

Sreekumar Mukherjee

Vs

Zainel Abedin and Others

Civil Appeal No. 942 of 1999

(K. Venkataswami, N. Santosh Hegde JJ)

19.02.1999

JUDGMENT

SANTOSH HEGDE, J. -

1. Leave granted.

2. This appeal arises out of an order dated 2-9-1997 in G A No. 2410 of 1997 in Election Petition No. 7 of 1996 passed by the High Court of Calcutta.

3. The appellant herein made an application for the dismissal of the above election petition under Section 86(1) read with Section 82 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'). The contention of the appellant in the said application was that in the election petition filed on 21-6-1996, the election petitioner had not impleaded all the necessary parties as is required under the law and as such the petition was liable to be dismissed, ignoring an impleadment application which was filed by Mostiga Molla, Respondent 8 herein, which application according to the appellant was wrongly allowed by the Court on 27-8-1996 since the said application was beyond the period of limitation contemplated under Section 86(4) of the Act.

4. The learned Judge who heard the application by a detailed order dismissed the said application, holding that even assuming the impleaded respondent ought to have been made a party, initially, since his impleadment application was allowed in accordance with law, the prayer of the appellant herein could not be granted and accordingly he dismissed the said application.

5. Hence this appeal.

6. The facts necessary for deciding this case fall within a narrow compass. The polling for the election in question was held on 2-5-1996 and the results were announced on 12-5-1996. The election petition challenging the election of the appellant was filed within the time stipulated in the Act. In the said election petition, the Court issued notice to the respondents on 2-7-1996, directing them to appear on 9-7-1996. On that date since the respondents were not served, the Court fixed 6-8-1996 as the fresh date for appearance of the respondents. On that date also the respondents were not served. Hence, the Court fixed 13-8-1996 as the next date for appearance of the respondents. On 27-8-1996, that is within 14 days of 13-8-1996, Respondent 8 herein, who was also a candidate in the election in question, moved an application to be impleaded as a party respondent to the said election petition under Section 86(4) of the Act which came to be allowed. Though there is some controversy in regard to the alleged consent purported to have been given on behalf of the appellant's counsel, it is not necessary for us to go into the same in view of the fact that the issue in

question could be decided de hors those controversies.

7. On behalf of the appellant, it is firstly contended that since the first respondent herein was a necessary party to the petition and he was not impleaded in the original election petition, the same is liable to be dismissed in limine under Section 86(1) of the Act, in view of the requirements of Section 82 of the Act.

8. The next contention advanced by the appellant is that the High Court erred in allowing the impleading application of the 8th respondent since the same was beyond the period of limitation prescribed under Section 86(4) of the Act.

9. We will take the second contention first for our consideration. This contention, as stated above, is based on the fact that the application of the first respondent herein was made beyond the time prescribed under sub-section (4) of Section 86 of the Act, wherein a limitation of 14 days has been contemplated for any application to be filed for impleadment and that the said limitation of 14 days commences from the date of commencement of the trial which, according to the petitioner, commenced on the first date fixed in the notice issued for the appearance of the respondents in the election petition by the Court, namely, on 2-7-1996 and since the application of the eighth respondent for impleadment was made only on 27-8-1996, far beyond the 14 days' time prescribed under sub-section (4) of Section 86, the said application ought to have been rejected and consequently, the election petition itself was liable to be rejected. On behalf of the contesting respondents, it was pointed out that a perusal of the Explanation to sub-section (4) of Section 86 would make it clear that the period of 14 days contemplated under sub-section (4) of Section 86 would start running only from the date of commencement of the trial which would be a date fixed by the Court for appearance of the respondent before the High Court. On the basis of this provision of law, it was contended that on 6-8-1996 the Court itself has fixed a fresh date for appearance of the original respondents to 13-8-1996, hence it would be only from that date the period of 14 days would commence and the impleading application of Respondent 1 having been filed on 27-8-1996, it was well within the period of limitation prescribed under sub-section (4) of Section 86 of the Act. It was also pointed out to us from the court records which were summoned by this Court that as a matter of fact one of the respondents, viz., 4th respondent was served with the court notice to appear only on 4-10-1996. Hence, it was contended on behalf of the contesting respondent that the application filed by his clients was well within the time contemplated under the Act.

10. A perusal of sub-section (4) of Section 86 of the Act shows that any candidate who was not already a respondent, can make an application to the High Court within 14 days from the date of commencement of the trial and be entitled to be joined as a respondent. The actual date of commencement of trial had been fixed by the statute itself by way of a deeming provision found in the Explanation to sub-section (4) of Section 86 which reads :

"For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition."

11. A plain reading of sub-section (4) of Section 86 shows that the trial of a petition as contemplated in the said sub-section would start only from the date fixed for the respondents to appear before the High Court. The object of this provision seems to be that on the date on which the original respondents to the election petition appear before the High Court, they would be in a position to acquaint themselves with the pleadings and also the said service would give sufficient information

about the election petition to the other persons concerned who are entitled to invoke the provision of sub-section (4) of Section 86 to make an application for impleadment, if they so desired within 14 days from the date so fixed for appearance of the original respondents. This view of ours finds support from the reading of Section 97 of the Act which provides for the filing of recrimination petition by the returned candidate or any other person. If the above argument of the appellant is to be accepted then this right of a person under Sections 86(4) and 97 can be very well defeated by indulging in methods by which service of original notice to the respondents could be delayed beyond 14 days of the date fixed in the original notice. That could not have been the object of the Act. Therefore, in our opinion, it is not possible to accept the contention of the appellant that once a notice is issued in an election petition, even if that notice is not served on the original respondents, the commencement of the period of 14 days begins from the date fixed for trial in such original notice and the subsequent change of the date of trial by the court cannot be used as a beginning of the period of limitation prescribed under sub-section (4) of Section 86 of the Act. This argument in our opinion would defeat the very object of sub-section (4) of Section 86 which enables a person entitled to be joined as a party. The period of 14 days fixed in Section 86, therefore, will have to be construed as commencing from the date fixed by the High Court for the appearance of the original respondents in the first instance or from such subsequent dates that the court may fix for the appearance of those respondents. If so construed, it is seen in this case, the High Court itself had fixed a fresh date for appearance of the original respondents on 13-8-1996, and the application of the first respondent for impleadment having been filed on 27-8-1996, which is within 14 days from 13-8-1996, the said application was within the time prescribed under sub-section (4) of Section 86 and the Court below was justified in rejecting the application of the appellant.

12. Now we shall advert to the first contention of the appellant which is that the first respondent having failed to implead all the contesting candidates in the original election petition, the same is liable to be dismissed in limine in view of Section 86(1) read with Section 82 of the Act.

13. We are not inclined to accept this contention as well. If Section 86(1) is to be interpreted so narrowly as the appellant wants us to do then that would make sub-section (4) of Section 86 otiose. It would also mean that a right given to a party under Section 86(4) could be defeated by a deliberate or otherwise act of an election petitioner, which certainly would not have been the object of Section 86(1). This view of ours also finds support from the judgment of this Court in the case of Shiv Chand v. Ujagar Singh ((1978) 4 SCC 152 : (1979) 1 SCR 520). In the said case in an almost similar fact situation, this Court held : (SCR Headnote) "In the instant case, Section 86(4) of the Act itself entitles M/s. Singh to be joined as respondent. That right cannot be defeated and once he comes on record as party the petition is in order and cannot be dismissed for non-joinder. Moreover once Mal Singh comes on the party-array, by virtue of Section 86(4), the fatal infirmity, if any, must be judged with reference to the petition as amended by the addition of the new respondent. It is the amended petition consequent on the addition under Section 86(4) of Mal Singh that has to be tested in the light of Section 86(1) read with Section 82(b) of the Act."

14. For the reasons recorded hereinabove this appeal fails and is hereby dismissed. No costs.