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Pt. Govind Ram Vs. Ram Saroop

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Court : Jammu and Kashmir

Decided On : Sep-25-1998

Reported in : AIR1999J& K63

Judge : R.C. Gandhi and; Arun Kumar Goel, JJ.

Acts : Jammu and Kashmir Representation of the People Act, 1957 - Sections 95, 106, 107 and 123; ;Representation of the People Act, 1951 - Sections 87 and 116A; ;Constitution of India - Article 136; ;Code of Civil Procedure (CPC) , 1908 - Order 8, Rule 9

Appeal No. : Letters Patent Appeal (C) No. 23 of 1997 and C.M.P. No. 57 of 1997

Appellant : Pt. Govind Ram

Respondent : Ram Saroop

Advocate for Def. : Parmod Kohli, Sr. Adv. and; Ajay Kumar Gupta, Adv.

Advocate for Pet/Ap. : S.A. Salaria, Sr. Adv. and; M.U. Salaria, Adv.

Disposition : Appeal dismissed

Judgement :

Arun Kumar Goel, J.

1. This Letters Patent Appeal u nder Clause 12 of the Jammu and Kashmir Letters Patent is directed against the order passed by learned single Judge of this Court in Chamber on 26th of August, 1997. The said order has permitted the respondent No. 1 to file additional written statements, with a prayer to allow this appeal and set aside the impugned order.

2. Brief facts giving rise to this case are that Election Petition No. 4 of 1996 titled Ram Saroop v. Returning Officer, is pending trial under the provisions of the Jammu and Kashmir Representation of the People Act, 1957 (hereinafter referred to as the Act), wherein election of the appellant has been questioned on a number of grounds. After the filing of written statement by the appellant to the said Election Petition vide order dated 22-5-1997 on an oral request having been made on behalf of the respondent No. 1-pct it Loner in the Election Petition, he was permitted to file replica to the written statement of defendants 1 to 3 therein. This prayer was granted and three weeks' time was allowed for doing the needful with the condition that copy of the same be supplied to the learned Counsel for the respondent.

3. Record of the case further shows that when the case came up for hearing on 25-6-1997, when it transpired that additional written statement as ordered on 22-5-1997 had not been filed.

4. In the aforesaid background, an objection was raised on behalf of the appellant that additional written statement could not be filed suo motu, but prior leave of the Court had to be sought. Accordingly, counsel tor the respondent No. I was directed by the learned single Judge to file an application on such an objection having been raised. When application was filed, it was objected to on behalf of the appellant. (Respondent No, 3 is the present appellant and is also the Returned Candidate, whose elcction is questioned in Election Petition No. 4 of 1996). Learned single Judge after hearing the learned Counsel for the parties has negatived the objections filed on behalf of the appellant. Hence, this appeal.

5. When this case was taken up for hearing, a serious objection was raised on behalf of respondent No. 1 regarding the maintainability of the present appeal, as according to him, this appeal is liable to be dismissed as incompetent. It was

further urged Mr. Kohli, learned Sr. Counsel appearing for respondent No. I that the present appeal is another step-in-aid on the part of the respondent No. I to protract the already protracted decision of the Election Petition. By adopting such tactics, appellant has successfully defeated the provisions of law. This plea on behalf of the respondent No. 1 was seriously contested by Mr, Salaria, learned Senior Counsel appearing for the appellant, he placed reliance on ILR (1970) 2 Mad 103, Kadiravan v. R. Thirumalaikumar. On the basis of this judgment, it was urged by Shri Salaria that the impugned order passed by the learned single Judge tantamount to an order within the meaning of Clause 12 of the Letters Patent of this Court and, therefore, the plea urged on behalf of the respondent No. I was liable to be negatived.

6. So far decision of election disputes are concerned special provision has been enacted for the said purpose in the shape of the Act by the State and in the shape of Representation of People Act, 1951 by Central Government Provisions of State Act are pari matcria to those of the Central Act. Whether an appeal against an interlocutory order is excluded under the provisions to Section 123 of the Act or not It may be noticed here that notwithstanding in any other law for the time being in force, order passed in an Election Petition under Sections 196 and 197 of the Act is made appealable before the Supreme Court under Section 123 of the Act and identical provision is there in Section 116-A of the Central Act.

7. Besides this Section 95 of the State Act and Section 87 of the Central Act are to the following effect:-

'87. Procedure before the High Court. - (1) Subject to the provisions of this Act and of any rules made thereunder, 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, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witness is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872) , shall, subject to the provisions of this Act, be deemed to apply in all respects of the trial of any election-petition.'

'95. Procedure before the High Court. - (1) Subject to the provisions of this Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the provisions applicable under the Code of Civil Procedure, Samvat 1977 to the trial of suits;

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Evidence Act, Samvat 1977, shall, subject to the provisions of this Act, be deemed to apply in all respects of the trial of an election petition.'

A perusal of both these sections indicates that Election Petition is tried by the High Court, as nearly as may be possible, in accordance with the provisions of the Code of Civil Procedure.

Incidentally, it may be noticed here that the provisions of Code of Civil Procedure, 1908 as well as those of Jammu and Kashmir Code of Civil Procedure, 1977 Bikrami are almost identical.

8. It is worthwhile to notice here that certain class of order are appealable under the Code of Civil Procedure under Order 43 and Section 184 thereof. Admittedly, an order passed under Order 8, Rule 9 of the Code of Civil Procedure is not one of such orders. Whether the Letters Patent Appeal is maintainable against such an order has also to be seen in the light of this position. In the context, it may be worth while to mention that by necessary implication, it can be safely inferred that an interlocutory order passed during the course of Election Petition, which may amount to judgment and under the Act only appeal, which is permissible is after

the conclusion of the trial of Election petition in accordance with the provisions of the Act. Such an appeal bas been provided under Section 123 of the Act. It may further also be proper to notice that where a liability does not exist under the ordinary law, i.e., common law, hut is created by a statute, as under the Act in the present case, which provides for a special remedy for enforcing the provisions of the Act, it hardly needs to be emphasised that such a remedy provided under the statute have got to be followed. In such a situation, it will not be competent for the party concerned, appellant in the present case to pursue the remedy under the ordinary law. Consequences of such a situation would be that such a forum created by the statute has got to be approached.

9. As already noticed, the jurisdiction to hear and decide an Election Petition is conferred upon this Court as a Court and not either as a Special Tribunal or Special Court. This is just ah enlargement of the original jurisdiction of the High Court to Election Petitions also.

10. In this behalf reference may be made to a few observations of FB decision in AIR 1985 Raj 185, Ram Dhan v. Bhanwar Lal (Paras 18, 32 and 33):

'A similar question arose for decision before their Lordships of the Judicial Committee of the Privy Council in Goonesinha v. The Honourable O.L.De. Krester, (1945) 2 Mad LJ 314 : AIR 1945 PC 83, on an appeal from the Supreme Court of Ceylon. The statute constituting the Supreme Court of Ceylon did not confer upon it any original jurisdiction but only appellate jurisdiction was conferred upon it in respect of matters enumerated in the it statute. The law relating to disposal of election disputes provided that an election petition may be presented to the Supreme Court, which would be tried by the Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice. An election dispute came up for consideration before a Judge of the Supreme Court and against an order passed by the election Judge, an application for certiorari was moved before the Supreme Court. It was held by their Lordship of the Privy Council in that case that cognizance of the election petition by the Supreme Court was an extension of or addition to the ordinary jurisdiction of that Court and that certiorari could hot be issued in respect of an order made by a Judge of that very Court.'

'In Union of India v. Mohindra Supply Co., AIR 1962 SC 256 , the question which arose for consideration before the Supreme Court was as to whether a Letters Patent appeal could be maintained against an order passed in appeal under: Section 39(1) of the Arbitration Act, 1940 by a single Judge of the High Court. Sub-section (1) of Section 39 provides a right of appeal in respect of the matters specified therein. The provisions of Sub-section (2) of Section 39 are significant inasmuch as a second appeal is barred but the right of appeal to the Supreme Court is expressly saved. However, nothing has been provided in the statute in respect of the right of appeal under the Letters Patent against an order passed by a single Judge of the High Court under Section 39(1) and it was argued before their Lordships that an intra Court appeal was not prohibited.

Their Lordships of the Supreme Court took notice of the fact that Arbitration Act of 1940 was a consolidating and amending Act and was for all, purposes a code relating to Arbitration and observed as under rejecting the submission made before them :-

'The Arbitration Act, which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by codifying the law relating to appeals in Section 39.'

'Under Section 39(1) an appeal lies, from the orders specified in that sub-section and from no others. The legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in Section 39(1), right to appeal from a judgment which may otherwise be available under the Letters Patent is

restricted, there is no ground for holding that Clause (2) does not similarly restrict, the exercise of appellate power granted by Letters Patent.'

11. After having considered the matters, we are of the opinion that it will lead to a very peculiar situation, when on one hand appeals are provided against final orders under Section 123 of the Act to the Supreme Court, but in respect of interlocutory order passed by the High Court during the trial of an Election Petition, the same being a judgment within the meaning of Letters Patent Appeal an Intra Court (appeal) would lie to the Division Bench of the Court, This decision in Letters Patent Bench would provide further appeal under Article 136 of the Constitution of India again to the Supreme Court. Consequence of this would be that against the final order under the Act, a party has one appeal, whereas against an interlocutory order, it will have two appeals, one in the same Court before a Division Bench and the other before the Supreme Court. This was never intended much less aimed by the legislature while enacting the provisions of the Representation of People Act. Otherwise in Chapter-V of the State Act, which deals with the Appeals, there would not have been specific mention of the Appeals only to the Supreme Court. This omission is not without purpose, which provides for limited right of appeal, that too against the order passed under Sections 106 and 107 of the Act to the Supreme Court. It may be worthwhile to notice that Section 123 of the Act brought on statute book in the year 1967.

12. In AIR 1988 SC 915, Upadhyaya Hargovind Devshanker, v. Dhirendrasing Virbhadrasinghji Solanki, this controversy has been set at rest by the Supreme Court in the context of Section 116-A of the Central Act visa-vis Clause 15 of the Letters Patent (Bombay). Relevant observations in this judgment are to the following effect (Para 15) :-

'Even on this occasion the Act did not provide for any appeal against any interlocutory order passed by Judge trying an election petition. After the above amendment the authority referred to in Article 329(b) of the Constitution to decide an election petition under the Act is again two tier authority - the High Court Judge trying an election petition being the original authority and the Supreme Court the appellate authority. The effect of clause (b) of Article 329 of the Constitution as

already referred to above has been explained by the Constitution Bench of this Court in N.P.' Poonuswami's case, AIR 1952 SC 64 (supra). No Court exercising power under any ordinary law other than the Judge of a High Court who has been assigned the work of trying an election petition under sub-section (2) of Section 80A of the Act and the Supreme Court which is empowered to hear an appeal against any order passed by the Judge of the High Court under Section 98 or Section 99 of the Act can therefore decide any question arising out of an election petition. The power of the Supreme Court under the provisions of the Constitution which is the fundamental law of the land and not an ordinary law is however unaffected by any of the provisions of the Act. It means that when the election petition is pending in the High Court only the Judge who is asked to try an election petition can deal with questions arising in it and no other Judge or Judges of the High Court can deal with them. When the order passed by the Judge of the High Court in an election is an order passed under Section 98 or Section 99 of the Act it is subject to the appellate jurisdiction of the Supreme Court under Section 116-A of the Act as Article 136 of the Constitution naturally stands excluded in view of the express provisions contained in Section 116 of the Act. The remedy available under Article 136 of the Constitution may, however, be resorted to be any party who is aggrieved by any order passed by the Judge trying an election petition which does not fall under Section 98 or Section 99 of the Act. It follows that the Division Bench of the High Court which is entitled to hear an appeal against any order of a single Judge under clause 15 of the Letters Patent of the High Court which is an ordinary law cannot hear an appeal against any interlocutory order passed in the course of the trial of an election petition by the Judge trying an election petition since the Division Bench is not specified in the Act as an appellate authority which can deal with questions arising out of an election petition filed under the Act.

Clause 15 of the Letters Patent of the High Court of Gujarat (omitting the unnecessary portions) reads as follows :

'15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction - And we do further ordain that an appeal shall lie to the said High Court...'......... from the judgment (not being a judgment passed in the exercise of

appellate jurisdiction ....} of one Judge of the said High Court or one Judge or any Division Court, pursuant to Section 108 of the Government of India Act...........'

The relevant part of Clause 15 of the Letters Patent which is referred to above provides for an appeal against a judgment passed by a single Judge of a High Court to the same High Court and the scope of the said appellate power has been explained by this Court in Shah Babulal Khimjj v. Jayaben D. Kania, (1982) 1 SCR 187 : AIR 1981 SC 1786. An appeal no doubt lies under that clause from an order of a single Judge of the High Court exercising original jurisdiction to the High Court itself irrespective of the fact that the judgment is preliminary or final or that it is one passed at an interlocutory stage provided it satisfies the conditions set out in the above decision but the said provision cannot be extended to an election petition filed under the Act, Conferment of the power to try an election petition filed under the Act does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable by the Single Judge under the Act is a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. Having regard to the history of the legislation and the limited nature of the appeal expressly provided in Section 116A of the act it should be held that any other right of appeal (excluding that under the Constitution) is taken away by necessary implication. We, therefore, find it difficult to subscribe to the view that when once the jurisdiction to try an election petition is conferred on the High Court all other powers incidental to the ordinary original jurisdiction exercised by a single Judge of a High Court would become applicable to an election petition filed under the Act. It is no doubt true that in Dr. Chotalal Jivabhai Patel's case, (1971) 22 Guj LR 850 (supra) the Division Bench of the High Court of Gujarat applied the rule laid down in National Telephone Company Ltd. v. Post Master General, 1913 AC 546, namely '(W)hen a question is stated to be referred to an established Court without more, it...........imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches' to an election petition filed under the Act which the High Court could try in exercise of the special jurisdiction conferred on it by the Act and held that except an order under Section 98 or Section 99 of the Act which was made expressly appealable under Section 116A of the Act to this Court all other orders passed by the Judge trying an election petition would be appellate to the High

Court under Clause 15 of the Letters Patent. The principle applied by the High Court is not an unqualified one. That rule itself suggests that even where a Court is asked to hear a case, it is quite possible that the nature of the Jurisdiction may be such that all the incidents of procedure or any general right of appeal from its decision may not be attracted. Perhaps the Division Bench would not have reached the said conclusion if it had considered the effect of Article 329(b) of the Constitution which authorised the creation of an authority for trying disputes arising out of elections to the Houses of Parliament and to the Houses of State Legislatures and the history and the scheme of the Act and the limited right of appeal provided in Section 116-A of the Act. We do not find any discussion about the effect of the constitutional provision in Article 329(b) in the course of the said decision. There was also no adequate appreciation of the need to construe the Act as a complete code regarding all matters relating to settlement of election disputes. It is significant that in subsection (7) of Section 86 of the Act it is stated that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. If Parliament intended that the Division Bench of the High Court should exercise its appellate jurisdiction under clause 15 of the Letters Patent of the High Court probably it would not have enacted Sub-section (7) of Section 86 of the Act having regard to the well-known tendency of one or the other party to an election petition preferring appeals against interlocutory orders to the Division Bench. The presence of such a remedy is enough to defeat the object of enacting Sub-section (7) of Section 86. If such appeals against interlocutory orders to the High Court are permitted perhaps no election dispute will be finally settled until the next election becomes due. The intention of Parliament is that at the level of the High Court only the Judge who is asked by the learned Chief Justice to try an election petition should be the sole Judge to decide any question arising out of any such election petition and that at the appellate stage the Supreme Court alone should deal with any matter arising out of the election petition. We are of the view that as regards the jurisdiction to try an election petition and the right of appeal of the parties to an election petition, the provisions of the Act (apart from the provisions in the Constitution) constitute a complete code and no other Judge or Judges other than the single Judge of the

High Court who is asked to try an election petition and the Supreme Court exercising appellate powers under Section 116A of the Act in respect of orders passed under Section 98 or Section 99 of the Act or under Article 136 of the Constitution in respect of other orders can have any jurisdiction to deal with any matter arising out of an election petition filed under the Act. We do not therefore agree with the view expressed on this question by the High Court of Gujarat in Dr. Chotalal Jivabhai Patel's case(1971 (12) Guj LR 850) (supra). We therefore overrule the said decision. We also overrule the decision of the Madras High Court in Kadiravan v. B. Thirumalakumar, ILR (1970) 2 Mad 183, and the decision of the Madhya Pradesh High Court in Laxmi Narayan Nayak v. Ramratan Court in Laxmi Narayan Nayak v. Ramratan Chaturvedi, AIR 1986 Madh Pra 165 (FB), which have taken the same view as in Dr. Chotalal Jivabhai Patel's case (supra). We are, however, in agreement with the view expressedby the High Court of Allahabad in Siaram v.Nathuram, 1968 All U 576, and by the HighCourt of Rajaslhan in Ramdhan v. Bhanwarlal,AIR 1985 Rajasthan 185 (FB), which have heldthat by necessary implication an appeal to theHigh Court from an interlocutory order passedby the single Judge of the High Court in thecourse of a trial of an election petition filed underthe Act is excluded. The reasons given in thelatter case by the Full Bench, of the RajasthanHigh Court are indeed quite substantial.'

13. In case the plea, urged by Mr. Salaria, Senior Counsel in support of this appeal is taken to its logical and, then its result would be disastrous as already observed there would be first intra Court appeal before the Division Bench of: the Court and it will be followed by appeal under: Article 136 of the Constitution of India, which was never aimed at by framers of the Act.

14. Except for the Madras decision referred to (supra), nothing to the contrary was cited by Mr. Salaria. Thus it is held that the present appeal is incompetent.

15. Since the case had been argued on meritsby both the learned counsel, we may deal withthat aspect also. Under the provisions of Order 8,Rule 9 of the Code of Civil Procedure, which isto the following effect:-

'9. Subsequent pleadings. - No pleading subsequent to the written statement of defendant other than by way of defence to set-off (or counter claim) shall be

presented except by the leave of the Court and upon such terms as the Court think fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the sanie.'

The Court can grant leave on such terms as it thinks fit, however, on its own at any time it ,can require a party to file written statement or additional written statement from any of the parties and fix a time for presenting the same.

16. In the instant case, trial Court had already exercised its jurisdiction by allowing respondent No. 1 to file replica as is evident from its order dated 22-5-1997. Parties were not at variance that this order has been passed in the presence of the learned counsel for the appellant. In case any grievance was made against the exercise of such power by the learned single Judge, objection would have been noticed in that behalf. Therefore, for all intends and purpose, when application was called for, it can at best be termed for extension of time instead of permission being asked for by the respondent No. 1. It appears that appellant became wiser after the event when as per order of 22-5-1997 passed by the learned Judge, replica was not filed.

17. It may also be worthwhile to notice that the rules of procedure like the provisions of Order 8, Rule 9 of the Code of Civil Procedure are aimed at not only advancing the cause of justice, but also doing substantial justice between the parties. In no case rule of procedure can be brought to be interpreted in a manner, which may thwart the judicial process. Ultimate aim of all laws including procedural laws has to finally set at rest controversies between the parties. If the narrow interpretation as was being urged on behalf of the appellant is accepted, it will result in procedure being allowed to defeat the ends of justice. It may be also worthwhile to notice here that the procedure is something designed to facilitate justice and further its end, it is not apenal enactment for punishment and penalties, much less a thing to trap up litigant. Here it may also be noticed too technical a view of substantial provisions of the Code of Civil Procedure would leave no room for elasticity of interpretation needs to be guarded against, of course doing justice to both the parties, lest it results in frustrating the very purpose of enacting the procedural law, which is aimed at the furtherance the cause of justice as a step-in-

aid in that direction.

18. After having examined the case on both counts as discussed hereinabove, it is held that appeal filed by the appellant is incompetent, besides this it is also held that even on merits, there is no case which may call for interference, even if the Letters Patent Appeal filed by the appellant was maintainable.

19. No other point is urged.

20. The appeal stands dismissed and appellant is burdened with costs of respondent No. 1 in this appeal.

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