

Jitendra Vs. Hari Raj and Others

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Court : Allahabad

Decided On : Dec-17-1998

Reported in : 1998(4)AWC665

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Panchayat (Election of Adhyaksha and Upadhyaksha and Settlement of Election Disputes) Rules, 1994 - Rules 33, 35 39, 39(1) and (3), 44, 45 and 47; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96 and 100; Uttar Pradesh Town Areas Act, 1914 - Rule 50; Limitation Act - Sections 29(2); Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhinyam, 1961 - Sections 25

Appeal No. : First Appeal No. 214 of 1998

Appellant : Jitendra

Respondent : Hari Raj and Others

Advocate for Def. : N.K. Sharma, Adv.

Advocate for Pet/Ap. : Prakash Padia, Adv.

Judgement :

O.P. Garg, J.

1. This is an appeal under Rule 47 of the U. P. Panchayats (Election of Adhyaksha and Upadhyaksha and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as 'the Rules of 1994') against the order dated 13.4.1998 passed by 4th Additional District Judge, Ghaziabad, in an Election Petition No. 21 of 1995 filed under Rule 33 of the Rules of 1994 whereby the election petitioner-Hari Raj-present respondent No. 1 was declared to have been duly elected as Adhyaksha Zila Panchayat, Ghaziabad.

2. Counter and rejoinder-affidavits have been exchanged. Heard Dr. R. G. Padia, learned counsel for the appellant and Sri N. K. Sharma. learned counsel for the respondent No. 1--Hari Raj.

3. An election to the office of Adhyaksha, Zila Panchayat. Ghaziabad, was held on 22.5.1995. Admittedly there are 28 members who were entitled to vote for electing the Adhyaksha out of whom 27 members participated in the election as one of the members was absent on account of illness. Out of the 27 votes polled and which were taken out from the ballot box, one ballot, paper was held invalid and the remaining 26 votes were shared between three contesting persons as follows :

Joginder Singh

13

Hari Raj

12

Tek Chand

01

Joginder Singh was accordingly declared as duly elected Adhyaksha. Hari Raj--respondent No. 1 filed an Election Petition No. 21 of 1995 alleging that large scale bungling had taken place during the course of election and that counting was also not properly made and certain invalid votes were counted in favour of Joginder Singh. Learned 4th Additional District Judge, Ghaziabad found that two votes which were invalid had been counted in favour of Joginder Singh and after

excluding those two Invalid votes, he concluded that Joginder Singh secured only 11 votes and since Hari Raj had secured 12 votes, he was declared elected. Necessary communication was transmitted to the concerned authorities as contemplated by Rule 45 of the Rules of 1994 and the order passed on the election petition took effect from 13.4.1998 as has been provided in Rule 44. Admittedly Hari Raj assumed the office of Adhyaksha and was administered oath on 17.4.1998.

4. The present appellant Jitendra is one out of 28 members who were entitled to vote for the post of Adhyaksha. He was respondent No. 5 in the Election Petition No. 21 of 1995. He has challenged the order dated 13.4.1998 passed by the 4th Additional District Judge, Ghaziabad, on various grounds. One of the grounds taken by him in the present appeal is that during the pendency of the election petition, Joginder Singh died on 2.11.1997 and in view of the provisions of Rule 39. the election petition stood abated and consequently, the decision made by the lower court on 13.4.1998 was illegal. The finding that two votes polled in favour of Joginder Singh were Invalid has also been challenged and attacked on the ground that the mark 'I' made on the two ballot papers clearly indicated the intention of the voter to vote in favour of Joginder Singh.

5. On behalf of respondent No. 1. Hari Raj, it was urged by Sri N. K. Sharma that the present appellant Jitendra has no locus standi to file the present appeal and that the respondent No. 1 was rightly declared as having been duly elected to the office of Adhyaksha, Zila Panchayat, Ghaziabad.

6. The question of maintainability of the appeal at the instance of Jitendra should not detain us much longer. Admittedly. Jitendra is one of the 28 members who were entitled to vote for the office of Adhyaksha. He admittedly is also a party to the Election Petition No. 21 of 1995 as respondent No. 5. He is not a stranger but a person Interested in ensuring that a proper person is elected and assumes charge of the office of Adhyaksha according to law.

7. Sri N. K. Sharma, learned counsel for the respondent No. 1 placed reliance on the two decisions of this Court in Raja Ram v. Moolraj Singh and others. 1961 ALJ 473 and Balkrishna Das Agarwal v. Smt. Radha Devi and others. AIR 1989 All

133. The gamut of these decisions is that only a person aggrieved by a decision of the lower court can file an appeal. Both these decisions are with reference to the provisions either of U. P. Act No. 3 of 1947 or Sections 96 and 100 of the Code of Civil Procedure. I have thoroughly studied both these rulings and find that they are not applicable on all fours to the facts of the present case. In the present appeal, the dispute is with regard to a public office and no private or individual right is sought to be enforced. The appellant, as said above, is one of the members of the collegium which elects Adhyaksha of Zila Panchayat. By virtue of his being member, he was arrayed as a party to the election petition. It is the duty and obligation of every individual member to ensure that a proper person is elected according to law to the office of Adhyaksha and that the various provisions contained in the Rules are followed. If there is any flagrant violation of the rules, it may be brought to the notice of the Court by a person, who has interest in the matter. The present appellant, therefore, has a vested right to ensure that the rules are observed in letter and spirit and if the order on the election petition has been passed ignoring the rules, the mistake should be rectified. I also feel that it is a case in which the Court below has ignored the mandatory law on the point and has passed an order which is patently erroneous, in such a situation, this Court would not shirk in its duty to step in to rectify the mistake which has been brought to its notice.

8. Now it is the time to consider the merits of the case.

9. An election petition is required to be filed under Rule 33 within 30 days from the date of declaration of the result. Respondent No. 1--Hari Raj filed the petition under Rule 33 to challenge the election of Joginder Singh and the original relief claimed by him was that 'the election of the returned candidate Mr. Joginder Singh-respondent No. 3 be declared void'. Rule 35 of the Rules of 1994 provides that an election petitioner may claim either of the following declarations :

(a) that the election of the returned candidate is void ;

(b) that the election of the returned candidate is void and that he himself (election petitioner) or any other candidate has been duly elected.

Rule 39 deals with the abatement of the petitions. In sub-rule (1) of Rule 39. It is provided that an election petition claiming a declaration mentioned in clause (a.) of Rule 35 shall abate upon the death of the returned candidate, while sub-rule (3) of Rule 39 provides that if any election petition claims the declaration mentioned in clause (b) of Rule 35 and the returned candidate dies, the Judge shall cause notice of such event to be published in the Gazette and thereupon any person who might have been a petitioner, may within fourteen days of the publication apply to be substituted in place of the returned candidate to oppose the petition and shall be entitled to continue the proceedings upon such terms as the Judge may think fit.

10. Dr. R. G. Padla, learned counsel for the appellant pointed out that since Hari Raj--respondent No. 1 has originally claimed relief, which is contemplated in Rule 35 (a), the election petition stood abated upon the death of Joginder Singh on 2.11.1997 and, therefore, the Court below has committed an illegality in deciding the election petition on merits on 13.4.1998. This submission of the learned counsel for the appellant is not without force. Since in the original petition, the only relief claimed was that the election of Joginder Singh be declared as void, the election petition stood abated in view of the provisions of Rule 39 (1) of the Rules of 1994 and consequently, the Court below was not justified in proceeding to decide the petition on merits.

11. Sri N. K. Sharma, learned counsel for the respondent No. 1 urged that after the death of Joginder Singh, a returned candidate, the election-petitioner Hari Raj filed an application, paper No. 34-G, for amendment which was allowed by the Court below on 2.2.1998. It was contended that in view of the amendment, which was carried out in the election petition, the following relief was also Incorporated :

'.....and the petitioner (Hari Raj) be declared elected to the post of Adhyaksha, Zila Panchayat. Ghaziabad.'

According to Sri Sharma, in view of the fact that the amendment had been allowed, the provisions of Rule 39 (1) would not be attracted and the petition would not stand abated. This submission has further been repelled by Dr. Padia on the ground that the amendment application was illegally allowed by the Court below

without notice to the present appellant, in a mechanical and casual manner without realising its true import and implications. It was urged that since the period of limitation for filing an election petition is 30 days as contemplated in Rule 33, no amendment to incorporate any other relief is permissible after the expiry of period of 30 days. In support of his contention, Dr. Padia placed reliance on the decision of this Court in Saeed Ahmad v. Murlidhar and another, AIR 1971 All 331. It was a case in which Rule 50 of the U. P. Town Areas Act (2 of 1914) came to be interpreted which specified a period of 30 days for filing the election petition. It was held that amendment of the petition adding new grounds cannot be sought beyond such period. Hence, amendment of an election petition by addition of further instances of impersonation (corrupt practice) beyond period of limitation could not be allowed. Reliance was also placed on K. D. Deshtnukh v. Amritlal Jayaswal, AIR 1992 SC 164, in which it was held by the Apex Court that the application for amendment filed beyond limitation, i.e., after 45 days of result of election cannot be allowed. A more specific and precise decision on the point is in K. Venkateswara Rao and another v. Bekkam Narasimbha Reddi and others, AIR 1969 SC 872. In which it was observed as follows :

'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. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion, however, the Limitation Act cannot apply to proceedings like an election petition, inasmuch as, the Representation of the People Act is a complete and self-contained Code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.'

In view of above decisions, there can be no escape from the finding that the Court below has allowed the amendment application on 2.2.1998 to incorporate the relief as contemplated in clause (b) of Rule 35 in a most mechanical, perfunctory and casual manner. The amendment application was moved obviously beyond the time, and could not be allowed. The amendment carried out in the election petition being beyond time, has to be totally ignored. Even otherwise, the procedure, as prescribed under sub-rule (3) of Rule 39 was not followed. In view of the fact that Joginder Singh, a returned candidate died during the pendency of the election petition, it stood abated under the provisions of Rule 39 (1). The Court below was not justified in allowing the amendment application or in any case to decide the already abated election petition on merits. The order passed by the lower court is obviously illegal, void and non-est. This order cannot be allowed to stand.

12. In the result, the appeal succeeds and is allowed. The impugned order dated 13.4.1998 passed on Election Petition No. 21 of 1995 declaring respondent No. 1-- Hari Raj as duly elected Adhyaksha Zila Parishad, Ghazlabad, is hereby quashed. The election petition, aforesaid stood abated on the death of the returned candidate--Joginder Singh on 2.11.1997. Legal implication of the present order is that there has occurred a casual vacancy in the office of Adhyaksha, Zila Panchayat. Ghaziabad. This casual vacancy shall be filled in accordance with the provisions of Section 25 of the U. P. Kshettra Panchayats and Zila Panchayats Adhiniyam. 1961 and the allied provisions. Parties shall bear their own costs.

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