

Raj Kumar Shukla Vs. Xth Additional District Judge, Lucknow and Others

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Court : Allahabad

Decided On : Mar-24-1994

Reported in : AIR1995All403

Judge : K.C. Bhargava, J.

Acts : Cantonment Act, 1924 - Sections 31; Contonment Electoral Rules, 1945 - Rules 19, 42, 43, 44, 45, 46 and 47; Representation of Peoples Act - Sections 77, 79, 82(1) and 82

Appeal No. : Writ Petn. No. 49 of 1994 (M.S.)

Appellant : Raj Kumar Shukla

Respondent : Xth Additional District Judge, Lucknow and Others

Advocate for Def. : C.S.C., ;P. Kant, ;V. Prakash, ;K.C. Sexena and ;S.C. Jain, Adv.

Advocate for Pet/Ap. : R.K. Agarwal, Adv.

Judgement :

ORDER

1. By means of this petition the petitioner seeks quashing of order dated 14-12-1993 passed by the 10th Addl. District Judge, Lucknow, opposite party No. 1, contained in Annexure 3 to the writ petition, and further for quashing the

proceedings of Election Petition No. I of 1992 (Mohammad Khalid Qureshi v. Raj Kumar Shukla and others).

2. According to the petitioner the election of Members of Cantonment Board, Lucknow were held in 1991-92. The election schedule was as under:--

Date of nomination 30-12-1991.

Date of scrutiny 2-1-1992.

Date of withdrawal of 3-1-1992.

nomination.

Date of polling 2-2-1992.

Date of declaration of 3-2-1992.

results.

The petitioner and opposite parties 2 to 8, besides Sri Virendra Kumar Shukla and Sri D.P. Gupta, filed their nomination papers for election of the Cantonment Board for Ward No. 4. The nomination paper of Sri D. P. Gupta was rejected in the scrutiny and the nonination papers of others were found to be in order. Sri Virendra Kumar Shukla later on withdrew his candidature under Rule 21 of the Cantonments Electoral Rules, 1945. After polling the petitioner was declared elected for the membership of Ward No. 4 of Lucknow Cantonment Board, Opposite Parties 2 and 3 filed an election petition (being Election Petition No. 1 of 1992, Mohd. Khalid Qureshi and another v. Raj Kumar Shukla and others) under Rule 42 of the Cantonment Electoral Rules, 1945 before the District Judge, Lucknow. The said election petition has now been transferred for disposal of 10th Additional District Judge, Lucknow, opposite party No. 1. A notice was served on the petitioner who put in appearance before the opposite party No. 1. Other opposite parties did not contest the petition. Besides other pleas the petitioner took a plea in para 21 of his written statement that Sri Virendra Kumar Shukla who was also a candidate in the election in question, had not been im-pleaded in the present election petition and hence the election petition was not maintainable and

be dismissed on that ground. An issue was also framed on this point and the 10th Additional District Judge, Lucknow decided this issue against the petitioner. Under the provisions of Rule 19 of the Cantonment Electoral Rules, 1945 Sri Virendra Kumar Shukla was a candidate as his name found place in the list of candidates inform VII drawn under the said Rule. Under the provisions of Section 82(1)(a) of the Representation of Peoples Act (hereinafter to be referred to as the Act) a petitioner has to implead all the contesting candidates. Subsection (b) of Section 82 of the Act provides for joining as respondents any other candidate against whom allegations of corrupt practice are made in the petition. The definition of the word 'candidate' as given in Section 79(b) of the Act has not been correctly appreciated by the Court below. Opposite party No. 4 has contested the petition.

3. Learned counsel for the petitioner and the learned counsel for opposite party No. 4 have been heard. Learned counsel for the petitioner has argued that non-impleadment of Virendra Kumar Singh in the election was fatal and the election petition was not maintainable while on the other hand learned counsel for the opposite party has argued that impleadment of Virendra Kumar Singh was not necessary in the present case as he had withdrawn from the election within the time permitted for withdrawal of the nomination.

4. Now the only question which arises for consideration in the present case is whether the word 'candidate' will include a person who had filed his nomination but withdrew the same before the expiry of the period allowed for withdrawal of nomination. This question has to be answered in the present case in view of Rule 45 of the Cantonments Electoral Rules, 1945 because the election in the present case took place in the Cantonment Board, Lucknow. To appreciate this controversy it will be desirable to reproduce Rule 45 of the said Rules: --

'45. Enquiry into Election:-- Where a petition has been presented under Rule 43 and the security deposited as required by Rule 44, the District Judge (for the officer appointed in accordance with Rule 43), or any Judicial Officer subordinate to him and not below such rank as the State Government may by notification prescribe in this behalf to whom the District Judge may transfer the petition, shall after notice to all candidates for the ward concerned at the election (other than

such of them as may be petitioners hold such enquiry as he deems necessary.'

5. Rule 46 of the above Rules deals with the powers of enquiry officer in relation to enquiry under Rule 45. Rule 47 deals with grounds for declaring election void.

6. Word 'candidate' has not been defined in these Rules, therefore he learned counsel for the parties have placed reliance on the definition of word 'candidate' given in the Representation of the People Act and have also referred to the definition of this word given in dictionary.

The word 'candidate' has been defined in Stroud's Judicial Dictionary, Fourth Edition, Vol. 1, at page 373. It reads as under:--

'The correct sense of the word 'candidate' is a person offering himself to the suffrages of the people. But this question arises, when does a person so offers himself. This question according to the purpose for which it is asked will vary in its answer.'

7. In Black's Law Dictionary, Fifth Edition at page 187 the word 'candidate' is defined as one who seeks or offers himself, or is put forward by others, for office, privilege or honour.

8. Thus these two definitions go to show that a person who seeks or offers himself for a particular office, is a candidate, but the word 'candidate' is to be construed or interpreted according to the purpose for which it is used. It cannot be interpreted from the other provisions of the Act or the Rules but it has to be interpreted in the manner which will advance the intention of the legislature to achieve a particular object.

9. Section 79 of the Representation of People Act defines the words used in the Act. It is mentioned in this section that in this part and Part VII unless otherwise required these definition are to be taken into consideration. The definition of 'candidate' as contained in sub-clause (b) of Section 79 of the Act as under:--

"Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election.'

10. In order to see as to what is meant by the word 'candidate' under this Act the different provisions of the Act have also to be considered where the meaning assigned to the word 'candidate' will differ in different circumstances according to the purpose which is sought to be achieved by the legislature. A word can be interpreted according to the purpose for which it has been used. The word 'candidate' has to be interpreted in the sense in which it has been used in a particular section.

11. A number of case law has been cited by learned counsel for both the parties to show that the word 'candidate' includes or does the not include a person who has withdrawn his nomination before the expiry of the date permitted for withdrawal of nomination. In the case of Sita Ram Hira-chand Birla v. Yograj Singh Shanker Singh Parhihar AIR 1953 Bom 293 the word 'candidate' has been interpreted. In that case before the date of expiry of withdrawal of nomination one of the persons who offered himself as a candidate withdrew his nomination. A question arose whether he was also a necessary party to the proceedings. On these facts in that case it was further argued that even if a duly nominated candidate withdraws his candidature, does not relieve the petitioner of his obligation to make him a party to the petition. The Court in para 8 held as under: --

'Now, the expression used by the Legislature is not 'all the candidates who were duly nominated', but 'all the candidates who were duly nominated at the election', and proper meaning and significance is to be given to the expression 'at the election'. If the intention of the legislature was that the petitioner should join as parties all candidates whose nominations were accepted irrespective of the fact whether they were candidates at the election or not, it is difficult to understand why the expression 'candidates who were duly nominated' is qualified by the expression 'at the election'. It is clear that there is a vital distinction between a candidate for an election and 'a candidate at an election'..... It emphasises the fact that you are a contestant at the election and that the voters have a right to vote for that candidate. It also emphasises the fact that the candidate has not withdrawn and has no right to withdraw and in law he must be considered to be a person who is contesting the election along with other candidates. The objection of S. 82 is that all parties who were concerned with the actual election and who contested

the election should be before the Tribunal, but a person who did not contest the election and who withdrew from the fight does not stand in the same position as candidates who not only were duly nominated but who were candidates at the election.'

Thus, this authority shows that a person who has withdrawn his nomination within the time cannot be said to be a candidate at the election and non-impleadment of him as a party to the election petition does not vitiate the election petition. The fact is to be noted that in this case there was no allegation of corrupt practice against the person who has withdrawn his nomination.

12. In the case of Sheo Kumar v, V.G. Oak AIR 1953 All 633 a Division Bench of this Court had an opportunity of interpreting the words 'candidate at the election' occurring in Sections 77 and 82 of the Representation of People Act. In this case one person filed his nomination and after scrutiny the same was accepted by the Returning Officer but he withdrew from the election and did not contest the same. In the election petition a plea was taken that he had not been im-pleaded as a party to the election petition and therefore the election petition was liable to be dismissed. On these facts the Court was of the opinion that in Chapter III, Part 5 of the Act a difference is contemplated by the Legislature between the candidate who withdraws his candidature on the date of scrutiny and a candidate who dies before the actual polling takes place. It was also observed that the law does not lay down that the petitioner shall join as respondent to the petition all the candidates who were duly nominated other than himself if he was so nominated. The distinction between the 'candidate for the election' and the 'candidates at the election' was also considered and it was opined that it cannot be ignored. It was observed that a candidate may make known long before the election takes place that he is a candidate. He may be nominated, proposed and seconded but before the date of scrutiny for certain reasons he withdraws himself from the contest and does not face the electorate. He was a candidate for the election during this period but after he withdraws his nomination it means he does not go to the poll and face the election. It was further held that the word 'candidate' cannot obviously include a person who withdrew himself from the contest before the election was over. The candidate must be a person, if the polling takes place, who continues as a

candidate right up to the time when the election is held at the actual time when the voting takes place. Thus on the basis of the reasoning mentioned above the Court came to the conclusion that a person who has withdrawn his nomination within the time permitted is not a necessary party to the election petition. The election petition is not defective on that count. In that case also there was no allegation of corrupt practice against the person who had withdrawn his nomination.

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'It was in the circumstances not necessary on the allegations made in para 11(b) of the petition to implead Himmat Singh as a respondent to the petition.'

In para 10 the Hon'ble Supreme Court also held as under:--

'If, therefore, the petition contained any imputation of corrupt practice made against Himmat Singh, it could not be regarded as properly constituted unless he was impleaded as a respondent, for, by the definition of 'candidate' in Section 79(b), the expression 'any other candidate' in Section 82(b) must include a candidate who had withdrawn his candidature. But in our judgment in para 11 (b) there is no allegation of corrupt practice against Himmat Singh.'

Thus in view of the facts on record the Court came to the conclusion that if there is any allegation of corrupt practice then such a person has to be impleaded as party to the election petition irrespective of the fact that he contested the election or not. If there are allegation of corrupt practice then he is a necessary party and non-impledment of such a person will necessitate the dismissal of the election petition. This proposition of law has been considered in view of the provisions of Section 82 of the Act which provides that the petitioner shall join certain persons as respondents to his petition. If allegations of corrupt practice are made against any candidate then he is a necessary party even if he has not faced the electorate and has withdrawn his candidature before the date prescribed for withdrawal of nomination.

15. In the case of *Amin Lal v. Hunna Mal*, AIR 1965 SC 1243 the word 'candidate' has also been interpreted in the sense in which it has been used in Sections 82(b) and 79(b) of the Act. In that case there was an allegation that Suraj Bhan had used corrupt practices which fact was denied by Suraj Bhan. The Supreme Court, in para 5 of the judgment, observed as under:--

'Suraj Bhan was a duly nominated candidate and though he withdrew his candidature within the time permitted by the rules he must, for the purpose of S. 82, still be regarded as a candidate. As pointed out by this Court in *Mohan Singh v. Bhanwarlal*, AIR 1964 SC 1366 a person who was duly nominated as a candidate for selection would not cease to be a candidate for the purpose of parts VI, VII and VIII of the Act merely because he withdraw his candidature. Therefore, according to this Court where a petition contained any imputation of corrupt practice against such a person it could not be regarded as properly constituted unless he was impleaded as a respondent.'

This case is also an authority on the proposition that if there are allegations of corrupt practice against any of the candidates then that candidate has to be made a party in the election petition whether he had withdrawn his nomination before the date of expiry permitted for withdrawal of nomination or not. He cannot be left out of the petition and no petition can be entertained without such a person being made a party to the election petition. This case does not go to show that in each and every case a person who has withdrawn his nomination before the date prescribed for withdrawal of nomination should be made a party to the election petition. The only exception is against a person who has used corrupt practices and allegations to that effect have been imputed against him in the election petition.

In the case of *Kashinath v. Kudsia Begam*, AIR 1971 SC 372 the Hon'ble Supreme Court held that a person against whom there is an allegation of corrupt practice has to be joined as a respondent even if he has withdrawn from the election. A similar view was also taken by the Hon'ble Supreme Court in the case of *K. Venkateswara v. Bekkam Narasimha Reddi*, AIR 1969 SC 872. The same proposition of law was laid down in this case.

All the cases discussed above will not apply to the facts of the present case because there is no allegation of corrupt practice against the non-joinder, Verendra Kumar Shukla.

16. The last case which remains to be seen is Vishwa Mitra v. District Judge, AIR 1956 Allahabad 89. In that case a petition was filed without impleading the person whose nomination paper had been rejected. In that case it was held that a person whose nomination paper has been rejected will have a right to file an election petition. In the present case the question which has arisen is not so. This case is entirely different on facts. Therefore it will not apply to the facts of the present case;

17. As seen in the earlier part of this judgment Rule 45 of the Cantonments Electoral Rules, 1945 shows that the words used therein are 'at the election'. The words 'at the election' have been interpreted in various authorities referred to above and the words 'at the election' mean the persons who have faced the electorate and were candidates duly notified by the Returning Officer. A person who has withdrawn his nomination before the prescribed date for the same cannot be said to be a candidate of the election and he is not a necessary party to the election petition unless an allegation of corrupt practice is made against him. Therefore in view of the interpretation of the words 'at the election' it has to be held that a person who has withdrawn his nomination before the prescribed date for withdrawal of nomination and against whom there is no allegation of corrupt practice will not be a necessary party to the election petition and the election petition cannot be dismissed on the ground of non-impleadment of such a person.

18. In the present case also Virendra Kumar Shukla was not made a party to the election petition. He had withdrawn his nomination before the prescribed date fixed for withdrawal of nomination and no allegation of corrupt practice was imputed against him in the election petition filed by the opposite parties 2 and 3. Therefore Virendra Kumar Shukla was not a necessary party to the election petition and the election petition cannot be dismissed on the ground of nonjoinder of Virendra Kumar Shukla as a party to the election petition. The order of the learned Court below on this point is perfectly correct and no interference is required therein.

19. In the result writ petition is dismissed. There will be no order as to costs.

20. Petition dismissed.

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