

Samar Singh

Vs

Kedar Nath Alias K. N. Singh and Others

Civil Appeal No. 1395 (NCE) of 1986

(E. S. Venkataramiah, K. N. Singh JJ)

28.07.1987

JUDGMENT

SINGH, J. –

1. This appeal under Section 116-A of the Representation of the People Act, 1951 is directed against the judgment of the High Court of Allahabad dated March 6, 1986 rejecting the appellant's election petition under Order 7 Rule 11 of the Code of Civil Procedure.
2. Briefly the facts giving rise to this appeal are that during the General Elections held in the year 1984, the appellant filed his nomination paper for contesting election to the Lok Sabha from 79-Hapur Parliamentary Constituency. The appellant's nomination paper was accepted and he was allotted symbol of "Lion". The appellant, Kedar Nath alias K. N. Singh-respondent, and 17 other candidates contested the election. The appellant could poll only 617 votes while Kedar Nath-respondent polled 2,55,828 votes and he was declared elected. The appellant filed election petition challenging the respondent's election on a number of grounds. The respondent appeared before the High Court, filed written statement and contested the election petition. On December 10, 1985 issues were framed, thereafter the respondent made an application for rejecting the election petition under Order 7 Rule 11 CPC on the ground that it disclosed no cause of action. A learned Single Judge of the High Court after hearing the parties at length rejected the election petition on the finding that the election petition did not disclose any cause of action. The appellant has challenged the correctness of the High Court order by means of this appeal.
3. The appellant who is an advocate appeared in person before us and argued his case at length. He made two submissions; firstly, he urged that under the Code of Civil Procedure the High Court had no jurisdiction to entertain any application under Order 7 Rule 11 of CPC after the settlement of issues. Once issues were framed on the pleadings of the parties the court should have proceeded to record evidence and decide the issues on the basis of evidence produced by the parties and the petition could not be rejected at that stage on the ground that it did not disclose any cause of action. In the alternative appellant urged that the election petition disclosed cause of action which could not be disposed of summarily without recording evidence. He referred to the pleadings raised in the election petition to show that the petitioner raised a specific ground that the appellant's nomination paper had been accepted improperly by the Returning Officer which materially affected the result of election of the returned candidate. The second submission raised by the appellant was that the Returning Officer acted in violation of the proviso to Section 33(4) of the Representation of the People Act as he failed to correct entries in the appellant's nomination paper and list of contesting candidates with regard to the petitioner's name, as a result of which, result of the election was materially affected insofar as the returned candidate is concerned.

4. The question whether the High Court while trying an election petition has power to reject an election petition summarily under Order 7 Rule 11 of CPC is no longer res integra as this controversy has been set at rest by this Court in Azhar Hussain v. Rajiv Gandhi [AIR 1986 SC 1253 : 1986 Supp SCC 315], Bhagwati Prasad Dixit v. Rajeev Gandhi [(1986) 4 SCC 78 : 1986 SCC (Cri) 399] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93]. In these cases, this Court after detailed consideration held that an election petition is liable to be rejected summarily at the threshold under Order 7 Rule 11 of the CPC. However, the appellant contended that once written statement was filed and after the court applied its mind to the pleadings, raised by the parties and framed issues, it should be presumed that tribal issues had been raised in the election petition and therefore the court could not thereafter summarily reject the petition under Order 7 Rule 11 of CPC. In substance the argument is that once issues are framed the court must proceed with the trial, record evidence and only thereafter it should deal with the preliminary objection raised by the returned candidate that the election petition does not disclose any cause of action. Similar argument was considered and repelled by this Court in Azhar Hussain case in the following words : (SCC p. 324, para 12)

In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent.

Proceeding further the court observed : (SCC p. 325, para 12)

The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfill other commitments. Such being the position in regard to matters pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections.

5. The above view was reiterated by this Court in Bhagwati Prasad Dixit v. Rajiv Gandhi [(1986) 4 SCC 78 : 1986 SCC (Cri) 399] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93]. If an election petition does not disclose cause of action, it can be dismissed summarily at the threshold of the proceeding under Order 7 Rule 11 of the Code of Civil Procedure. If an election petition can be summarily rejected at the threshold of the proceeding we do not see any reason as to why the same cannot be rejected at any stage of subsequent proceeding. If after framing of issues basic defect in the election petition persists (absence of cause of action) it is always open to the

contesting respondent to insist that the petition be rejected, under Order 7 Rule 11 and the court would be acting within its jurisdiction, in considering the objection. Order 7 Rule 11 does not place any restriction or limitation on the exercise of court's power; it does not either expressly or by necessary implication provide that power under Order 7 Rule 11 CPC should be exercised at a particular stage only. In the absence of any restriction placed by the statutory provision, it is open to the court to exercise that power at any stage. While it is true that ordinarily preliminary objection to the maintainability of the petition on the ground of absence of cause of action should be raised by the respondent as early as possible but if a party raises objections after filing written statement the preliminary objection cannot be ignored. If the election petition does not disclose any cause of action, the respondent's right to raise objection to the maintainability of the petition, or the court's power to consider the objection is not affected adversely merely because the objection is raised after filing of written statement or framing of issues. The court would be acting within its jurisdiction in exercise of its power under Order 7 Rule 11 in rejecting the same even after settlement of issues.

6. The appellant placed reliance on the decision of Assam, Allahabad and Gujarat High Courts in *Santi Ranjan Das Gupta v. Dasuram Mirzamal Firm* [AIR 1957 Ass 49], *Kalawati Devi v. Chandra Prakash* [AIR 1959 All 37], and *Devnarayan Ramsumar Tewari v. State of Bombay (now Gujarat)* [AIR 1963 Guj 79]. In *Santi Ranjan Das Gupta v. Dasuram Mirzamal Firm* [AIR 1957 Ass 49], plaintiff's suit for recovery of money on the basis of acknowledgement of liability executed in writing was filed before the trial court. The defendant resisted the suit by filing a written statement and raising several legal pleas including a plea that there was no cause of action for the suit. The trial court on appraisal of the evidence produced before it decided all the issues in plaintiff's favour and decreed the suit. On appeal before the High Court the defendant argued that the plaint did not disclose any cause of action and the trial judge failed to frame an issue on the point that the plaint itself was liable to rejection as it disclosed no cause of action. A Division Bench of the Assam High Court rejected the defendant's pleas on the ground that the defendant had never pleaded that the plaint did not disclose any cause of action and it was liable to rejection under Order 7 Rule 11, Civil Procedure Code. On the other hand, the defendant had raised a plea that there was no cause of action for the suit and that was something different. In coming to that conclusion the court observed that a plaint may disclose a cause of action which may not be sufficient to sustain the suit and in that event the suit would be liable to dismissal but it could not be said that the plaint does not disclose any cause of action. The Division Bench decision on the Assam High Court does not rule that a plaint which does not disclose any cause of action cannot be rejected under Order 7 Rule 11, CPC, after the issues are framed. In *Kalawati Devi v. Chandra Prakash* [AIR 1959 All 37], a learned Single Judge observed that on a comparison of the language of Rule 10 of Order 7 and Rule 11 it appears that the plaint is to be rejected in the circumstances mentioned in that rule at the preliminary stage and not at any other stage of the suit. It was a stray observation as the learned Judge himself observed that this question did not arise directly for determination in the case. This decision on the face of it does not decide the question.

7. In *Devnarayan Ramsumar Tewari v. State of Bombay (now Gujarat)* [AIR 1963 Guj 79], a learned Single Judge held that an order rejecting the plaint after the issues had been framed was clearly wrong. In coming to that conclusion the learned Judge placed reliance on Order 5 Rule 5 and Order 14 Rule 1, sub-rule (5) and Order 9 Rule 1, CPC. The learned Judge observed that under Order 5 Rule 1 when a suit is instituted and the summons are issued to the defendant to appear and answer the claim on a day to be stated therein, the court may indicate if the summons are issued for the settlement of issues or for the final disposal of the suit and the summons shall contain a direction accordingly. The learned Judge placing reliance on Order 9 Rule 1 held that the plaint cannot be rejected after the issues are framed; after summons are served on the defendant, the suit can be

dismissed but the plaint cannot be rejected. The view taken by the learned Single Judge is not sustainable in law. Normally, when a suit is instituted the court is to satisfy itself that the suit is maintainable and disclosed cause of action and only thereafter the court may issue summons to the defendants but merely because the summons are issued, the defendants' right to raise preliminary objection for rejection of the plaint on the ground that it disclosed no cause of action is not affected. If a plaint or an election petition does not disclose any cause of action, it does not stand to reason as to why the cause of action, defendant or the respondent should incur costs and waste public time in producing evidence when the proceedings can be disposed of on the preliminary objection. There is basic difference between a suit and an election petition. A suit is initiated by a plaint, by a party against the defendant and generally the dispute is confined to the parties whereas an election petition raises dispute relating to election which affects and involves the entire constituency; the dispute is not confined between the parties to the petition. The provisions of the Civil Procedure Code as applicable to trial of suits have been made applicable under Section 92 to the trial of election petition as nearly as possible. It is well settled that the provisions of the CPC do not apply in their entirety to the trial of the election petition but the provisions of Order 7 Rule 11 apply to an election petition and the High Court has jurisdiction to reject a plaint which does not disclose any cause of action. It would be in the interest of the parties to the petition and to the constituency and in public interest to dispose of preliminary objection and to reject an election petition if it does not disclose any cause of action. In our opinion, the High Court acted with jurisdiction in entertaining the preliminary objection and rejecting the election petition.

8. Before we deal with the appellant's second submission we consider it necessary to refer to certain essential facts. The appellant urged that his name is "Samar Singh s/o S. B. Singh" while the relevant entry relating to him in the Ghaziabad Assembly Constituency at S-662, in part 71 of 388, falling within the Parliamentary Constituency No. 79-Hapur, was printed as "Samay Singh s/o S. P. Singh". According to the appellant he filed his nomination paper on November 27, 1984 that last date prescribed for filing of the nomination paper under the name of "Samay Singh s/o S. P. Singh". His nomination paper was accepted by the Returning Officer on November 28, 1984 and the appellant was allotted symbol of 'Lion' on November 30, 1984 and his name was included in the list of contesting candidates showing "Samay Singh s/o S. P. Singh". According to the appellant he made an application before the Returning Officer for correcting his name in the list of contesting candidates and also for issue of direction for correcting the relevant entry in the electoral roll showing the petitioner as "Samar Singh s/o S. B. Singh". The Returning Officer rejected the petitioner's application by his order dated December 1, 1984.

9. The appellant contended that the Returning Officer failed to exercise jurisdiction vested in him under Section 33(4) of the Act and he improperly accepted the appellant's nomination paper which materially affected the result of the election. Section 33 provides for presentation of nomination paper and it further lays down requirement for a valid nomination. Sub-section (1) of Section 33 provides that on or before the appointment date fixed for filing of the nomination paper the candidate in person or his proposer may deliver the nomination paper to the Returning Officer in the prescribed form duly signed by the candidate or by an elector of the constituency as proposer. Rule 4 of the Conduct of Elections Rules, 1961 prescribes nomination Form 2-A for Elections to the House of People. Sub-section (4) reads as under :

On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll, or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clericals, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

10. When a nomination paper is presented to the Returning Officer he has to satisfy himself that the name and electoral roll number of the candidate and his proposer as mentioned in the nomination papers is the same as entered in the electoral roll and if he finds any discrepancy, the proviso empowers the Returning Officer to ignore and overlook any misnomer or inaccurate description, clerical, technical or printing error with regard to the name of the candidate or his proposer or with regard to place, mentioned in the electoral roll or in the nomination paper. The Returning Officer is further empowered by the proviso to permit correction of any misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper. The proviso makes it amply clear that the Returning Officer is empowered to overlook any misdescription in the entries in the nomination paper and the electoral roll and he has power to grant permission for the correction of the relevant entries if the name of the candidate and his proposer as entered in the nomination paper differ from the entries in the electoral roll. But if the name and electoral roll of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll, and there is no variation or difference in the two documents in that event, the Returning Officer has no power to permit correction of any entry either in the electoral roll or in the nomination paper. There may be occasions when due to printing error the name of a candidate or his electoral roll number or place is wrongly described in the electoral roll, which may be different than those entered in the nomination paper, in such an event if the Returning Officer is satisfied that the corresponding entry in the electoral roll relates to the candidate or his proposer, he is authorised by the proviso to ignore the inaccuracy and to get the same corrected. But if there is no variation between the entries mentioned in the nomination paper and the electoral roll, there would be no occasion for the Returning Officer to exercise his power under the proviso to Section 33(4) of the Act.

11. In the instant case the appellant personally presented his nomination paper to the Returning Officer on November 27, 1984. The Returning Officer examined the same, and he found that the name and electoral roll number of the appellant and his proposer as entered in the nomination paper were the same as entered in the electoral roll. The Returning Officer's attention was not drawn to any inaccurate description or printing error with regard to the appellant's name and his proposer in the electoral roll. On the other hand, we find that the appellant had given a solemn declaration on oath under clause (d) of Form 2-A that his name and his father's name as mentioned in the nomination paper was correct. The appellant had enclosed a receipt showing that he had deposited a sum of Rs. 500 as security deposit in accordance with Section 34, entries in that receipt also mentioned his name as "Samay Singh s/o S. P. Singh". The appellant had therefore himself represented to the Returning Officer that he was "Samay Singh s/o S. P. Singh" as mentioned in the electoral roll and the entries in the nomination paper were the same as those contained in the electoral roll. In these circumstances the Returning Officer had no authority in law to permit correction of any entry either in the electoral roll or in the nomination paper. The Returning Officer

had rightly accepted the appellant's nomination paper and the appellant's grievance that the Returning Officer failed to exercise jurisdiction vested in him under the proviso to Section 34 [sic Section 33(4)] is misconceived.

12. On behalf of the appellant an application was made before the Returning Officer on November 1, 1984 for correction of the appellant's name in the list of validly nominated candidates which was rejected by the Returning Officer. Once nomination paper was accepted and no scrutiny it was found to be valid and the list of contesting candidates was prepared in accordance with Section 36, the Returning Officer had no jurisdiction to make any correction therein, as neither the Act nor the Rules confer any such power on him. The proviso to Section 33(4) is the only provision which authorises the Returning Officer to ignore any inaccurate description or printing error and empowers him to permit correction of entries in the nomination paper and electoral roll relating to a candidate or his proposer when the nomination paper is presented before him, or at the time of scrutiny only and that too in the circumstances specified in the proviso. He has no jurisdiction to make any correction after the scrutiny of nomination paper is over and the list of validly nominated candidates has been prepared and notified under Section 36(8) of the Act.

13. The appellant's contention that the result of the election was materially affected by improper acceptance of his nomination paper is misconceived. As discussed earlier the Returning Officer committed no illegality or irregularity in accepting the appellant's nomination paper; consequently, the appellant's nomination paper could not be held to have been accepted improperly. Once it is held that the appellant was properly nominated there could be no question of election being materially affected on account of any improper acceptance of appellant's nomination paper. Since this was the only ground of challenge raised in the election petition, the High Court rightly held that the petition did not disclose any cause of action.

14. The appellant's submission that if his correct name had been mentioned in the list of contesting candidates he would have fair chance of success at the election is totally misconceived. The appellant's name as declared by him was "Samay Sing s/o S. P. Singh" in accordance with the entry contained in the electoral roll, his nomination paper was validly accepted and he was allotted symbol of 'Lion'. If he was really serious to contest the election he could have done so and any discrepancy regarding his name in the ballot paper could not affect his chances at the election. It is a matter of common knowledge that the voters cast their vote not on the basis of name of the candidate but on the basis of symbol allotted to him. The appellant asserted that since his name was not corrected in the list of contesting candidates he did not carry on his election propaganda, and he lost interest in the election. This is quite strange logic. If the appellant was a serious candidate he could have carried on his election campaign and persuaded the voters to cast their vote for the symbol of 'Lion' which admittedly relate to him. The facts and circumstances available on record show that the petitioner was not serious in contesting the election.

15. In view of the above discussion we do not find any merit in the appeal and it is accordingly dismissed with a cost which we quantify at Rs. 2000.

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