No doubt, this is "subject to the provisions of the Act and the rules if any, made thereunder". But this clause only means that the provisions of the Code and the Rules of the Court in hearing an appeal to this Court will apply except to the extent their application has been excluded, expressly or by necessary implication by any provision of the Act. There is no provision in Chapter IV-A of the Act, analogous to Sections 109 to 116 of the Act, which curtails, restricts or fetters an appellant's right to withdraw an appeal. Nor is there any such provision in the Code or the Rules of this Court which does so. If the intention of the legislature was that the provisions of Sections 109 to 116 which apply to the withdrawal of election petition, should also govern the withdrawal of appeals, there was no difficulty in inserting similar provisions in Section 116-C or elsewhere in Chapter IV-A.

23. In this view we are fortified by the decision of this Court in Bijayananda Patnaik case ((1964) 2 SCR 538, 545 : AIR 1963 SC 1566 : 24 ELT 219). In that case the provisions of Sections 116-A, 109 to 116 of the Act, as they stood before the amendment of 1966, came up for consideration. The facts were that one S filed an election petition against the appellant B who had been declared elected to the State Legislative Assembly. On the appellant B's application, the Tribunal dismissed the petition under Section 90(3), for non-compliance with the provisions of Section 82 of the Act. S went in appeal under Section 116-A to the High Court. Subsequently, S applied for withdrawal of the appeal but the High Court refused to permit withdrawal, holding that it had to be guided by the principles of Sections 109 and 110 of the Act in considering the application for withdrawal.

24. In appeal by special leave, this Court held that S had an absolute right to withdraw the appeal and High Court was bound to grant him permission to do so. In this connection, the observations made by Wanchoo, J. (As he then was) speaking for the court, at page 547 of the Report, are apposite and may be extracted :

When sub-section (2) says that the powers, jurisdiction and authority of the High Court is subject to the provisions of the Act, it means that the provisions must be an express provision in the Act or such as arises by necessary implication from an express provision There is however, no express provision in Chapter IV-A dealing with appeals, which deals with the question of withdrawal of appeals under that Chapter. Nor do we think that Sections 109 and 110 necessarily imply that an appeal also cannot be withdrawn as a matter of right, unless the procedure laid down in those sections is followed. One reason for this view may at once be stated. The losing party is not bound to file an appeal and if he does not, nobody else has the right to do so. The object apparently is that the election petition filed should, if any voter so desires, be heard and decided. The sections dealing with substitution on death of the petitioner lead to that view : see Sections 112-115. There is no such provision for appeals. It seems to us that if Parliament intended that the provisions of Sections 109 and 110 which deal with withdrawal of election petitions before a tribunal shall also apply to withdrawal of appeals before the High Court under Chapter IV-A an express provision could have been easily made to that effect in Section 116-A by adding a suitable provision in the section that the provisions of Sections 109 and 110 would apply to withdrawal of appeals before the High Court as they apply to withdrawal of election petitions before the tribunal. In the absence of such a provision in Chapter IV-A, we do not think that the High Court was right in importing the principles of Sections 109 and 110 in the matter of withdrawal of

appeals before the High Court. So far therefore as the question of withdrawal of appeals before the High Court under Chapter IV-A is concerned, it seems to us that the High Court has the same powers, jurisdiction and authority in the matter of withdrawal as it would have in the matter of withdrawal of an appeal from an original decree passed by a civil court within the local limits of its civil appellate jurisdiction without any limitation on such powers because of Sections 109 and 110. The High Court thus has the same powers, jurisdiction and authority and has to follow the same procedure in the matter of withdrawal of appeals under Section 116-A as in the matter of an appeal from an original decree before it, and there is no warrant for importing any limitation in the matter on the analogy of Sections 109 and 110 of the Act, which expressly deal only with election petitions and not with appeals under Section 116-A.

25. On the above reasoning, it was further held that the provisions regarding withdrawal applicable to ordinary civil appeals before the High Court are applicable, also, to appeals under Section 116-A. Under Order XXIII, Rule 1(1) of the Code of Civil Procedure, an appellant has the right to withdraw his appeal unconditionally; and if he is to make such application, the High Court has to grant it.

26. If an appellant, who is an aggrieved person under Section 116-C of the Act, has got a right to withdraw or abandon his appeal unconditionally, a fortiori, he has every right not to file an appeal against the dismissal of his election petition, much less has any other respondent who never joined the contest in the election petition, a right to file an appeal if the aggrieved party does not do so. In other words, the principle that an election petition is a representative action on behalf of the whole body of electors in the constituency, has a very limited application to the extent it has been incorporated in Sections 109 to 116 of the Act, and its application cannot be extended to appeals under the Act.

27. In the instant case, the appellant or any other elector did not make any application or complaint at the trial of the election petition in the High Court, that the election-petitioner has abandoned the prosecution of the petition or withdrawal from it and that the applicant be substituted for the election-petitioner to continue the proceedings under Section 110(3)(c) of the Act. It will bear repetition that the appellant took no interest, whatever, in the controversy in the election petition which was confined only to the election-petitioner and respondent 1. Conditions 1 and 3, the satisfaction of which is necessary to give locus standi to a person to file an appeal under Section 116-C, have not been fulfilled in the instant case. The appellant cannot, by any reckoning, be said to be a 'person aggrieved' by the decision of the High Court, dismissing the election petition.

28. We, therefore, allow this preliminary objection, and on that ground, dismiss this appeal with costs.

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