

Nardev Vs. Joti Saroop and ors.

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Court : Allahabad

Decided On : Mar-05-1963

Reported in : AIR1964All83

Judge : Bishambhar Dayal and ;J.N. Takru, JJ.

Acts : Representation of People Act, 1951 - Sections 79, 81, 82 and 99

Appeal No. : First Appeal No. 312 of 1962

Appellant : Nardev

Respondent : Joti Saroop and ors.

Advocate for Def. : Ambika Pd., ;B.R. Dhavan and ;K.L. Grover, Advs.

Advocate for Pet/Ap. : S.C. Khare, ;S.B. Verma and ;P. Chaturvedi, Advs.

Disposition : Appeal allowed

Judgement :

Takru, J.

1. Sri Nardev has filed this appeal under Section 116-A of the Representation of the People Act, 1951 -- hereinafter called the Act -- against a judgment and order of the Election Tribunal, Aligarh rejecting his election petition.

2. The facts, relevant for the purpose of the present appeal, lie within a narrow compass. The appellant along with Joti Saroop, the first respondent, and two others, offered themselves as candidates for election as member of the Lok Sabha from 76 Hathras Parliamentary Constituency at the last general election. At the election the first respondent secured the highest number of votes and was declared duly elected. Thereupon the appellant who had secured the second highest number of votes filed an election petition before the Election Commission, challenging the election of respondent No. 1. In this petition, the appellant besides claiming a declaration that the election of respondent No. 1 was void, claimed a further declaration that he, [the appellant), had been duly elected. That petition was in due course referred to the Election Tribunal, Aligarh, for trial.

3. In his election petition the appellant challenged the validity of the election of the first respondent on a number of grounds concerning the commission of corrupt practices by the first respondent, and his agents, palrokers and workers with his consent and knowledge -- especially one Sri B. P. Maurya who was himself a candidate at the last general election from the 77 Aligarh Parliamentary Constituency. The first respondent denied all those allegations of corrupt practices. In addition he took a preliminary objection that as corrupt practices were alleged to have been committed by Sri B. P. Maurya -- who as stated earlier was himself a candidate at the election -- he was necessary party to the election petition under Section 82(b) of the Act, and as he had not been impleaded as a respondent, the petition was liable to dismissal in time'.

4. On behalf of the appellant a written reply was filed stating that such an objection was misconceived, and further that as it could only be taken by the leave of the Tribunal and as the said leave had not been obtained. It could not be allowed to be raised. It was further stated that as Sri B.P. Maurya was not a candidate for election from the 76-Hathras Parliamentary Constituency, it was not necessary to implead him under Section 82(b) of the Act. The Election Tribunal, however, sustained the preliminary objection and dismissed the petition. Hence this appeal.

5. Sri S.C. Khare, learned counsel for the appellant, at the very outset of his argument, conceded -- as was thought he was bound to do -- that if Sri B. P.

Maurya could be held to be 'any other candidate' within the meaning of Section 82(b) of the Act, then the petition would have to be held to have been rightly dismissed. He however strenuously contended that Sri B.P. Maurya was not such a candidate and hence the preliminary objection was wrongly allowed. The sole point falling for our consideration, therefore, is whether, in the circumstances aforementioned, Sri B.P. Maurya was a 'candidate' under Section 82(b) of the Act. As the answer to this question depends upon the construction of some provisions of the Act -- particularly Section 82 -- we shall begin our discussion by quoting Section 82. The said section runs thus;

'Parties to the petition. -- 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.'

6. As the appellant in his election petition, besides claiming a declaration that the election of the first respondent -- i.e. the returned candidate -- was void, claimed a further declaration that he himself had been duly elected, it was incumbent upon him under the first limb of this section to make all the 'contesting candidates other than the petitioner' -- i. e. himself -- respondents to his petition. So far as this requirement is concerned there is no dispute and it has been complied with. The controversy is about the meaning which is to be given to the expression 'any other candidate' used in the second limb of this section.

Does it mean 'any other candidate' for election as member of the Lok Sabha from 'any' Parliamentary Constituency, or it only means 'any other candidate' from the particular constituency, the election of which is questioned. After perusing the relevant provisions of the Act and hearing the learned counsel for the parties, we are of the opinion that the latter interpretation is to be preferred and the view taken

by the Election Tribunal cannot, therefore, be sustained. We shall, therefore, proceed to record our reasons for coming to that conclusion.

7. Now, the Act is divided in several parts, of which Part VI provides for disputes regarding elections. This Part begins with Section 79 and ends with Section 122. Section 80 lays down that 'no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.' The word 'election' is defined in Section 2(1)(d) to mean, unless the context otherwise requires, 'election to fill a seat or seats in either House of Parliament or in the House or either House of the legislature of a State'. Hence reading the aforesaid provisions together, it is clear that whenever an election to a seat or seats, as stated in Section 2(1)(d) is sought to be questioned it can only be done by presenting an election petition in accordance with the provisions of Part VI. Section 81 then goes on to lay down the grounds on which, and the persons by whom, an election petition can be filed, and the authority to whom, and the period within which, the election petition must be presented. So far as the persons who are entitled to present an election petition calling in question any election are concerned, the section says that it can be presented by 'any candidate at such election or any elector.'

Thereafter follows an Explanation to the effect that the word 'elector' used in that section meant 'a person who was entitled to vote at the election to which the election petition related whether he had voted at such election or not.' The use of the qualifying expressions 'at such election' in connection with a 'candidate', and 'entitled to vote at the election to which the election petition related' in connection with an elector, clearly show that it is not every candidate or elector who can file an election petition calling in question an election to fill a particular seat, but only those who answered to the description contained in that section. Section 81, therefore, unmistakably goes to show that the intention of Parliament clearly was to confine the presentation of election petitions to only the candidates and electors of the constituency to which the petition related. In other words, in the matter of election petitions Parliament made a clear distinction between the candidates and electors of the different constituencies.

We have dwelt on this aspect of the matter at some length as in our opinion it will be found helpful in interpreting Section 82 which has been quoted in an earlier part of this judgment. That section, It will be observed, makes specific reference to three classes of candidates, viz. 'a returned candidate', 'a contesting candidate' and 'any other candidate'. The word 'candidate' is defined in Section 79(b) 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, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate'. Under this section, therefore, a person duly nominated as a candidate, and a person who claims to have been duly nominated as a candidate are included in the definition of 'candidate'. A 'candidate duly nominated' is composed of three categories, viz. a 'candidate who has withdrawn his candidature under Section 37, a 'contestng candidate' and a 'returned candidate', all of which are defined in the Act. The first is one whose name is printed in the list prepared under Section 36(8), but who has withdrawn his candidature under Section 37, while the second is one whose name is printed in the list prepared under Section 38, and the last is one whose name is published under Section 67 as duly elected. Thus by the method of elimination 'any other candidate' in Section 82, would mean a candidate other than the 'contestng candidate' and the 'returned candidate.'

We agree with the learned counsel for the first respondent that none of these definitions by themselves is of any particular assistance to us in answering the question which is posed before us. But, reading them in the context of Section 82(a) -- a latitude which the definitions of these expressions themselves allow we are unhesitatingly of the opinion that the said expressions cannot be held to mean all the 'contestng candidates', 'returned candidates', 'candidates who claim to have been duly nominated' and 'candidates who have withdrawn their candidature of all the Parliamentary or State Constituencies, as the case may be, but only those 'contestng candidates,' 'returned candidates,' 'candidates claiming to have been duly nominated' and 'candidates who have withdrawn their candidatures' who are concerned with the election in question. The impossibility of holding the contrary view, is so obvious that nothing further need be said in this aspect of the matter. For precisely the same reason we are of the opinion that the expression

'any other candidate' in Sub-section (b) should be given a similar restricted meaning -- its precise extent depending upon the declaration sought by the petitioner. For example, if 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 elected, then the expression 'any other candidate' in Sub-section (b) would mean 'a person who has withdrawn his candidature' and 'a person who claims to have been duly elected', as the remaining two classes of candidates, i.e. the contesting candidates and the 'returned candidates', would already have been joined as respondents under subsection (a): whereas if no such further declaration is claimed, then the said expression would mean, the 'contesting candidates other than the returned candidate or candidates' the person who claims to have been duly nominated and the person who has withdrawn his candidature as the returned candidate or candidates would already have been impleaded under Sub-section (a).

The contention of the learned counsel for the first respondent, that we should give the expression 'any other candidate' in Sub-section (b) an extended meaning, as otherwise a candidate from another constituency against whom allegations of any corrupt practice are made would have no opportunity of defending himself against these allegations, would have been a powerful contention, provided there had been no provision in the Act, adequately safeguarding the interest of such a candidate in each a situation. But that is not so, far apart from Section 98(4) which gives a candidate not already a respondent, to apply to the Election Tribunal, for being joined as a respondent. Section 99 specifically lays down that at the time of making an order under Section 98 -- i. e. at the time of giving its decision on an election petition -- the Tribunal shall also make an order-

'(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording-

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b).....

Provided that a person who is not a party to the petition shall not be named in the order under Sub-Clause (ii) of Clause (a) unless -

(a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

(2) '

8. This section, in our opinion, amply safeguards the interests of all persons, including candidates from Constituencies other than the constituency the election of which is questioned, who were not parties to the petition. We are further of the opinion that Section 99 gives full adequate opportunity to such candidates to meet the allegations of corrupt practice made against them, for not only does that section give them an opportunity to cross-examine the relevant witnesses produced against them, it also gives them an opportunity to produce evidence in their defence, for all these reasons, we are unable to accept the contention of the learned counsel for the first respondent that we should give an extended connotation to the expression 'any other candidate' in Section 82(b) of the Act. The result, therefore, is that the Tribunal's view on this point cannot be sustained and has to be set aside.

9. As the petition was dismissed on a preliminary point, which has been found to be devoid of substance, this petition must be remanded to the Tribunal concerned for disposal on merits. We accordingly allow the appeal, set aside the order of the Tribunal and remand the petition to it for disposal in the light of the observations made above. The appellant shall be entitled to his costs which shall be calculated so as to include Rs. 250/- as fee of the appellant's counsel.