

Mahesh Chauhan Vs. Anil and Others

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Court : Allahabad

Decided On : Apr-17-2001

Reported in : 2001(3)AWC1691; (2001)2UPLBEC1277

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Zila Panchayat (Settlement of Disputes Relating Membership) Rules, 1994 - Rule 4; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 16 - Order 7, Rule 11

Appeal No. : C.M.W.P. No. 13370 of 2001

Appellant : Mahesh Chauhan

Respondent : Anil and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.P. Srivastava and ;Ranjan Srivastava, Adv.

Disposition : Writ Petition dismissed

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 3.3.2001 whereby the respondent No. 2 decided issue No. 7 holding that the election petition is

maintainable and permitting the election petitioner to append a fresh verification of the election petition.

2. Briefly, stated the facts, are that the election from Ward No. 6. Gautam Budh Nagar for the membership of Zila Panchayat was held on 29.6.2000. The petitioner was declared elected by margin of 18 votes as against respondent No. 1. Respondent No. 1 filed election petition on 7.7.2000 in the Court of District Judge, Gautam Budh Nagar. The petitioner filed an application (29C) to dismiss the election petition on the ground that it was not maintainable. It was alleged that the election petition under the provisions of U. P. Zila Panchayat (Settlement of Disputes Relating Membership) Rules, 1994 (in short the Rules) can only be presented in person by the election petitioner, whereas the election petition was presented by one Sri R. K. Singh, advocate. It was further averred that the affidavit of Anil, the election petitioner, respondent No. 1 was sworn on 3.7.2000 at Delhi much before the presentation of the election petition. The District Judge rejected the application on 18.8.2000 on the finding that on the date of the presentation of the election petition, the election petitioner was present in person along with his counsel Sri R. K. Singh, advocate. The petitioner filed Writ Petition No. 40750 of 2000 in this Court. The writ petition was dismissed. It was, however, observed that if the petitioner raises a plea about the maintainability of the election petition in the written statement, an issue on the point shall be framed and it shall be decided by the learned District Judge or the transferee Court as a preliminary issue.

3. The District Judge, respondent No. 2 decided the preliminary issue holding that the election petition filed by respondent No. 1 was maintainable and permitted the election petitioner, respondent No. 1 to append a fresh verification to the election petition. The petitioner has challenged this order in the present writ petition.

4. I have heard Sri P. P. Srivastava. learned senior advocate for the petitioner who urged that the election petition should have been presented by respondent No. 1 in person as provided under Rule 4 (3) of the Rules but as it was not done, the election petition was not maintainable.

5. The petitioner had raised this point in Writ Petition No. 40750 of 2000. This Court did not accept this contention because the District Judge in his order dated

18.8.2000 had recorded a finding that the respondent No. 1 was present along with his counsel when the election petition was presented. This Court observed as follows :

'At this stage, suffice it to say that the learned District Judge, has accepted the contention of the election petitioner that he was present at the time of filing of the election petition. Substantial compliance of Rule 4 of the Rules governing the representation of the election petition has been held to have been made. With regard to the other defects as pointed out by the learned counsel for the petitioner, the matter may be thrashed out after framing of the preliminary issue.'

6. As this question was decided by this Court, this matter is no longer open to urge that the election petition was not maintainable as the petitioner did not present it in person before the District Judge. It has already been found that the petitioner was present along with his counsel when the election petition was presented before the District Judge.

7. The next submission of the learned counsel for the petitioner is that the election petition was not verified by respondent No. 1 and it was liable to be rejected. The election petition was filed along with an affidavit. The District Judge has permitted respondent No. 1 to verify the pleadings and the pleadings had been verified.

8. This Court in Surendra Nath and another v. Mahendra Pratap Singh, AIR 1986 All 290. It was contended that the verification in the election petition was defective, as the verification was not done at the foot of the plaint as required under law but at some other page. The Court held that it was immaterial whether the verification is made in continuation of the preceding paragraph or on a separate page after the plaint ended. In All India Re-porter Ltd. v. Ramchandra Dhondo Datar, AIR 1961 Bom 292. the Court held that the plaint is to be verified by the plaintiff or one of the plaintiffs or by some person but not by any other person but the omission to verify a pleading is a mere irregularity and that a pleading which is not verified as required under Order VI. Rule 15, C.P.C. may be verified at any later stage of the suit, even after the expiry of the period of limitation. In Bhikaji Keshao Joshi and another v. Brijlal Nandlal Biyani and others. AIR 1955 SC 610, it was held that in absence of enumeration of various paragraphs in the verification clause cannot be

considered as a defect so as to reject the election petition. In *Provabati Kunwar v. Kaiser Kunwar and others*. AIR 1959 Cal 642. It was held that a suit cannot and ought not to fail because of imperfect verification and the Court should give leave to rectify it at any time.

9. Learned counsel for the petitioner relied upon the decision in *Dr. (Smt.) Shipra etc. etc. v. Shanti Lal Khoiwal etc. etc.* JT. 1996 (4) SC 67. It was held that the verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the notary, etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and the affidavit filed in support thereof. In this case, the Apex Court did not lay down that the Court cannot permit verification of the election petition. In *Mr. V. Narayanaswamy v. Mr. C. P. Thirimaaukkarasu*. JT 2000 (1) SC 194. the Apex Court upheld the order of Madras High Court whereby the application of the respondent under Order VI. Rule 16 and Order VII. Rule 11. C.P.C. was allowed and the election petition was dismissed. In this case, it was found that there were no material facts in the election petition and the election petitioner was afforded opportunity to make the correction and give the material facts in the election petition but as he failed to do so, it was held that the High Court has power to permit to make amendment for furnishing material particulars and to require amendment of the verification. It was observed as under :

'High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo motu the furnishing of better particulars and requiring amendment of petition for the purpose of verification and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. See in this connection Constitution Bench decision in *Bhikaji Keshao Joshi and another v. Brijlal Nandlal Biyani and others*. AIR 1955 SC 610 : (1955) 2 SCR 428 (444).'

10. These cases do not hold that the Court has no power to permit the election petitioner to remove the defect in verification or permit the petitioner to make verification.

11. The last submission of the learned counsel for the petitioner is that the election petitioner had got sworn the affidavit on 3.7.2000 while the election petition was presented on 7.7.2000 and. therefore, the contents of the election petition cannot be taken as duly sworn on affidavit. The mere fact that the affidavit was prepared before the election petition was drafted, does not itself make the election petition defective.

12. I do not find any merit in the writ petition and it is, accordingly dismissed.

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