

SUPREME COURT OF INDIA

Chaugule

Vs.

Bhagwat

C.A.No.3373 of 2012

(Altamas Kabir and Surinder Singh Nijjar JJ.)

04.04.2012

JUDGMENT

ALTAMAS KABIR, J.

1. Leave granted.

2. The Appellant herein was elected to the Maharashtra Legislative Assembly from the 240-Omerga Legislative Assembly Constituency, which was reserved for a Scheduled Caste candidate. His election was challenged by one Shri Yadavrao, son of Bhimrao Suryawanshi, who was also a Scheduled Caste candidate. In order to contest the elections, the said Shri Yadavrao had filed three nomination forms which were all rejected by the Returning Officer on the ground that the proposer's name was not included in the voters list. Accordingly, the Returning Officer found Shri Yadavrao to be ineligible to contest the said elections as a candidate.

3. On 26th September, 2009, Shri Yadavrao filed Writ Petition No.6474 of 2009, challenging the rejection of his nomination form which had been submitted by him as an independent candidate. On 1st October, 2009, the High Court allowed the Writ Petition and quashed the order of the Returning Officer. The order of the High Court was challenged by the Election Commissioner before this Hon'ble Court, in which notice was issued and the impugned judgment was stayed. Consequently, Shri Yadavrao's name was not included in the ballot paper and he was unable to contest the elections.

4. The elections were conducted on 22nd October, 2009, and the Appellant herein was declared elected from the said Constituency. Shri Yadavrao challenged the

Appellant's election by way of Election Petition No.5 of 2009 filed before the Aurangabad Bench of the Bombay High Court on 1st December, 2009. While the Election Petition was pending hearing, on 25th November, 2010, Shri Yadavrao filed an application for withdrawal of the Election Petition filed by him. After hearing Shri Yadavrao in person, the High Court recorded the fact that the Election Petitioner was no longer interested in the Election Petition and wanted to withdraw the same. On the said materials, the High Court allowed the application filed by Shri Yadavrao, particularly when no corrupt practice had been alleged in the Election Petition. The Election Petition was, therefore, disposed of as withdrawn. At that point of time, there was no pending application from any person wanting to be substituted in place of the Election Petitioner, Shri Yadavrao son of Bhimrao Suryawanshi.

5. Within 14 days of the said order having been passed, on 8th December, 2010, the present Respondent, Bhagwat, son of Maruti Danane, filed Civil Application No.35 of 2010 under Section 110(3)(c) of the Representation of the People Act, 1951, hereinafter referred to as the 1951 Act, in Election Petition No.5 of 2009, which had been disposed of as withdrawn, for substituting his name as Election Petitioner in place of Shri Yadavrao. Such application was filed by Shri Bhagwat for substituting his name as the Election Petitioner in place of Shri Yadavrao, despite the fact that he had neither filed any nomination paper, nor contested the election. Furthermore, he did not even allege any corrupt practice against the Appellant, but filed the said Application No.35 of 2010, only on the ground that he was entitled to continue with the Election Petition under Section 116 of the 1951 Act.

6. After considering the submissions made on behalf of the respective parties regarding the right of the Respondent to be substituted in the Election Petition filed by Shri Yadavrao, the High Court held that on a conjoint reading of Section 78(b), Section 81(1) and Section 110(3)(c) of the 1951 Act, the Applicant, Shri Bhagwat, was entitled to be substituted in place of Shri Yadavrao for continuing the Election Petition, notwithstanding that the same had already been allowed to be withdrawn on the application filed by Shri Yadavrao under Section 110(3)(c) of the aforesaid Act. The present appeal is directed against the said order of the High Court allowing the application for substitution filed by Shri Bhagwat in the Election Petition which had been filed by Shri Yadavrao and had also been allowed to be withdrawn.

7. Appearing in support of the Appeal, Mr. Anant Bhushan Kanade, learned Senior Advocate, drew our attention to Section 81 of the 1951 Act, which deals with

presentation of petitions. Section 81 provides that an Election Petition calling in question any election may be presented by any candidate at such election or any elector within the period specified. Mr. Kanade also drew out attention to Section 110 of the above Act, which indicates the procedure for withdrawal of Election Petitions which under Section 109 could be done only with the leave of the High Court. Placing reliance on clause (c) of Sub-Section (3) of Section 110, Mr. Kanade urged that it has been specifically indicated therein that a person who might himself have been a Petitioner, may within 14 days of the publication of the results, apply to be substituted as Petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, would be entitled to be so substituted and to continue the proceedings upon such terms as the High Court might deem fit.

8. Attempting to draw a distinction between the provisions of Section 110 and Section 116, which deals with abatement or substitution on death of the Respondent, Mr. Kanade pointed out that under Section 116 in the event of the death of the sole respondent, or giving notice that he did not intend to oppose the Petition or any of the Respondent dying or giving such notice that there is no Respondent who is opposing the Petition, the High Court is required to cause notice of such event to be published in the Official Gazette and thereupon any person who might have been a Petitioner (emphasis supplied) may, within 14 days of such publication, apply to be substituted in place of such respondent to oppose the Petition and would be entitled to continue the proceedings upon such terms as the High Court thought fit.

9. Mr. Kanade submitted that in the present case the provisions of Section 110 stood attracted and not 116, since this case involved withdrawal of the Election Petition by the Election Petitioner and is not a case of abatement or substitution on death of the Respondent. While in Section 110(3)(c) the expression a person has been used, in Section 116 the expression any person has been used. He urged that only a person who could have a similar interest as that of the Election Petitioner could, therefore, be permitted to be substituted in place of the Election Petitioner to continue the proceedings initiated by the Election Petitioner.

10. Mr. Kanade, therefore, urged that the Respondent herein, who had been allowed to be substituted in place of the Election Petitioner, had not filed any nomination paper in the election in question and the High Court had misconstrued the expression who might himself have been a petitioner (emphasis supplied) in its application to him. Mr. Kanade contended that the expression was not meant to apply to anybody or everybody. By allowing the substitution of the Respondent to

enable him to continue with the proceedings, which had been withdrawn by the Election Petitioner, would be over-reaching the provisions of Section 110(3)(c) of the 1951 Act. Mr. Kanade submitted that the aforesaid expression would have to be logically interpreted to apply to a given situation and that the present situation was not one such situation where such substitution should have been allowed.

11. On behalf of the Respondent it was submitted by Mr. K.V. Viswanathan, learned Senior Advocate, that the language of Section 110(3)(c) was very clear and that the expression a person (emphasis supplied) used therein meant that any person who was eligible to be a Petitioner in an Election Petition, was entitled to be substituted in place of the original Election Petitioner to enable him to continue with the proceedings. Mr. Viswanathan contended that the aforesaid expression being general in nature, could not exclude the Respondent who was a registered voter and, therefore, was an elector within the meaning of Section 2(1)(e) of the 1951 Act. Mr. Viswanathan submitted that the High Court had rightly interpreted the aforesaid expression and, since, the Respondent had an interest in the elections in which the Appellant had been elected, he had every right to be substituted in place of the original Election Petitioner in terms of Section 110(3)(c) of the 1951 Act. Reference was made to the decision of this Court in *Nandiesha Reddy Vs. Kavitha Mahesh* [(2011) 7 SCC 721], wherein it had been held that the nomination paper, even if defective, could not be rejected by the Returning Officer at the inception and that the Returning Officer was required to accept the petition and, thereafter, to give an opportunity to the candidate to remove the defects and upon removal of the defects, to accept the same. Mr. Viswanathan contended that in the instant case the same not having been done, the rejection of the nomination paper of the original Election Petitioner, Shri Yadavrao, was erroneous and the election, therefore, stood vitiated and the election of the Appellant was, therefore, liable to be set aside.

12. Having considered the submissions made on behalf of the respective parties, we are unable to sustain the judgment of the High Court or to accept the submissions made by Mr. Viswanathan on behalf of the Respondent.

13. In the very beginning it may be stated that Section 81 of the 1951 Act disqualifies the Respondent from maintaining an election petition, since he was not entitled to invoke any of the grounds set out in Sections 100(1) and 101 of the 1951 Act.

14. As indicated hereinbefore, Section 110 refers to the procedure for withdrawal of the Election Petition and is extracted hereinbelow :

110. Procedure for withdrawal of election petitions.-

(1) If there are more petitioners 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 to be allowed.

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents therefore 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 fourteen days of such publication, 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.

15. As may be noticed, Clause (c) of Section 110(3) permits a person, who might himself have been a Petitioner, (emphasis supplied) to apply for substitution as Petitioner in place of the party withdrawing. However, as has been pointed out by Mr. Kanade, the said expression cannot be held to apply across the board in all cases, but has to fit in the facts of each case. In the instant case, the Election Petition filed by Shri Yadavrao was an action in personam and, was, therefore, confined to his own situation. Had it been an action in rem, the High Court may have been justified in substituting the Respondent in place of the original Election Petitioner. In the instant case, the complaint in the Election Petition was that the nomination paper of the Election Petitioner had been wrongly rejected by the Returning Officer. The Respondent herein, who had been substituted in place of Shri Yadavrao, did not have the same interest as Shri Yadavrao and, accordingly, the High Court, in our view, misconstrued the provisions of Section 110(3)(c) of

the 1951 Act in applying the conditions literally, without even satisfying itself that the order fit in the facts of the case.

16. We are satisfied that the expression a person who might himself have been a Petitioner, (emphasis supplied) would not apply in a case like the present one, in which the right to be exercised does not concern the actions of the person elected on the grounds, as contemplated in Sections 100(1) and 101 of the 1951 Act, which provide for the grounds for declaring the elections to be void. The grievance of the original Election Petitioner was not against the elected candidate, but against the action of Returning Officer in rejecting his nomination paper. Once the Election Petitioner decided not to pursue the matter, the Election Petition could not have been continued by a person, as contemplated in Section 110(3)(c) of the aforesaid Act.

17. We, therefore, have no hesitation in setting aside the judgment and order dated 28th November, 2011, passed by the Aurangabad Bench of the Bombay High Court in Election Petition No.5 of 2009 and Civil Application No.35 of 2010.

18. The appeal is, accordingly, allowed, but, there will be no order as to costs.