

Ram Pal Singh Vs. Devendra Patel and ors.

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Court : Madhya Pradesh

Decided On : Jul-31-2009

Reported in : AIR2010MP24; 2009(5)MPHT166

Judge : R.C. Mishra, J.

Appellant : Ram Pal Singh

Respondent : Devendra Patel and ors.

Disposition : Application dismissed

Judgement :

ORDER

R.C. Mishra, J.

1. This order shall govern disposal of I.A. No. 7/2009, which is an application, under Order 6 Rule 17 of the Code of Civil Procedure read with Section 87 of the Representation of the People Act, 1951, (for short 'the Act') for amendment by adding an additional relief of declaration that the petitioner himself has been duly elected to the State Legislative Assembly from Silvani Constituency.

2. In this petition, under Section 80 read with Section 80-A of the Act, the validity of the election of the returned candidate, viz., respondent No. 1 has been challenged on the ground of an incorrect counting of votes. The result of the

election was declared on 8-12-2008. Having lost the election by a narrow margin of votes, the petitioner, within the prescribed period of 45 days, presented the petition wherein the following reliefs have been claimed:

(i) declaration that election of the returned candidates is void.

(ii) direction for a recounting of votes.

3. According to the petitioner, he is also entitled to claim a further declaration that he has been duly elected but it was due to sheer oversight that the relief was left out of the petition.

4. The prayer has been vehemently opposed on the ground that the additional relief sought to be incorporated in the petition had already become time barred on 15-2-2009, i.e., the date of filing of the amendment application. To fortify the objection, learned Counsel for the respondent No. 1 has made reference to the decision of Apex Court in *Munilal v. Oriental Fire & General Insurance Co. Ltd.* 1996 (I) MPWN 101.

5. Learned Counsel for the petitioner, while placing strong reliance on the following observations made by a Constitution Bench in *T.C. Basappa v. T. Nagappa* AIR 1954 SC 440, has strenuously contended that there is no bar whatsoever to introduce the declaratory relief even after the expiry of the statutory period of limitation to call the election in question:

Coming now to the question of amendment, the High Court, after an elaborate discussion of the various provisions of the Act, came to the conclusion that the Election Tribunal which is a Special Court endowed with special jurisdiction has no general power of allowing amendment of the pleadings, and that the express provision of Section 83(3) of the Act, which empowers the Tribunal to allow amendment with respect to certain specified matters, impliedly excludes the power of allowing general amendment as is contemplated by Order 6 Rule 17, of the Civil Procedure Code. Here again the discussion embarked upon by the High Court seems to us to be unnecessary and uncalled for. The only amendment applied for by the petitioner was a modification in the prayer clause by insertion of an

alternative prayer to the original prayer in the petition. No change whatsoever was sought to be introduced in the actual averments in the petition and the original prayer, which was kept intact, was repeated in the application for amendment. The alternative prayer introduced by the amendment was not eventually allowed by the Tribunal, which granted the prayer of the petitioner as it originally stood. In these circumstances the mere fact that the Tribunal granted the petitioner's application for amendment becomes altogether immaterial and has absolutely no bearing on the actual decision in the case. We are unable to hold, therefore, that the Tribunal acted without jurisdiction in respect to either of these two matters.

Attention has also been invited to a subsequent decision of the Apex Court on the point in *Harish Chandra Bajpai v. Trilokl Singh* : AIR 1957 SC 444.

6. As reproduced in *Harish Chandra Bajpai's* case (*supra*), Section 83(3), prior to its substitution by Act 27 of 1956, read as under:

The Tribunal may upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as many in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

7. This provision, in substance, corresponds to the first part of Sub-section (5) of Section 86 of the Act as inserted by Act 47 of 1966 whereas the second part creates a positive bar in the following terms:

but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

8. Further, by virtue of the Amending Act, 1966, Section 90(2) was, in essence, substituted by Section 87(1) of the Act. Thus, the law relating to amendment of pleadings in an election petition, as explained in *Harish Chandra Bajpai's* case (*supra*), still holds the field with the only modification that if the amendment sought relates to corrupt practice, it would be subject to the rider placed by second part of Section 86(5). Accordingly,--

(i) this Court has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges.

(ii) this Court has power under Order 6 Rule 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred.

9. T.C. Basappa's case (supra), is primarily an authority for the proposition that it is a patent error which can be corrected by certiorari but not a mere wrong decision. The effect of observations relied upon by learned Counsel for the petitioner has, therefore, to be understood in the context that the Constitution Bench had refused to interfere, after noticing that the amendment of relief clause, though permitted even after expiry of the prescribed period, had become altogether immaterial and had absolutely no bearing on the actual decision in the case. In this view of the matter, the ratio in T.C. Basappa 's case (supra) is of no avail to the petitioner, particularly in the wake of the principles deducible from the subsequent decisions on the subject.

10. It is true that Sub-section (1) of Section 87 of the Act lays down that every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, subject to the provisions of this Act and of any rules made thereunder but, as laid down by a five Judge Bench of the Apex Court in Jagan Nath v. Jaswan Singh : AIR 1954 SC 210, an Election Petition is not an action at common law or equity but is a purely statutory proceedings. As explained by M.C. Mahajan, CJ., while speaking for the Bench:

The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power.

11. The view was re-affirmed in Jyoti Basu v. Debi Ghosal : AIR 1982 SC 983, in the following terms:

Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus, the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act.

12. This apart, it was held in *Hukumdev Narain Yadav v. Lalit Namin Mishra* : AIR 1974 SC 480, that even by virtue of Section 29(2) of the Limitation Act, the provisions thereof would not become applicable to an Election Petition under the Act, which itself is a self-contained Code.

13. In a subsequent case of *Mohan Raj v. Surendra Kumar Taparia* : AIR 1969 SC 677, the Supreme Court, while rejecting the argument that Order 6 Rule 17 and Order 1 Rule 10 enable the High Court respectively to order amendment of a petition and to strike out parties even after expiry of the period of limitation, held that these provisions of Civil Procedure Code cannot be used as curative means to save election petition.

14. There is yet another aspect of the matter. In case, for the argument's sake, the declaratory relief sought to be claimed by way of amendment is permitted to be incorporated, it would entitle the returned candidate or any other party to file a recrimination petition to the effect that election of the petitioner would have been void if he had been the returned candidate and a petition had been presented calling in question his election and as an obvious consequence, the scope of inquiry in this election trial would be enlarged. However, as explained by the Apex Court in *Harish Chandra Bajpai's case* (supra), the power under Order 6 Rule 17 cannot be exercised to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition or those allegations will then be barred.

(Emphasis supplied)

15. Thus, viewed from any angle, the Election Petition cannot be allowed to be amended, under Order 6 Rule 17 of the Code of Civil Procedure read with Section 87 of the Act, by inserting a new claim that had already become barred by limitation on the date of the corresponding application.

16. In the result, I.A. No. 7/2009, therefore, stands dismissed.

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