

SUPREME COURT OF INDIA

B.S. Yadiyurappa

Vs.

Mahalingappa

C.A.No.734 of 2001

(S.P. Bharucha, Y.K. Sabharwal and Brijesh Kumar JJ.)

10.10.2001

JUDGMENT

S.P. Bharucha, J.

1. The election to the 11th Karnataka Legislative Assembly from 167 Shikaripura constituency was held on 11th September, 1999. Respondent No. 1 was declared elected. The appellant was one of the candidates at the election and he filed an election petition in the High Court of Karnataka. He prayed therein that the election of the first respondent be declared void and that he, the appellant, be declared duly elected. To the election petition were impleaded the other two contesting candidates, namely, respondent Nos. 2 and 3, and the Returning Officer and the District Election Commissioner, as respondent Nos. 4 and 5. The latter two were impleaded because of the allegations made against them in the election petition.

2. Respondent Nos. 4 and 5 moved an interim application in the election petition praying that their names be deleted from the array of parties thereto. An application to the same effect was made by the first respondent; he also moved an application praying that the election petition be dismissed because of the impleadment of respondent Nos. 4 and 5. By the judgment and order under challenge, a learned Single Judge of the High Court allowed the latter application. He dismissed the election petition under the provisions of Section 86(1) of the *Representation of the People Act, 1951* ("the said Act") because parties other than those mentioned in Section 82 of the said Act had been impleaded thereto.

3. The election petitioner is in appeal.

4. Our attention has been drawn to the judgment of this Court in *Maraka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Ors*¹. A Constitution Bench considered the very situation with which we are now concerned. It noted that the foundation of the argument before it was that there had been non-compliance with the provisions of Section 82. What had happened there, as here, was this: All the parties whom it was necessary to join under the provisions of Section 82 were joined as respondents to the petition, but other respondents, in excess of the requirements of Section 82, were also joined. The question, therefore, was did this amount to

non-compliance with, or contravention of, the provisions of Section 82. Learned counsel for the appellant in that case wanted the Court to read Section 82 as though it said that the persons named therein and no others should be joined as respondents to the petition. He wanted the Court to add "and no others" to the Section. The Court found no warrant for such a reading of Section 82. It held that if all the necessary parties had been joined to the election petition, the circumstance that a person who was not a necessary party had also been impleaded did not amount to a breach of provisions of Section 82 and no question of dismissing the election petition arose. It was open to the Tribunal (or, here, the Court) to strike out the name of the party who was not a necessary party within the meaning of Section 82. The position, it was noted, would be different if a person who was required to be joined as a necessary party under Section 82 was not impleaded as a party to the petition.

5. This judgment in *Maraka Radhey Shyam Ram Kumar* was noticed by the learned Single Judge in the judgment under challenge but was distinguished on the ground that it was confined to its own facts. We find it difficult to agree. This is not a judgment that is confined to its own facts but is an elucidation of the law set out in Section 82 of the said Act.

6. In *Mohan Raj v. Surendra Kumar Taparia and Ors.*² the same position was reiterated. It was held that in an election petition the court can strike out a party who is not necessary but, by reason of the provisions of the said Act, the power of impleadment cannot be used if a necessary party has not been joined.

7. In *Jyoti Basu and Ors. v. Debi Ghosal and Ors.*³, this Court dealt with Section 82 of the said Act, and it is this judgment which the High Court principally relied upon. The ratio of this judgment, is that a person who is not a candidate cannot be joined as a respondent to an election petition. The High Court, however, failed to notice that, having so held, this Court ordered the deletion of the superfluous party from the array of parties.

8. It is, therefore, clear, on the authorities of this Court, that those who are mentioned in Section 82 of the said Act must be made parties to an election petition and, if they are not, the election petition is one which does not comply with the provisions of Section 82 and must, therefore, be dismissed by reason of the terms of Section 86(1). It does not, however, follow that if to an election petition parties other than those who are necessary parties under Section 82 have been impleaded, the election petition is one that does not comply with the provisions of Section 82 and must be dismissed. Such a petition can be amended by striking out from the array of parties those additionally impleaded.

9. The appeal is, accordingly, allowed. The judgment and order under appeal is set aside. The names of respondent Nos. 4 and 5 are deleted from the array of parties to the election petition. The election petition (No. of 1999) is restored to the file of the High Court of Karnataka to be heard and disposed of on merits. Having regard to the time that has elapsed, this shall be done very expeditiously.

10. No order as to costs. Appeal allowed.

¹1964(3) SCR 573

²1960(1) SCR 630

³1982(1) SCC 691