

Dilip Kumar Chaurasiya

Vs

Ramesh Chandra Sahu alias Bhaiji and others

Civil Appeal No. 4703 of 1990

(R. M. Sahai, K. Jayachandra Reddy JJ)

19.09.1990

ORDER

1. Leave granted. Heard counsel for the parties. We proceed to dispose of the appeal.
2. Petitioner was elected as Sabhasad for Nagar Mahapalika, Allahabad. Respondent 1 filed a petition challenging the election of the petitioner. After notice to the parties, the 2nd Additional District Judge before whom the election petition was pending, listed the case from time to time. Ultimately on May 31, 1990 he took up the case and made an ex parte order declaring respondent (1) as duly elected candidate while at the same time setting aside the election of the petitioner. Against the said ex parte order, the petitioner preferred an appeal before the High Court of Allahabad. The High Court, while admitting the appeal, however, did not grant stay of the impugned order. That created all the problem. The petitioner approached the Additional District Judge complaining that the ex parte order made on May 31, 1990 was without an intimation to him since the case was not listed on that day. He pleaded that the order should be set aside and till his application is decided, the order should be stayed. Learned District Judge gave an ex parte order, subsequently confirmed it with opportunity to both the parties. He has expressed the view that the ex parte declaration he gave in favour of the respondent on May 31, 1990 was incorrect and the case was not listed on that date for consideration. Against the said order of stay, the respondent by means of a writ petition under Article 226 of the Constitution moved the High Court challenging its validity. The High Court has allowed the writ petition quashing that order with a direction to the learned District Judge to determine his own jurisdiction to issue the stay in a matter like this.
3. The instant appeal has been preferred against the order of the High Court.
4. We have heard counsel on both sides and also perused the orders of the learned District Judge and the High Court. It seems to us that the learned District Judge was right in his opinion that the ex parte order was made on May 31, 1990 without an opportunity to the petitioner. That was because of the Court mistake in listing the case on a date which was not previously set down. The Court therefore was justified in invoking its inherent powers to do substantial justice between the parties.
5. Now, having discovered that the petitioner had no opportunity to present his case on May 31, 1990, it would be proper to set aside that order and direct de novo trial. The order of the High Court will needlessly drag on the litigation. In election cases there should not be any unnecessary sidewinds and the Court should decide the main case expeditiously.

6. In the result we allow this appeal, set aside the order of the High Court. We also set aside the order dated May 31, 1990 passed by the Additional District Judge. The matter shall be disposed of on the merits with reasonable opportunity to parties within two months from the date of receipt of the order.

7. Needless to state that the subsequent order made by the Additional District Judge @page-SC69 does not survive. The appeal filed by the petitioner before the High Court also becomes infructuous and he may move the High Court for dismissal of the appeal accordingly.

8. Before parting with the case, we may also observe that since the learned Additional District Judge has already expressed his view in favour of respondent (1), it is proper that this case be tried by the District Judge himself or by any other Additional District Judge to whom he transfers the case. In the circumstances of the case, there will be no order as to costs.

9. The parties to appear before the District Judge on Monday the 8th October 1990 to receive further direction.

Order accordingly.

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