

SUPREME COURT OF INDIA

Mohd. Abubakkar Siddique

Vs.

Mustafa Shahidul Islam

CrI.A.Nos.2057 of 1999

(Dr. A. S. Anand, C.J.I., S. Rajendra Babu and R. C. Lahoti, JJ.)

18.01.2000

ORDER

1. Mohammed Idris Ali, respondent No. 16 in this appeal by special leave, filed an election petition under Section 80, read with Section 80-A of the Representation of the People Act, 1951, (hereinafter referred to as the Act), calling in question the election of respondent No. 1 Shri Mustafa Shahidul Islam, as a member of the Assam Legislative Assembly from 83 DHING Legislative Constituency Assembly in the general elections held in 1996. Various allegations were made in the election petition with a prayer for a direction for re-counting of votes polled in the election and thereafter to declare the election of respondent No. 1 as void under Section 110(1)(d)(iii) and (iv) and to declare the election petitioner to have been duly elected from the said Assembly Constituency. The election petition came to be registered as Election Petition No. 7 of 1996 in the Gauhati High Court. The election petition was resisted by the returned candidate. Some of the other candidates, who had filed their nomination papers and contested the elections, however, remained ex parte in the High Court.

2. The election petitioner had contested the election as a candidate nominated by All India Congress (Tiwari), while the returned candidate-respondent No. 1 contested the elections sponsored by Indian National Congress (I). It appears that in the meanwhile All India Congress (Tiwari) and Indian

National Congress (I) merged and on account of that merger, both the election petitioner and the returned candidate became members of the same political party. At this stage, the election petitioner filed an application under Section 109 of the Act seeking to withdraw the election petition. This application was filed on 29th April, 1997. On 14th July, 1997, notices of the withdrawal application were issued and published in the Official Gazette as well as in local English newspapers. On 2-9-97, the withdrawal application was allowed and as mandated by Section 110 of the Act, a notification about the same was published. The notification came to be published in the newspaper Assam Tribune, Ex. P. 3. on 12th September, 1997. It was also published in the Government Gazette, Ex. P-4, on 20th September, 1997.

3. On 30th September, 1997 the appellant filed an application seeking permission for substitution to be able to carry the proceedings in the election petition under Section 100(3)(c) of the Act. In this application reference is made to the withdrawal notice published in the Assam Tribune in its issue dated 12th September, 1997. It transpires that on 3rd October, 1997 the appellant also filed another application for the same relief (registered as Misc. Case No. 125 of 97). In this application, reference is made to the withdrawal notice published in the Assam Tribune dated 12th September, 1997 as also to the notice published in the Government Gazette dated 20th September, 1997. The returned candidate resisted the substitution application. By the order impugned in this appeal both the applications filed by the appellant were dismissed on the ground that the applications were barred by limitation as prescribed under Section 110 of the Act.

4. We have heard learned counsel for the appellant.

5. Learned advocate on record for the contesting respondent submitted that the brief of the case is no longer available with her and was unable to offer any assistance. She has at no point of time sought discharge in the case from the Court. There is none else representing respondent No. 1 either. Respondent No. 1 is also not present personally. The other respondents have already been set ex parte. We are, therefore, disposing of this appeal after hearing learned counsel for the appellant and carefully perusing the record including the counter affidavit filed by respondent No. 1 in response to the notice at the stage of the special leave petition.

Section 110 of the Act provides :

"110. Procedure for withdrawal of election petitions.- (1) If there are more petitions than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not be allowed.

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the High Court may think fit;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may, within 14 days of such application, apply to be substituted as petitioner in place of the party withdrawing and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

6. A bare perusal of Section 110(3)(b) shows that the High Court shall direct the notice of the withdrawal (of the election petition) to be published in the Official Gazette and in such other manner as it may specify. Sub-clause (c) of sub-section (3) provides that within 14 days of such publication, a person who might himself have been a petitioner may apply to be substituted as a petitioner in place of the party withdrawing the election petition and upon compliance with such conditions as may be imposed by the High Court, he may be permitted to continue the proceedings.

7. Clause (b), thus, unmistakably suggests that it is a mandatory requirement that the High Court shall cause the notice of withdrawal to be published in the Official Gazette. Apart from publication of the notice in the Official Gazette, the notice may also be published in such other manner as the High Court may specify. The expression "in the Official Gazette and in such other manner as it may specify (emphasis supplied by us) clearly suggests that publication in the newspaper or in any other manner is in addition to the publication of the notice in the Official Gazette and not in substitution of it. If the date of publication in any other manner precedes the date of publication in the Official Gazette, the period of 14 days prescribed in Clause (c) within which a person may apply to be substituted in place of the original election petitioner would ordinarily not commence unless publication in the Official Gazette has also taken place as in the present case. The High Court erroneously calculated the period of limitation from the publication of the notice in the English daily Assam Tribune of 12-9-97 rather than from the date of publication in the Official Gazette, Ex. P-4. The period of 14 days ought to have been calculated from the date of publication of the withdrawal notice in the Official Gazette i.e. 20th September, 1997 and so calculated we find that the application which was filed by the appellant (Misc. case No. 125/97) as also the earlier application (Misc. case No. Nil/97) filed by him were both within the statutory period of 14 days calculated from the date of publication of the notice in the Official Gazette.

8. The High Court, under the circumstances, fell in error in dismissing the substitution applications filed by the appellant on the ground of limitation only. The impugned order of the High Court, thus, cannot be sustained and the same is hereby set aside. The case is remanded to the High Court for proceeding further treating the substitution application to have been filed under section 110 of the Act within the prescribed period of limitation. The High Court shall take further appropriate steps expeditiously.

9. The appeal succeeds and is accordingly allowed. There shall, however, be no order as to costs insofar as this appeal is concerned.

Appeal allowed.