RAJASTHAN HIGH COURT

Heersingh

Vs.

Veerka

Civil Misc. Appeal No. 38 of 1957
(K.N. Wanchoo, C.J. And I.N. Modi, J.)

09.12.1957

JUDGMENT

N. Modi, J.

1. This is an appeal in election matter. The appellants were admittedly not a party to the proceeding before the election tribunal. They have, therefore, along with their memorandum of appeal, also submitted a petition praying for being allowed to institute this appeal. The question is whether we should grant the permission and entertain this appeal. This question is interesting and is also of importance.

2. We may state a few facts bearing on the point which arises for determination. Respondents Veerka (alias Veerka Ram) and Mohabat Singh were declared elected to the legislative assembly of this State from the Sirohi Constitutency at the last general election. Veerka was an independent candidate belonging to a scheduled caste for the reserved seat in this constituency and Mohabat Singh was a candidate of the Congress Party for the other seat, which was general. Tejaram was also a candidate for the reserved seat but he was unsuccessful. The latter filed an election petition to the Election Commission, challenging the election of Veerka and Mohabat Singh, which was in due course referred for adjudication to single member Tribunal consisting of Mr. Raj Krishna Mathur, District Judge, Pali. The election petition appears to be principally based on two grounds. The first ground was that the nomination paper of one Tulsa who had also stood up for the reserved seat as a candidate of the Ram Rajya Parishad had been wrongly rejected by the Returning Officer. Tulsa had put down his age as 28 years in his nomination paper, while his age was recorded as 22 years in the material electoral rolls (prepared in the year 1954) with the result that on the latter computation he would be less than 25 years at the relevant point of time, and,

therefore, was not eligible to stand for the State Assembly. Tulsa filed an affidavit before the Returning Officer in which he swore that his date of birth was Magh Sudi 9, Samwat 1985. Still the Returning Officer was not satisfied and so he rejected the nomination paper of Tulsa. The second ground upon which the election petition was founded was that Veerka had committed corrupt practices in the course of his election, and particulars of the alleged corrupt practices were supplied with the election petition.

3. Veerka and Mohabat Singh resisted the petition. It was urged that the nomination paper of Tulsa was rightly rejected as he was in fact below 25 years of age at the crucial date. The alleged corrupt practices were denied by Veerka and Mohabat Singh pleaded ignorance thereof.

4. On 2nd August 1957, Teja Ram produced only one witness before the Election Tribunal, namely, Tulsa's father Ratna who deposed that the date of birth of Tulsa was Magh Sudi 14, Samwat 1989. Other witnesses were present but they were not produced. From Ratna's evidence, it could not but appear that Tulsa's age in 1954 was 22 years and no more. The learned Judge, however, formed the opinion that the parties had colluded between themselves and were therefore withholding evidence in proof of the allegations made in the petition. The learned Judge, therefore, by his order dated 14th August 1957, decided to examine certain evidence suo motu out of the list of witnesses which had already been filed by Teja Ram. The learned Judge then examined certain witnesses. He came to the conclusion that Tulsa was an unreliable witness and that it was not otherwise proved that he was 25 years of age at the relevant time, and so he eventually held that it was not established that his nomination paper has been improperly rejected. As to corrupt practices alleged to have been committed by Veerka, he further held that no evidence was forthcoming, and on that view he dismissed the petition by his order dated 9th September 1957.

5. It is this order that the present appellants seek to challenge. Admittedly they were not parties to the petition. They allege themselves to be voters in this double-member constituency. Their contention is that the original petitioner had colluded with the respondents as indeed the learned Judge of the Tribunal had himself found ; that as voters in this constituency they would themselves have been entitled to file an election petition in the first instance, and they were even now entitled to be substituted as petitioners, and therefore, this appeal was properly brought by them, and we should

allow them to file this appeal. The relief claimed is that the appellants be ordered to be substituted as petitioners and allowed to lead evidence before the Election Tribunal. Learned counsel for the appellants places his reliance on *Province of Bombay v. Western India Automobile Association,*[1] and *Ponnalagu Ammal v. State of Madras,* [2] in support of his submission.

6. The question which emerges for determination in these circumstances is whether we should allow the appellants to file this appeal.

7. Let us look at the cases on which learned counsel relies. In AIR 1949 Bombay 141, there was a dispute between the Western India Automobile Association and its workers. The workers struck Work. The Government of Bombay then issued a notification constituting an industrial tribunal and referred for adjudication to that tribunal the various disputes between the Association and the Workers' Union. The Association, challenging the jurisdiction of the Tribunal to enquire into these disputes filed a writ petition in the High Court of Bombay. A learned single Judge before whom the writ came issued a writ of prohibition against the Tribunal restraining it from entering upon the enquiry. The State of Bombay filed an appeal against the aforesaid decision. The Western India Automobile Association also filed an appeal. The question was raised as to the competence of the State of Bombay to file the appeal, it having not been a party to the proceeding before the Tribunal. It may be mentioned here that the learned Single Judge had directed a notice to go to the State, and the latter had appeared before the Judge, and submitted its point of view. It was held that generally speaking, it is only a party to the proceeding in the Court or tribunal of first instance who can prefer an appeal. It was further recognized, however, that a person who is not a party to the suit may prefer an appeal, if he is affected by the order of the trial Court provided that he obtains leave from the Court of Appeal. What was, therefore, held was this that whereas a party to a suit aggrieved by the decision given had a right of appeal, a person who was not a party to the suit had no such right but the Court of Appeal may in its discretion allow him to prefer an appeal. On this view, the State of Bombay was given leave to maintain the appeal.

8. This decision was followed by the Madras High Court in AIR 1953 Madras 485, but leave to appeal was not granted in that case to a person who wanted to appeal but was not a party to the proceeding in the Court below. This view appears to be based

upon the practice under English law. We may usefully quote the following passage from Halsbury's Laws of England, Volume 26, page 115, para. 227 :

> "Any of the parties to an action or matter or any person served with notice of the judgment or order may appeal (by leave where leave is necessary). A person who is not a party and who has not been served with any such notice cannot appeal without leave, but a person who might properly have been party may obtain leave to appeal."

9. We need not multiply authorities. The position appears to us to be clearly this that as a rule, it is only a party to the proceeding in the primary Court or tribunal who has the right to prefer an appeal against the order of that tribunal provided of course he is aggrieved by it, and if any other person happens to feel aggrieved by that order, and his interests are affected thereby, he can file an appeal against it only by leave of the Court of appeal but not otherwise. Again, whether such leave should be granted or not is a matter which lies in the discretion of the Court of Appeal. We would also add that no hard and fast rule can be laid down to crystallize the exercise of such discretion, and the decision in each case is bound to depend upon its own facts and circumstances.

10. That being so, the narrow point for our determination is whether we should allow the petitioners to file the present appeal in the circumstances of this case. We may state at once that we are perfectly alive to the consideration that it is of fundamental importance to the body politic of our country that the elections to the Legislature of this State, and for that matter to the several other Legislatures in the other States, or to the Central Parliament, should be held in a fair and above-board manner, and that corruption, and things like that, must be stamped out as far as possible, and collusion should not be suffered as a cloak to screen any evil practices. We would respectfully quote the observations of their Lordships of the Supreme Court in *Jagan Nath v. Jaswant Singh,* [3] to which we have been referred in this connection :

> "it is always to be borne in mind.....that one of the essentials of that law is also to safeguard the purity of the election process, and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices."

The above observations were, however, made in a different context, and the case

before their Lordships was not of the kind we have before us. In a case like the present, we have to remember always that the grant of leave to file an appeal to voters who had not made an election petition themselves and who were, therefore, not a party before the tribunal may well be fraught with the gravest danger, and lead to untold harassment of successful candidate or candidates and occasion to endless prolongation of enquiries into matter related to their election. The number of voters in a constituency is legion, and voters after voters may come forward seeking to be permitted to be joined in the enquiry into the election of a successful member on the ground that their predecessors had colluded with the successful candidate or candidates. For aught we know, this process may turn out to be a terrible weapon of blackmail and personal gain. We would, therefore, be extremely loath to allow persons in the positions of the petitioners, whose number is indeterminate, to file an appeal, against the order of the election tribunal except perhaps under rare and most exceptional circumstances. We see no such circumstances in the present case. It is true that the learned Judge of the Tribunal found that the petitioner Tejaram appeared to him to have colluded with the respondents. Now leaving the question of proof of the alleged corrupt practices relating to which no particular evidence was brought to our notice and no proof was forthcoming before the tribunal, we have little hesitation in saying that the evidence as to Tulsa being of or over 25 years at the relevant point of time is extremely nebulous. It may be that this was the most important point on which Tejaram relied, and when he felt that his case had cracked on that point, on the evidence of Ratna, Tulsa's own father, he discreetly gave up the whole fight and took up the position that he had no further evidence to offer. If that is a possibly correct analysis of the entire situation, as it may well be, we have no hesitation in holding that it is by no means a proper case in which we should allow the appellants to file this appeal.

11. We also cannot forget to take into consideration circumstance in this connection, as we must, that in spite of the fact that the petitioner had so stayed his hand, the learned Judge of the Tribunal was still not prepared to dismiss the application at that stage, and he called certain witnesses and examined certain documentary material suo motu; but, even so, the evidence thus gathered was found insufficient to prove that Tulsa was 25 or more than 25 years of age at the relative time. The conclusion in such circumstances could only be that Tulsa's nomination paper was rightly rejected by the Returning Officer,

12. Our attention was, in the last resort, drawn to the provisions relating to the

withdrawal of an election petition (Sections 108 to 110 of the Representation of the People Act No. 43 of 1951) in this connection, and it was argued that even if the petitioner had wished to withdraw his election petition, such withdrawal would not have been granted as a matter of course, and could have been allowed only if the tribunal came to the opinion that the withdrawal had not been actuated by some kind of bargain or improper consideration. It was further argued that notice of such withdrawal must also have been published in the Gazette, and in that case it would have been open to the petitioners to have applied for being substituted as a party for the petitioner and to continue the proceedings upon furnishing the requisite security, and such other terms as the tribunal might have thought fit to impose upon them. It is suggested that if this procedure had been followed, the petitioners would have applied to the Tribunal to be brought on the record and themselves continued the proceedings. We have carefully considered this argument, and are not prepared to accept it. In our opinion, these provisions would have come into play only if the election petitions were to be withdrawn from the tribunal and the withdrawal was granted, but in the present case the election petition was never sought to be withdrawn at any stage. Permission to withdraw the election petition was never asked for much less it was given in the present case. Consequently, the provisions of Section 110 (3) (c) were never, and could not be, attracted, and therefore, the petitioners were not entitled to come before the tribunal in any case. It follows that the benefit of this provision cannot avail the petitioners under the circumstances of the present case.

13. For the reasons mentioned, we refuse the leave to appeal prayed for. The appeal then automatically fails and we dismiss it also.

Appeal dismissed.

Cases Referred.

1. AIR 1949 Bom 141
2. AIR 1953 Mad 485
3. AIR 1954 SC 210