

PATNA HIGH COURT

Kapildeo Singh

Vs

Suraj Narayan Singh

Misc. Judicial Case No. 603 of 1957

(V. Ramaswami, C.J. and K. Choudhary, J.)

02.12.1958

JUDGMENT

K. Choudhary, J.

1. The short facts leading to the presentation of this application under Article 226 of the Constitution of India are as under :

2. In the last General Election the petitioner, respondents 2 and 3 and two other persons, namely, Sri Rameshwar Yadav and Sri Sukar Yadav, were declared as duly nominated candidates for the election from the Barahiya single member Constituency No. 145 of the Bihar Legislative Assembly. Subsequently, on the 4th of February, 1957, the last date fixed by the Election Commission for withdrawal of the candidature, the aforesaid Sri Rameshwar Yadav and Sri Sukar Yadav withdrew their candidature for the Assembly seat of the aforesaid Constituency, and the withdrawal was duly accepted by the Returning Officer. The result of the election was announced on the 18th of March, 1957, and the petitioner Sri Kapildeo Singh was declared to have been duly elected. Respondents 2 and 3, who also had contested for the aforesaid seat, were thus defeated. On the 3rd of May, 1957, respondent No. 1 an elector in the aforesaid Constituency, presented an election petition before the Secretary, Election Commission, India, calling in question the election of the petitioner or the said Constituency. In that election petition, apart from other allegations, certain allegations of corrupt practices committed by the aforesaid Sri Rameshwar Yadav and Sri Sukar Yadav were made, but those two persons were not made parties in the election petition. The election petition was received by Sri J.N. Lal, District Judge of Monghyr, who had been appointed the member of the Tribunal to hear the same. The petitioner appeared before, the Tribunal and filed his written statement denying all the allegations made in the petition and asserted that the petition was lime-barred and bad for non-joinder of the aforesaid persons who had withdrawn their candidature. It was contended on behalf of the petitioner that on the above two grounds the election petition should be dismissed in limine. Later on, respondent No. 1 filed an amendment petition to the effect that paragraphs 13, 14, 15 and 26 of the election petition, which contained allegations about corrupt practices by the above two persons, be deleted and their names also be deleted wherever they occur in the election petition. The above amendment was allowed by the Election Tribunal, who, after hearing the

parties on the above two preliminary objections, over-ruled the same and held that the election petition could not be dismissed in limine as contended by the petitioner. The petitioner, therefore, filed the present application in this Court for issue of an appropriate writ quashing the above order of the Tribunal.

3. The first point raised on behalf of the petitioner is that the election petition was filed beyond the time prescribed by the Representation of the People Act, 1951, hereinafter to be referred to as the Act and, therefore, it was barred by time. Section 80 of the Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part (Part VI). Section 81(1) lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-Section (1) of Section 100 and Section 101 to the Election Commission by any candidate at such election or any elector within forty-five days, from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. According to the above provisions the election petition should have been filed within forty-five days from the 18th of January, 1957, the date of election of the petitioner. It is admitted by the parties in this case that on computation of the above period of forty-five days, the 2nd of May, 1957, was the last date for the filing of the election petition. That day, however, happened to be a public holiday, and the election petition was filed on the 3rd of May, 1957. It, however, appears from the letter of the Secretary, Election Commission, India, written to Sri Jagannath Lal, Member, Election Tribunal, Monghyr, that the 2nd of May, 1957, was a closed holiday in the Government of India Offices and also in the office of the Election Commission, India, New Delhi but arrangements were made to receive election petitions in the Commission office on that date as a special case. As a matter of fact, certain election petitions were really presented in that office on that date in accordance with the above arrangements.

It has, therefore, been argue by Counsel for the petitioner that respondent No. 1 could have filed the election petition on the 2nd of May, 1957, and, as such, the petition filed on the next day was beyond time. On behalf of respondent No. 1, however, a counter-affidavit has been filed in which it has been stated that he or his lawyer was not aware of the above arrangements in the office of the Election Commission to receive election petitions on the 2nd of May, 1957, as a special case, and he was within his right under the law to present the same on the next day. In support of this contention reliance has been placed by him on Section 10 of the General Clauses Act, 1897, according to which where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the court or office is closed an that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. Counsel for the petitioner has conceded that the above section is applicable to an election petition. But his contention, as has already been stated, is that though the 2nd of May, 1957, was a public holiday, the office of the Election Commission had made arrangements to receive election petitions on that date and, therefore, the above section has no application to the present case. I am unable to agree with this contention. The office of the Election Commission may have for its own facility, made arrangements to receive the election petitions on a day on which the office is actually closed as being a public holiday; but that cannot take away the right of a party to present the same on the day on which actually the office opens after that public holiday. Apart from the fact that respondent No. 1 or his lawyer had no knowledge of the above arrangements as stated in the counter-affidavit, he, in my opinion, had a light to make the application not on the

day on which the office was closed, but on the day on which it opened after the public holiday. The election petition filed on the 3rd of May, 1957 therefore, was perfectly within time, and the submission made on behalf of the petitioner in that regard must be rejected as being barren of substance.

4. The next point urged on behalf of the petitioner is that in the present case the Election Tribunal could not have allowed the amendment which had the effect of withdrawing a part of the claim made in the election petition. The argument put forward is that respondent No. 1 sought to have the election of the petitioner set aside on various grounds including corrupt practices committed by the above two persons Sri Rameshwar Yadav and Sri Sukar Yadav. He, therefore, based his claim on those corrupt practices and he could not in law be permitted to withdraw the said claim by way of amendment. The above argument gains full support from a decision of the Supreme Court in *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa*¹, in which their Lordships of the Supreme Court held that the Representation of the People Act is a self-contained code governing the trial of election petitions and, in spite of the provisions of Section 90(1) of the Act, the provisions of Order 23 Rule 1 do not apply to the election petitions and, it would not be open to a petitioner to withdraw or abandon a part of his claim once an election petition was presented to the Election Commission. Mr. Lalnarain Sinha Government Advocate appearing for the respondents, has, in view of the above decision, conceded that the amendment allowed by the Election Tribunal in this case could not be supposed. His submission, however, is that even assuming that the allegations of corrupt practices committed by the above two persons are there in the election petition, nothing turns upon the same for the decision of this case. This is a point which really is an answer to the third contention raised on behalf of the petitioner in this case which I am presently going to deal with.

5. The third contention raised on behalf of the petitioner is that the above named two persons, namely, Sri Rameshwar Yadav and Sri Sukar Yadav, were necessary parties to the election petition and, they not having been made parties to it, it should have been dismissed in limine. His submission is that these persons were necessary parties to the petition under Section 82(b) of the Act and under the provisions of Section 90(3) of the Act the Tribunal was bound to dismiss the election petition which did not comply with the provisions of Section 82 of the Act. It is no doubt true that if these persons are necessary parties to the petition, there is non-compliance with the provisions of Section 82 of the Act and under Section 90(3) the, Election Tribunal should have dismissed the petition. But, in my opinion, there is no justification for holding the above two persons to be necessary parties to the petition.

8. In order to appreciate the above point it may perhaps be necessary to refer to a few sections of the Act, Section 33 makes provision for presentation of nomination paper

¹ AIR 1958 SC 698

and requirements for a valid nomination. Section 36 provides for scrutiny of nomination Sub-Section (8) of that Section says that immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board. Section 37 authorizes any candidate to withdraw his candidature by a notice in writing. Then comes Section 38 which provides for publication of list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates but have not withdrawn their candidature.

Thereafter, there are various sections which deal with matters relating to the procedure of making the election and then Section 56 provides for fixing time for poll. Thereafter again there are various other sections which deal with manner, procedure and method of voting, counting of votes and report of the result. Then comes Part VI in the Act which contains provisions for disputes regarding elections. Section 79(b) defines "candidate" to mean, unless the context otherwise requires, a person who has been or claims to have been duly nominated as a candidate at any election.

7. Section 82 of the Act runs as follows :

"A petitioner shall join as respondents to his petition -

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

It is on this Section that Counsel for the petitioner has advanced an argument that Sri Rameshwar Yadav and Sri Sukar Yadav were necessary parties to the election petition. His contention is that according to the definition given in Section 79 any person who has been duly nominated as a candidate at an election is a candidate for the purchase of Section 82 and the above two persons admittedly having been duly nominated are candidates so as to be made parties to the election petition under clause (b) of that Section . The argument put forward is that apart from the persons who are required to be made parties under Clause (a) of that section in petitions claiming different kinds of relief any other candidate against whom allegations of any corrupt practice have been made in the petitions must be made parties in all such election petitions in other words, Counsel has submitted that the above two persons Sri Rameshwar Yadav and Sri Sukar Yadav having been duly nominated as candidates at the election and allegations of corrupt practices having been made against them, they must be made parties to the election petition under Clause (b) of Section 82 as being 'any other candidates against whom allegations of any corrupt practice are made in the petition'.

8. The definition of candidate given in Section 79 is not absolute because it is always subject to the context which may require it to mean otherwise. Counsel for respondent No. 1 has argued that under Section 37 the above two persons withdrew their candidature and, therefore, they thereafter could no longer be said to have been candidates for purposes of any act required to be done by the Act thereafter. His submission is that the definition of candidate as given in Section 79 should be read along with the provisions of Section 37 and they, being read together, clearly indicate that a candidate who withdrew his candidature could not be said to be a candidate for being made a party in the election petition. The above argument appears to be well founded and must prevail.

9. The correctness of the above submission appears from the use of the words "any other

candidate has been duly elected" in Clause (a) of Section 82. That clause lays down as to who should be made parties when the petitioner claims a declaration that he himself or any other candidate has been duly elected. The word "candidate" here could not be used to include a candidate who has withdrawn his candidature, because the question of his having been duly elected could never arise after the withdrawal of his candidature under Section 37 of the Act. The meaning of the word "candidate" here has to be given according to the definition given in Section 79(b) with reference to the context. Similarly, the words "any other candidate" used in Clause (b) must, with reference to the context of that clause itself, mean any candidate who did not withdraw his candidature under Section 37 of the Act, because the question of corrupt practice practically arises only on publication of a list of contesting candidates under Section 38 of the Act after the withdrawal of the candidature by any candidate under Section 37 of the Act. On a proper construction of Section 82, my opinion is that a candidate who had been duly nominated as a candidate at an election but has withdrawn his candidature under Section 37 of the Act is not a candidate within the meaning of Section 82(b) of the Act to be required to be made a party to the election petition.

10. Counsel for the petitioner, however, has relied on a Supreme Court decision in *K. Kamaraja Nadir v. Kunju Thevar*². In that case it was held that any person who has given a notice of retirement under Section 55A(2) of the Act continues to be a contesting candidate for the purposes of the Act and he is a necessary party to an election petition under Section 82 of the Act. That case, in my opinion, has no application to the facts of the present case. Section 55A(2) provides for the retirement of the contesting candidate from the contest. There is a marked difference between this section and Section 37 under which a candidate withdraws from the candidature itself and not only retires from the contest. After having withdrawn from the candidature under Section 37, there is no scope for any contention that he is still a candidate for any purpose of the Act, whereas in the case of Section 55A(2) he does not cease to be a candidate but only retires from the contest.

11. For the reasons given above, there appears to be no merit in this application which must be dismissed with costs. Hearing fee Rs. 200.

V. Ramaswami, C.J.

11. I agree.

² AIR 1958 SC 687

Application dismissed.