

K. D. Deshmukh

Vs

Amritlal Jayaswal

Civil Appeal No. 2556 of 1991

(K. Ramaswamy, N. M. Kasliwal JJ)

11.07.1991

ORDER

1. This appeal by special leave is directed against the order of the Madhya Pradesh High Court dated April 4, 1991. The parties filed nomination papers for election to Legislative Assembly Madhya Pradesh for Constituency No. 180 Waraseoni, District Balaghat (Madhya Pradesh). February 3, 1990 was the date for filing nomination papers and February 5, 1990 for scrutiny. Election was held on February 27, 1990 and the appellant before us was declared elected on February 28, 1990.

2. The respondent having lost in the election by a margin of 1476 votes filed an election petition on April 12, 1990. The petition was filed under Section 100(1)(c) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'). The only ground taken in the election petition was that the nomination papers of 3 candidates were wrongly rejected by the Returning Officer. During the proceedings of the election petition statement of Returning Officer Shri S. R. Mohanti was recorded on March 6, 1991 and the Returning Officer in his cross-examination made the following statement :

"Respondent K. D. Deshmukh did not read out the particular line in the oath."

3. The respondent who had filed the election petition then submitted an application for amendment in the original election petition to add a ground that the oath administered to the appellant was not in proper form. This amendment application submitted on March 8, 1991 was allowed by the High Court by the impugned order dated April 4, 1991. The appellant took time on April 5, 1991 to file the amended written statement.

4. We have heard learned counsel for the parties and we are inclined to allow this appeal. It is an admitted position that the result of the election was declared on February 28, 1990 and the election petition could have been filed within 45 days of such result. It is also an admitted position that on March 8, 1991 when the amendment application was filed, the said period of 45 days had expired long back. The ground now sought to be raised by way of amendment is totally a new ground falling under Section 100(1)(d) of the Act. The original petition was filed on the ground of improper rejection of nomination papers of 3 candidates under Section 100(1)(c) of the Act, and the ground now sought to be raised by amendment is of improper acceptance of nomination paper of the appellant himself under Section 100(1)(d) of the Act. In our view the High Court was wrong in allowing the amendment application and in taking the view that the objection regarding limitation shall be decided while disposing of the election petition on merits finally. This approach of the High Court is totally wrong inasmuch as no amendment could have been allowed by which totally a new

ground was sought to be taken and which was clearly beyond limitation on March 8, 1991 the date of filing the amendment application.

5. In the result we allow this appeal, set aside the order of the High Court dated April 4, 1991 and as a result of which the amendment application filed by the respondent stands dismissed. In the fact and circumstances of the case, we make no order as to costs.

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