

Anil Pahar Vs. Subhas Mahato and ors.

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Court : Kolkata

Decided On : Apr-23-1984

Reported in : AIR1985Cal169,88CWN756

Judge : Anil Kumar Sen and ;Prabir Kumar Majumdar, JJ.

Acts : [West Bengal Panchayat Act, 1957](#) - Section 204; ;West Bengal Panchayat Rules - Rule 75; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 80

Appeal No. : Civil Order No. 3290 of 1983

Appellant : Anil Pahar

Respondent : Subhas Mahato and ors.

Advocate for Def. : Snehatosh Majumdar, Adv. (for No. 1), ;A.N. Banerjee and ;Debayan Bera, Adv. (for Nos. 2-5)

Advocate for Pet/Ap. : S.B. Bhunia and ;Rivaki Ranjan Mitra, Adv.

Disposition : Petition allowed

Judgement :

Anil K. Sen, J.

1. An application raising an Election Dispute under Section 204 of the West Bengal Panchayat Act (hereinafter referred to as the said (Act)) which was

registered as Misc. Case No. 69 of 1983 being dismissed by the learned Munsif, Purulia, by an order dt. Nov. 28, 1983, the applicant has challenged the said order in a revisional application. The revisional application is being heard as a contested application.

2. The petitioner contested the election for the post of Chatumadar Gram Panchayat Prodhan held on Aug. 10, 1983, but on the declared result thereof lost to opposite party No. 1. On Aug. 20, 1983, the petitioner instituted the aforesaid Election Dispute case by filing an application under Section 204 of the said Act in the court of the learned Munsif, Purulia who is the tribunal constituted under the Act for adjudication of such a dispute. The opposite party appeared and raised a preliminary objection that since no notice under Section 80(1) of the Civil P.C. had been served upon the Government and the Polling Officer nor any leave had in the alternative been obtained, the election petition is not maintainable. Such an objection having been upheld by the learned Munsif, he has dismissed the election petition without going into the merits. Feeling aggrieved the petitioner has moved this court in revision and the only point which arises for our consideration is as to whether an applicant under Section 204 of the said Act is required to comply with Section 80 of the Code in the matter of preferring an election petition.

3. Mr. Bhunia appearing in support of this revisional application has contended that the election case not being a suit, Section 80 of the Code can have no application. Moreover according to Mr. Bhunia in the disputed proceeding, all the relief that has been claimed is against the opposite party No. 1 and none against the Government nor against any public servant, hence Section 80 of the Code even on its terms can have no application. The learned Advocate for the opposite party has contested the points thus raised by Mr. Bhunia.

4. On a careful consideration of the legal position, we are unable to sustain the view taken by the learned Munsif in this case. The learned Munsif appears to have taken the view that when the provisions of the Code had been adopted by the Rules framed under the Act and had been made applicable to trial of election petition, the petitioner is not entitled to file an election petition without due compliance with the requirement of Section 80 of the Code. The learned Munsif

has gone wrong in not appreciating the real extent to which the Code had been adopted.

5. The Civil P.C. no doubt primarily prescribes rules of procedure. But those rules are comprehensive enough to cover all stages since before institution of a suit till appeal, revision and execution of decrees obtained therein. Section 80 of the Code prescribes a rule of procedure which has to be fulfilled prior to the institution of the suit. It in effect provides that advance copy of the plaint should be served on the defendant and no suit should be instituted in Court until the expiry of two months after such service; (State of Seraikella v. Union of India, : [1951]2SCR474). It does not provide for a procedure applicable to trials as such but prescribes a pre-trial procedure to be fulfilled in respect of a special category of suits.

6. It is not disputed that the Civil P.C. is applicable to suit coming within its purview and it would not be applicable to suits or proceedings under special statutes unless the said statute adopts the Code and makes it applicable thereto and to the extent it is so adopted. Here in the present case Section 264 of the said Act confers right on specified persons to dispute the declared results of an election and prescribes the forum and the procedure for the adjudication of such a dispute. This section reads as follows : --

'204.(1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of the declaration of the results of such election, file a petition, calling in question such election -

(a) before the Munsif having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti, and

(b) before the District Judge of the district, where such election is in respect of a Zillah Parishad.

2) When filing a petition under Sub-section (1), the petitioner shall deposit in court, as security for the costs likely to be incurred, a sum of

a) fifty rupees, where the petition is filed before the Munsif, and

b) two hundred rupees, where the petition is filed before the District Judge.

3) The District Judge may transfer any petition filed before him under Sub-section (1) to any Judicial Officer subordinate to him not below the rank of a Subordinate Judge.

4) In dealing with a petition under Sub- Section (1), the Munsif, the District Judge or the Judicial Officer to whom the petition is transferred under Sub-section (3) (hereinafter referred to as the Judge) may hold such enquiry as he deems necessary. '

5) The procedure to be followed by the Judge including all matters relating to the filing of such petition shall be such as may be prescribed.

6) The Judges shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses and compelling the discovery and production of documents.

7) The decision of the Judge shall be final and shall not be called in question in any Court.

8) No court shall grant an injunction --i) to postpone the election of-

a) a member of a Gram Panchayat a Nyaya Panchayat, a Panchayat Samiti or a Zillah Parishad, or

b) a Pradhan, an Upa-Pradhan, a Pradhan Vicharak, a Sabhapati, a Sahakari Sabhapati, a Sabhadhipati ora Sahakari Sabhadhipati; or

ii) to prohibit a person declared to have been elected under this Act, from taking part in the proceedings of the Gram Panchayat, Nyaya Panchayat, Panchayat Samiti or Zillah Parishad, as the case may be to which he has been elected; or

iii) to prohibit the members formally elected or appointed to a Gram Panchayat, Nyaya Panchayat, Panchayat Samiti or Zilla Parishad, as the case may be, under this Act from entering upon their offices'.

7. The Prescribed procedure is to be found in the Rules -- the material provisions whereof are set out as follows : -- .

'74. Filing of petition.-- (1) The petition referred to in Sub-section (1) of Section 204 shall be filed before -

a) The Munsif having jurisdiction where the election is in respect of a Gram Panchayat or Panchayat Samiti, and

b) before the District Judge of the district, where the election is in respect of a Zilla Parishad.

2) The petition shall contain a statement in brief of the material facts on which the petitioner relies and shall where necessary be divided into paragraphs numbered consecutively. It shall be filed by the petitioner and verified in the manner prescribed for verification of pleading in the Code of Civil Procedure, 1908.

3) If the irregularities alleged in the petition are likely to affect the validity of the election of more than one returned candidate the petitioner shall join as opposite party to his petition all such returned candidates.

4) The petitioner may, if he so desires in addition to calling in question the election of the returned candidate or candidates, claim for a declaration that he himself or any other candidate has been duly elected.

5) The Munsif, or the District Judge or the judicial officer to whom the petition has been transferred under Sub-section (3) of Section 204 (hereinafter referred to as the 'judge') shall, if the deposit in accordance with the provisions of Sub-section (2) of Section 204 has been made, proceed to inquire into the petition.

6) The Judge shall, as soon as may be, cause a copy of the petition to be served on each opposite party.

75. Procedure to be followed :-- (1) Every dispute relating to election shall be enquired into by the Judge as early as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits : --

Provided that it shall only be necessary for the Judge to make a memorandum of the substance of the evidence of any witness examined by him.

76. Withdrawal of petition.-- (1) No election petition shall be withdrawn without the leave of the Judge.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.

(3) When an application for withdrawal is made notice thereof fixing a date for the hearing of application shall be given to all other parties to the petition.

(4) No application for withdrawal shall be granted if the Judge is of opinion that such application has been induced by any bargain of consideration which does not deserve to be admitted.

(5) If the application is granted, the petitioner may be ordered to pay such cost to the opposite party as the Judge may think fit.

77. Evidence during enquiry.-- The provisions of Indian Evidence Act, 1872, shall apply in all respects to the trial of an election petition.'

8. It would appear clear from the provisions of the statute and the Rules, that the Legislature having itself prescribed the procedure for filing and/or institution of election petitions had adopted the Code only for the purpose of trial of such cases. Rule 75 as above has not adopted the whole Code. It had adopted such of the provisions thereof as are applicable at the stage of trial of suits but subject again to other provisions of the Act and the Rules. The Act and the Rules had prescribed their own procedure as to how such an election petition is to be filed and the case instituted and has also provided that once such a petition has been filed fulfilling the requirements prescribed therefor, the tribunal shall forthwith proceed with the enquiry, i.e. with the trial of such a case. Hence in our view, the legislature had not adopted Section 80 of the Code and had not made it applicable to election petitions under Section 204 of the Act. The learned Munsif went wrong in not appreciating this position. He rejected the election petition upon an erroneous view that provisions of Section 80 of the Code not having been complied with, he had

no jurisdiction to entertain the petition. In doing so, the learned Munsif has really refused to exercise a jurisdiction otherwise vested in him and the impugned order is, therefore, liable to be set aside. Hence we set aside the impugned order and direct the learned Munsif to dispose of the misc case on its merits. There will be no order for costs.

Prabir Kumar Majumdar, J.

9. I, agree.

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