

Manohar Joshi

Vs

Bhaurao Ragoji Patil through Legal Representatives

Civil Appeal No. 112 of 1992

(S. Ranganathan, V. Ramaswami N.D. Ojha JJ)

14.01.1992

JUDGEMENT

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OJHA, J.:-

1. Special leave is granted.

2. This appeal has been preferred against the order dated 5th August, 1991 of the Bombay High Court on miscellaneous applications made in Election Petition on No. 24 of 1990. The appellant was elected to the Maharashtra Legislative Assembly from the Sadar Constituency. One Bhaurao Ragoji Patil filed Election Petition No. 24 of 1990 challenging the said election. He, however, died on 4th June, 1991. He being the sole petitioner, the election petition consequent upon his death abated under sub-section (1) of Section 112 of the Representation of the People Act, 1951 (hereinafter referred to as the Act). This fact was published as contemplated by sub-section (2) of Section 112 of the Act. Upon the said publication four applications including one each by the respondents were made under sub-section (3) of Section 112 of the Act for being substituted in place of the deceased petitioner. The applications made by the respondents were allowed by the order appealed against whereas the other two applications were dismissed with certain observations.

3. The appellant who was the successful candidate at the election has in the present appeal challenged the order substituting the respondents in the election petition in place the deceased petitioner. In support of this appeal learned counsel for the appellant has urged two grounds. Firstly, it has been submitted that a direction requiring the respondents to furnish security as contemplated by sub-section (3) of Section 112 as a condition precedent should have been given before ordering them to be substituted and the High Court committed an error in holding that the question of providing security would arise only after an order for substitution is made. The second submission made by learned counsel for the appellant is that even though the respondents have been required to forthwith deposit in court towards security as sum of Rs. 2000/- each, that part of the order has been made only after first directing them to be substituted in place of the original petitioner. According to learned counsel the respondents could have been directed to be substituted only after they had actually deposited the amount of security. The order appealed against having been passed according to learned counsel in breach of the mandatory requirement of sub-section (3) of Section 112 of the Act is liable to be set aside.

4. For the respondents on the other hand, it has been urged by their learned Counsel that when four applications had been made for substitution an order had first to be passed indicating the names of

the applicants who were to be substituted and it is only such applicants who were to be substituted could there after be required to deposit any amount as security.

5. In order to appreciate the respective submissions made by learned counsel for the parties sub-section (3) of Section 112 of the Act may be reproduced. It reads as here under:

"112(1)-(2)... .."

(3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to the security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

(Emphasis supplied)

6. Before the High Court it was urged on behalf of the appellant that since the respondents had not deposited any amount as security for the costs of the petition as contemplated by Section 117 of the Act their applications were liable to dismissed. It is while repelling this submission that the High Court made the aforesaid observation namely, that the question of the providing security would arise only after an order for substitution is made. The High Court, in our opinion, does not appear to have committed any error in holding that simultaneous deposit of any amount as security for costs at the time of presentation of the applications for substitution was not necessary. On a plain reading of Section 117 the said requirement is applicable at the time of presenting an election petition". An application for substitution made under sub-section (3) of Section 112 consequent upon the death of the election petitioner cannot @page-SC1451 be put at par to the presentation of an election petition. It is to be noticed in this behalf that sub-section (3) of Section 112 does not contain the requirement of depositing any amount of security for costs at the time of presenting the substitution application. It permits a person who might himself have been a petitioner to apply to be substituted as petitioner within fourteen days of the publication made under sub-section (2). The applicant, however, becomes entitled to be so substituted only upon compliance with the conditions, if any, as to security. In other words, the right to apply to be substituted accrues on fulfilment of two conditions: (i) that the person making the application should be one who might himself have been a petitioner and (ii) that the application is made within fourteen days of the publication made under sub-section (2) of Section 112. He, however, becomes entitled to be substituted only upon compliance with the conditions, if any, as to security. The applications made by the respondents could not, therefore, be dismissed on the ground that no amount was deposited as security for costs at the time of presenting the said applications. It is true that the observations referred to above were made by the High Court while repelling the submission made on behalf of the appellant on the basis of Section 117 but to us it appears that the observation as made is rather too wide. Sub-section (3) of Section 112, in our opinion, contemplates simultaneous application of mind by the High Court on the question as to whether the applicant should be substituted or not and also on the question as to what amount of security for costs, if any, is to be deposited by the person who is to be ordered to be substituted. The observation that the question of providing security will arise only after an order for substitution is made does not obviously conform with the requirement of sub-section (3) of Section 112 of the Act. Unlike Section 117 of the Act sub-section (3) of Section 112 uses the words "if any" between the words "upon compliance with the conditions" and "as to security". While considering, therefore, an application for substitution the Court has also to consider as to whether any deposit is to be made or not as security for costs and if it is to be made what is the amount which has to be deposited. If the Court comes to the conclusion on the facts of a given case that no amount is to be deposited as security for costs an order of substitution simpliciter would be sufficient. The fact that

no deposit as security is to be made with reason therefor would, however, have to be simultaneously stated in the order of substitution. On the other hand, if the Court comes to the conclusion that some amount has to be deposited by the applicants who are proposed to be substituted, as security for costs the amount should be simultaneously specified in the order of substitution and the entitlement of such applicant to be substituted should be made subject to compliance with the condition of depositing the amount so specified. This, in our opinion, is the true import of sub-section (3) of Section 112 of the Act.

7. Coming to the facts of the instant case it would be seen as noticed earlier that the respondents were directed by the same order which permitted their substitution "to forthwith deposit in Court towards security a sum of Rs. 2000 each". We have been informed by learned counsel for the respondents that this condition was complied with by the respondents on the very next day of the passing of the order appealed against. In view of this circumstance, we are of the opinion that even though the order appealed against may not be said to be in strict compliance with the requirements of sub-section (3) of Section 112 of the Act it is not a fit case for interference under Article 136 of the Constitution.

8. In view of the foregoing discussion, this appeal fails and is accordingly dismissed. In the circumstances of the case, however, the parties shall bear their own costs.

Appeal dismissed.

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