

Kashinath Sajjan Patil

Vs

Dr. Deshmukh Hemant Bhaskar and Others

Civil Appeal No. 3673 of 1991

(K. Jayachandra Reddy, G. N. Ray JJ)

14.08.1992

JUDGMENT

1. The appellant Kashinath Sajjan Patil has filed the appeal against the judgment of the High Court of Judicature at Bombay in Election Petition No. 19 of 1990. The petitioner challenged the election of the respondent No. 1 from Shahada, Maharashtra Legislative Assembly Constituency which was held in 1990. The appellant was a voter. He filed a petition making several averments. It is unnecessary for us to traverse the same for the reason that the appellant died pending the appeal before this Court on 19-3-1992 in a road accident. The respondent No. 2 in the appeal before us filed IA No. 2 to transpose him as appellant in the place of Kashinath Sajjan Patil. He also filed I A. No. 3 for substituting him as appellant in the place of the deceased-appellant, Kashinath Sajjan Patil. Both these applications are opposed by the learned counsel for the respondent No. 1, the elected candidate and who was successful in the election petition. No provision of the law has been brought to our notice under which transposition can be allowed. Learned counsel for the petitioner appellant in these two I.As. submits that the object underlying the provisions of the Representation of the People Act, 1950 indicates that the purity of the election has to be maintained and therefore there cannot be any bar for the respondent No. 2 or any other person in the constituency prosecuting the appeal in the place of the deceased appellant. He, however, invited our attention to S. 112 of the Representation of the People Act, 1950, which deals with the abatement of election petitions during trial. The provision lays down that on the abatement of election petition on the death of the sole petitioner, 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, mentioned therein. Now the question is whether this provision can be invoked in an appeal during the pendency of which the appellant died. In *Bijayananda Patnaik v. Satrughna Sahu*, (1964) 2 SCR 538 : (AIR 1963 SC 1566), a question arose, when the appellant seeks unconditional withdrawal of the appeal whether the appellate Court can grant the same. The High Court which was the appellate authority then, refused to grant such permission. Thereupon, this Court while allowing appeal observed thus (at p. 1571 of AIR):

"It has been urged that in this view an appeal may be withdrawn even where withdrawal has been induced by bargain or consideration which ought not be allowed and this would interfere with purity of elections. As the statute stands it seems that the intention was that the provisions about withdrawal and abatement would apply to a petition only when it is before the commission, or the Tribunal. It may have been intended that only one proceeding should be specially provided for and that would ensure the purity of elections. If it was intended that Ss. 109 and 110 should also

apply to an appeal for which provision was made by S. 116A, that intention has not been given effect to by proper language. In any case, the position is not the same when an appeal is being withdrawn for generally speaking at that stage a trial has taken place before the Tribunal which would ordinarily safeguard such purity, We therefore see no reason to import the principles of Ss. 109 and 110 into withdrawal of appeals on this ground."

In our view same reasoning applies to an appeal which abates and the substitution or transposition cannot be permitted enabling somebody else to prosecute the appeal. The appeal is dismissed. No order as to costs. Appeal dismissed.

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