

Mahadeo and ors. Vs. the Sub-divisional Officer, Kunda and ors.

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Court : Allahabad

Decided On : Jan-16-1958

Reported in : AIR1959All43

Judge : V.G. Oak, J.

Acts : [Evidence Act, 1872](#) - Sections 1; Uttar Pradesh Panchayat Raj Rules, 1947 - Rule 25

Appeal No. : Civil Misc. Writ No. 1742 of 1956

Appellant : Mahadeo and ors.

Respondent : The Sub-divisional Officer, Kunda and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.C. Khare and ;N.C. Upadhaya, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

V.G. Oak, J.

1. This petition under Articles 226/227 of the Constitution is directed against a decision of the learned Sub-Divisional Officer, Kunda, district Partabgarh,

dismissing an election petition. Maha-deo and nine others are the petitioners in this petition. Sumer Chand is the principal opposite party. Faruq, petitioner No. 8, has filed an affidavit in support of the writ petition.

2. According to Faruq's affidavit, election was held for the office of Pradhan of Gaon Sabha Nen-dura. There were two candidates for the Office. They are Sumer Chand and Sajjad Husain, who are opposite parties 2 and 3 in the writ petition. Sumer Chand was declared elected as Pradhan.

3. The petitioners filed an election petition challenging Sumer Chand's election. The main ground in the election petition was that, Sumer Chand's age was below 30 years. There were also other irregularities alleged by the petitioners. The election petition was heard by the learned Sub-Divisional Officer Kunda, district Partabgarh. He held that Sumer Chand's age was above 30 years. The election petition was therefore dismissed on 22-6-1956. The ten petitioners have now challenged that judgment dated 22-6-1956.

4. The election Tribunal framed as many as five issues. Issue No. 1 related to Sumer Chand's age. Issue Nos. 2 to 5 related to alleged-irregularities in the election. The Tribunal recorded its finding on issue No. 1 that, Sumer Chand's age is above 30 years. Upon this finding the election petition was dismissed.

5. The first contention of the petitioners is that the election Tribunal did not refer to the petitioner's evidence on issue Nos. 2 to 5. It is said that the petitioners brought a number of witnesses in support of the allegations about irregularities. But their statements were not recorded. The Tribunal remarked that the only issue of disqualification will be decided. This allegation is contained in paragraphs 8 and 9 of the affidavit.

6. Sumer Chand filed a counter-affidavit. The contents of paragraphs 8 and 9 of the affidavit have been denied in the counter-affidavit. According to the counter-affidavit, whatever witnesses and evidence the applicants wanted to produce, they were allowed to produce, and no evidence was shut out.

7. After quoting the five issues the Tribunal observed in its judgment :--

'In this case the main issue to be decided is whether opposite party is below 30 years of age. The rest of the issues were not pressed nor evidence worth the name has been produced to support them.'

8. The Tribunal recorded a good deal of evidence on issue No. 1. There was no good reason why the Tribunal should have refused to receive evidence on issue Nos. 2 to 5, having recorded evidence on issue No. 1. The allegations of the petitioners contained in paragraphs 8 and 9 of the affidavit do not appear to be true.

9. Next it was urged for the petitioners that, it has not been proved that Sumer Chand's age was above 30 years. It was argued that the Tribunal acted upon inadmissible evidence. This contention is based on the assumption that, the Indian Evidence Act applies to proceedings before the election Tribunals.

10. Chapter I-F of U. P. Panchayat Raj Rules deals with election petitions. Under Rule 24 an election petition has to be presented before the Sub-Divisional Officer. According to Rule 25, the Code of Civil Procedure is applicable to the hearing of such an election petition. It is not mentioned in this chapter on election petitions whether the provisions of the Indian Evidence Act are applicable to the hearing of election petitions.

11. According to Section 1 of the Indian Evidence Act, the Act applies to all judicial proceedings in or before any court. It is not mentioned in that section that the Act applies to proceedings before all Tribunals. In 'Bharat Bank Ltd. v. The Employees of the Bharat Bank Ltd. Delhi : (1950) NULLLLJ921SC', it was held by their Lordships of the Supreme Court, that the functions and the duties of an Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court in the technical sense of the word. The functions of an election Tribunal are similar to those of an Industrial Tribunal. Section 12C of U. P. Panchayat Raj Act provides for application for questioning elections.

It is laid down in Section 12-C that, an election shall not be called in question except by an application presented to such authority as may be prescribed. The authority as contemplated by Section 12-C has been prescribed under Rule 24. It,

therefore, appears that, a Sub-Divisional Officer hearing an election petition under Rule 25 is not a Court, but is merely a Tribunal. So provisions of the Indian Evidence Act are not applicable to the hearing of an election petition under Rule 25.

12. Even if it is assumed for the sake of argument that, the Indian Evidence Act is applicable to election petitions, I find that there was a good deal of admissible evidence on the question of Sumer Chand's age. Sumer Chand produced a doctor on the question of age. With the assistance of an X-ray photograph the doctor stated that, Sumer Chand's age is over 30 years. Mr. S. C. Khare appearing for the petitioners contended that, the X-ray photograph was not proved before the Tribunal.

The doctor stated before the Tribunal that, having advised Sumer Chand to get himself X-rayed, the doctor accompanied him in the X-ray room. Thus it appears that the X-ray photograph was taken under the doctor's supervision. The doctor's statement was sufficient to prove the X-ray photograph. An X-ray photograph enables a doctor to estimate the age accurately. The Tribunal was justified in relying upon the doctor's statement.

The Tribunal's finding that Sumer Chand's age is over 30 years should be accepted in this writ petition. Other issues were not pressed as pointed out by the Tribunal. It means that all the pleas raised in the election petition failed. The election petition was rightly dismissed.

13. This petition under Article 226/227 of the Constitution is dismissed with costs.

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