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**Surinder Kumar Vs. Ranjit Singh, Mla and Ors.**

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**Court** : Delhi

**Decided On :** Dec-22-2014

**Judge** : Manmohan Singh

**Appellant** : Surinder Kumar

**Respondent** : Ranjit Singh, Mla and Ors.

**Judgement** :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on:

22. d December, 2014 % EL.PET. No.5/2014 + SURINDER KUMAR Through ..... Petitioner Mr. R.V.Naik, Adv. with Mr. S.K. Tandon, Adv. versus RANJIT SINGH, MLA & ORS. ..... Respondents Through Mr. U.B.N. Singh, Adv. with Mr. Umesh Sinha, Ms. Priyanka and Mr. Rajesh Kumar, Advs. for R-1 CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. This election petition has been filed by the petitioner seeking a declaration that election of respondent No.1 is null and void, thereby setting aside the election result dated 8th December, 2013 to the Assembly Constituency 68, Gokulpur Delhi (NCT Delhi) (hereinafter referred to as the "Gokulpur Constituency"), constituency reserved for schedule caste whereby respondent No.1 was elected and a declaration that the petitioner is the elected member from Gokulpur Constituency, who contested the said election dated 4th December, 2013 as an independent candidate.

2. Brief facts of the present petition are that pursuant to the Election Notification dated 4th October, 2013, general elections to the Legislative Assembly, Delhi were held on 4th December, 2013, the results whereof were declared on 8th December, 2013 whereby respondent No.1 was declared as the elected candidate.

3. It is the case of the petitioner that as per the Delimitation Commission under the Delimitation Act, 2002, Gokulpur Constituency is reserved for scheduled caste and accordingly the candidates intending to contest elections from Gokulpur Constituency must belong to schedule caste. However, respondent No.1, it is averred, does not belong to schedule caste.

4. It has been averred by the petitioner that respondent No.1, earlier named as Rambhool, as per the records of the school register is son of Mr. Pritam Singh, a labourer by occupation, resident of village Kharad, Shamli tehsil, Muzaffarnagar and belongs to Kahar Vedic caste. It is further averred that as per an application dated 31 st December, 2001, submitted to tehsildar, Shamli tehsil Distt Muzaffarnagar for issue of caste certificate, respondent No.1 sworn in that he belongs to Kahar caste (Malhar).

5. It has been averred by the petitioner that though the respondent No.1 as per the school records is resident of village Kharad, Shamli tehsil, Muzaffarnagar, but respondent No.1 has later produced a caste certificate claiming himself to be resident of house No.B-48A, Harijan Basti, West Jyoti Nagar, Delhi-94, which comes under Constituency No.67 Babarpur (General) NCT of Delhi. Respondent No.1 has produced a false certificate as belonging to Malhar caste which he fraudulently obtained from SDM, Delhi Administration, Shahdara Delhi, however he belongs to Kahar Vedic caste which is a backward class so declared both in U.P. and Delhi.

6. It is stated that respondent No.1 belongs to Kahar Vedic caste which is declared as backward class in U.P. In Delhi, Kahar caste at serial No.18 is declared as backward class with its synonymous names known as Dhinwar, Jhinwar, Nishad, Kewat/Mallah (excluding those of SCs) Kashap (non Brahmin) Kahar. However, respondent No.1 has claimed as belonging to Mallah caste and obtained a certificate by fraud and false representation showing himself to be a resident of

Delhi and belonging to Mallah caste which was declared as schedule caste in the year 1976.

7. It is contended by the petitioner that one Mr. Mahesh Chand filed a complaint before the returning officer stating that respondent No.1 herein belongs to Kahar caste and his relatives i.e. maternal uncle and others belong to Dhiwar caste which is synonymous to Kahar community and respondent No.1 has falsely claimed to be a Mallah although he belongs to Kashyap which is synonymous to Kahar which is notified as backward class and therefore an enquiry be conducted and his caste certificate as well as nomination be cancelled. In reply to the said complaint, it was stated that Executive Magistrate/tehsildar Sub-Division, Shahdara, office of Dy. Commissioner Complex, Nand Nagari, Delhi issued a letter to the returning officer dated 17th January, 2014 stating that caste certificate of Shri Ranjit Singh (respondent No.1 herein) which was issued by SDM Shahdara, dated 15th September, 1999 is genuine as per record. It is averred by the petitioner that the returning officer has not given any details neither has he given the enquiry report. Returning officer has not distinguished between Kahar and Mallah, community and native of village Kharad, tehsil Shamli, Muzaffarnagar. Respondent No.1 belongs to Kahar which is a backward class and not scheduled caste.

8. On the other hand, petitioner, resident of ground floor, No.1/G- 60, East Jyotinagar, Loni Road, Shahdara, Delhi-32, belongs to Jatav community, which is recognized as schedule caste. Petitioner contested the said election as an independent candidate and out of total number of electors who polled i.e. 1,28,054, petitioner secured 32,966 votes and respondent No.1 secured 34,888 votes. It is prayed that since respondent No.1 belongs to backward class and not scheduled caste, his election be declared as null and void and petitioner be declared as elected.

9. Summons in the matter have not been issued, as counsel have been appearing on behalf of respondent No.1 and has raised a preliminary objection that the present petition is not maintainable. An application in this regard has also been filed being I.A. No.6061/2014 for dismissal of the present petition.

10. Respondent No.1 in the said application has taken mainly two grounds for contending that the present petition is not maintainable. First ground is that challenge, if any, to the said decision of the SDM, Delhi Administration, Shahdara (certifying that respondent No.1 belongs to a schedule class), ought to have been made by way of a petition under Article 226 of the Constitution of India. Secondly, the petition is not maintainable for non-joinder of necessary parties. It is contended that the other contesting candidates to the said election have not been made party in the present petition as required under Section 82(a) of the Representation of the Peoples Act, 1951 (hereinafter referred to as the Act) and so the present petition is not maintainable under Section 86 of the Act.

11. It is contended that Gokulpur Constituency is a reserved Constituency and all the candidates who fought for this election are scheduled caste candidates and are necessary parties in the matter, however, none of them have been made party in the present petition. Thus, the petition is liable to be dismissed.

12. I have heard the submissions made by learned counsel on behalf of both the parties, however, before proceeding further, it is imperative to discuss Section 82 and Section 86(1) of the Act. Both the provisions read as under: Section 82:

"2. Parties of the petition.A petitioner shall join as respondents to his petition(a) where the petitioner, in addition to claiming 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."

Section 86(1): (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117. Explanation.-. An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

13. In the case of Comrade Kallappa Laxman Malabade Vs. Prakash Kallappa Awade AIR1996 Bom 5, Bombay High Court referred to the decision of the

Supreme Court in K. Kamaraja Nadar v. Kunju Thevar [1959]. 1 SCR583and observed as follows: "This decision makes it clear that the Court has to examine the question of applicability of Section 86 of the Act at the time Election Petition is presented to the Court, and if the Election Petition presented to the Court, is liable to be dismissed on account of non-compliance of Section 82 of the Act, no amount of subsequent exercise either by resorting to provisions of the Code of Civil Procedure or otherwise can save the petition from being dismissed. This case of K. Kamaraja Nadar v. Kunju Thevar [1959].1SCR583 (supra) puts beyond the pale of doubt the position that the petitioner cannot be allowed to delete any prayer in the petition with a view to avoid the consequences following from Section 86 of the Act. In that case, their Lordships have made a reference to the decision in the case of Mallappa Basappa v. Basavraj Ayyappa, Civil Appeal No.76 of 1958, [1959].1SCR611 . That judgment also holds that there is no power in the Election Commission to allow a petitioner to withdraw or abandon a part of his claim either by having resort to the provisions of Order 23, Rule 1 of the Code of Civil Procedure or otherwise."

14. Patna High Court in the case of Neelam Kumari @ Neelam Devi Vs. The State of Bihar and Ors. AIR2008 Pat 165 referred to the decision in Comrade Kallappa Laxman Malabade (supra) and observed that: "In Comrade Kallappa Laxman Malabade (supra) relied upon by the petitioner, with regard to non-joinder of necessary parties under the Representation of the Peoples Act, the High Court quoted the following passage from paragraph 10 of the judgment of the Supreme Court in [1969].1SCR630 (Mohan Raj v. Surendra Kumar Taparia and Ors.) 10... No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder. When the Act enjoins the penalty of dismissal of the petition for nonjoinder of a party the provisions of the

Civil Procedure Code cannot be used as curative means to save the petition. (emphasis added)" 15. In the case of Yera Chandraiah Vs. District Munsif-cum-Election Tribunal and Ors 1991(2)ALT188, it was observed as follows:

14. Dealing with the applicability of the provisions of the Civil Procedure Code to trial of Ejection Petitions under the Representation of People Act, 1951. Their Lordships of the Supreme Court in Jyothi Basu and Ors. v. Debi Ghosal and Ors [1982].3SCR318 held that : "It is said that the Civil Procedure Code applies to the trial of Election Petitions and so proper parties whose presence may be necessary in order to enable the Court 'effectually and completely to adjudicate upon and settle all questions involved may be joined as respondents to the petitions. The question is not whether the Civil Procedure Code applies because it undoubtedly does, but only as far as may be and subject to the provisions of the Representation of the Peoples Act, 1951 and the Rules made thereunder. Section 87(1) expressly says so. The question is whether the provisions of the Civil Procedure Code can be invoked to permit that which the Representation of the People Act does not quite obviously the provisions of the Code not be so invoked."

15. In Mohan Raj v. Surendra Kumar Tabard and Ors., [1969].1SCR630 their Lordships of the Supreme Court dealt with the applicability of the provisions of Order 6 Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure to the trial of Election Petitions under the Representation of the People Act, 1951. Section 82(b) of the said Act enjoins that a petitioner shall join as respondents to the Election Petition" any other candidate against whom allegations of any corrupt practice are made in the petition."

When an attempt was made to withdraw the name of the candidate who was duly nominated at an election to save the petition, repelling the contention that the High Court should have exercised the powers under Order 6 Rule 17 or Order 1 Rule 10 to order amendment of petition and to strike out parties, it was held."

"It is argued that the Civil Procedure Code applies and Order 6 Rule 17 and Order 1 Rule 10 enable the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of references to Periwal. This argument

cannot be accepted. No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of People Act and any rules made thereunder (Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party, the provisions of the Civil Procedure Code cannot be used as curative means to save the petition."

16. Again in the decision K. Venkateswara Rao and Anr. v. Bekkam Narasimha Reddy and Ors., [1969].1SCR679 considering the provisions of Section 82 and 86(1) of the Representation of People Act, 1951, it was held by their Lordships of the Supreme Court as follows :"Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election petition. Under Order 6 Rule 17 CPC a Court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and amendments which will aid the Court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of limitation. But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of Sub-section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86(1) it is incumbent on the High Court to dismiss an election petition

which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act."

"It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the Law of Limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the Court in respect thereof are all circumscribed by the Act."

17. Following the aforesaid decisions of the Supreme Court in R.D. Paranjpe v. Ram Jethmalani and Ors., AIR1978 Bom356 where the contesting candidate was not made a party to the election petition and although in the election petition the relief of declaration by the election petitioner was claimed, it was held that the election petition under Representation of People Act for non-joinder of a party under Section 81(1) cannot be cured under the provisions of the Civil Procedure Code and that the provisions of the Civil Procedure Code cannot be used as a curative means to save the election petition. Where there is no inconsistency with the provisions of the Representation of People Act, their Lordships of the Supreme Court in Udhav Singh v. Madhav Rao Scindia, [1976].2SCR246 held that the provisions of Order 6 Rule 16 CPC are applicable. In P. Nalla Thampy Thera v. R.L. Shankar and Ors.( AIR 1984 SC135 it was held by their Lordships that Order 9 and Order 17 CPC is applicable to the trial of the election petitions under the Representation of People Act, 1951. In Azhak Hussain v. Rajiv Gandhi, [1986].2SCR782 it was held by their Lordships that the provisions of Order 7 Rule 11 were applicable and the contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed after recording the evidence and not at the thresh-should was rejected.

16. Considering the above, this Court is of the considered opinion that the present petition is not maintainable for non-joinder of parties as contemplated by the conjoint reading of section 82(a) and Section 86(1) of the Act and the same is liable to be dismissed. Dismissed accordingly. It is not necessary to discuss the other objections raised by the respondent No.1.

17. I.A. No.15604/2014 has also become infructuous in view of the petition being not maintainable.

18. No costs. (MANMOHAN SINGH) JUDGE DECEMBER22 2014

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