

Smt.Renu Shah. Vs. Kant Shrish Dev Singh.

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Court : Madhya Pradesh

Decided On : Jul-13-2010

Judge : Krishn Kumar Lahoti ; J.K. Maheshwari, JJ.

Acts : Madhya Pradesh Municipal Corporation Act, 1956 - Section 441 ; [Representation of the People Act, 1951](#) - Section 81 ;

Appeal No. : W.P. No.6219/2010

Appellant : Smt.Renu Shah.

Respondent : Kant Shrish Dev Singh.

Advocate for Def. : Shri Sanjay Agrawal, Adv.

Advocate for Pet/Ap. : Shri K.K. Trivedi, Adv.

Judgement :

1. Shri K.K. Trivedi, learned counsel for the petitioner. Shri Sanjay Agrawal, learned counsel for the respondent. This petition is directed against the order dated 22/4/2010 passed by the Election Tribunal, District Judge, Sidhi in Election Petition No.6/2010 by which an application filed by the petitioner for dismissal of the election petition was rejected.

2. The petitioner herein had raised two objections before the Election Tribunal for dismissal of the election petition (i) that the election petition was not filed by the election petitioner himself but was filed by his counsel so it was liable to be dismissed, (ii) that the security though deposited by the election petitioner but in a wrong head in the Treasury.

3. The Election Tribunal found that the election petition could have been filed by the election petitioner or by his nominee and on this ground the first objection was rejected. So far as second objection is concerned, it was not decided and by order dated 15/4/2010 the Election Tribunal directed that this objection will be considered after recording the evidence.

4. Shri K.K. Trivedi, learned counsel for the petitioner, submitted that the election petition ought to have been filed by the Election petitioner himself and filing of the election petition by the Advocate is contrary to the statutory provisions. He has referred the decision of the Apex Court in the case of G.V. Sreerama Reddy & another V. Returning Officer & others, AIR 2010 SC 133, in support of his contention. It was also submitted by Shri Trivedi that the objection in respect of improper deposit of the security ought to have been decided by the Election Tribunal before proceeding in the matter but the Tribunal erred in deferring the aforesaid issue till recording the evidence.

5. Shri Sanjay Agrawal, learned counsel appearing for the respondent, submitted that the election petition was filed by the election petitioner himself along with his counsel. He referred the order sheet dated 27/1/2010 of the Election Tribunal which is at page 47 of the paper book in support of his contention. It was

submitted by Shri Agrawal that election petitioner himself was present along with his counsel and the election petition was filed by the election petitioner accompanying with the counsel, so it was a proper presentation of election petition. It was further submitted that even if it is found that the election petition was not filed by the election petitioner but it was filed by his counsel, then it was a proper presentation of the election petition. In support of his contention, he has relied upon the decision of the Division Bench of this Court Manoharlal Gole V. Dilip and others, 2009 (3) MPLJ 345 and submitted that first objection of the petitioner has been rightly turned down by the Election Tribunal. So far as second objection is concerned, it was submitted by Shri Agrawal that security was duly deposited by the election petitioner. Even if it was deposited in some wrong head, there was sufficient compliance of the mandatory provisions. The security deposit is to be made to meet out the expenses of the election petition and the respondents who has duly deposited the aforesaid amount in the Treasury even though it was deposited in a wrong head, will not be a ground to dismiss the election petition.

6. To appreciate the rival contentions of the parties, firstly we perused the order dated 27/1/2010 of the Election Tribunal and for ready reference we quote the entire order sheet which reads thus : "27.1.2010

vkosnd lfgr Jh lh0,e0 xqIrk vf/AoDrk mifFr Jh xqIrk vf/AoDrk us ;g pquko ;kfpdk vUrxZr /Akjk 144 e0iz0 uxj fuxe vf/Afu;e 1956 is'k dh A ;kfpdk ds leFAZu esa ;kfpdkdrkZ dk 'AiFA ir rFkk lwph vuqlkj nLrkostkr is'k fd;s A ;kfpdk dh xzkgrk ij cgl Jo.k dh xbZ A ;kfpdk esa fof/k ,oa rF;ksa ds iz'u vuxzLr gSa vr% ;kfpdk xzkg; dh tkrh gS A ;kfpdk dh f}rh; izfr is'k dj;k;k x;k tks fd izdj.k esa layXu dj;k;k x;k A ;kfpdk dk uksfVI vukosndx.k dks tkjh gks A izdj.k rych ,oa tckc gsrq fn0 17.2.2010"

7. From the perusal of the aforesaid, it is apparent that the election petitioner was himself present on the date of filing of the election petition though the election petition was handed over by the counsel to the Election Tribunal, but the fact remain is that the election petitioner was himself present at the time of presentation of the election petition. Under Section 441 of the M.P. Municipal Corporation Act, 1956, such election petition requires presentation by the election petitioner to the Election Tribunal. When the election petitioner himself was present along with his counsel and the counsel handed over the election petition to the Election Tribunal, it was sufficient compliance of the statutory provisions. See *Seo Sadan Singh V. Mohan Lal Gautam*, 1969 (1) SCC 408.

8. In *G.V. Sreerama Reddy (supra)*, the Apex Court has specifically recorded the factual position that the election petitioner was not present on that day. The Apex Court considered the question of presentation of the election petition by the advocate of election petitioner. So the judgment of the Apex Court in *G.V. Sreerama Reddy (supra)*, is distinguishable on facts.

9. In the present case the election petitioner himself was present at the time of filing of the election petition. Though the election petition was handed over by the counsel to the Election Tribunal, but this presentation cannot be said to be illegal presentation of the election petition. The order sheet was recorded by the Election Tribunal in which it was specifically stated that the election petitioner was present along with his counsel. In these circumstances, we find that the election petition was properly presented by the election petitioner along with his counsel and merely the election petition was handed over by the election petitioner to his counsel and the same was presented by the counsel cannot be treated as illegal presentation of the election petition. In view of the aforesaid, we find that the election petition was properly presented before the Election Tribunal.

10. Section 81 of the [Representation of the People Act, 1951](#) provides thus :

"81. Presentation of petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub0section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.- In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) Omitted by Act 47 of 1966.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 86 (1) of the Act provides that High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 81 of the [Representation of the People Act, 1951](#) deserves to be complied with being mandatory. But in Section 441 of the M.P. Municipal Corporation Act, 1956, no consequence is provide if the election petition is not presented by the election petitioner. For ready reference we quote Section 441 of the M.P. Municipal Corporation Act, 1956 which reads as under :

441. Election Petitions.-(1) No election or nomination under this Act shall be called into question except by a petition presented in

accordance with the provision of this section. (2) Such petition may be presented on one more of the grounds specified in Section 441-B- (a) by any candidate at such election or

nomination; or

(b)(i) in the case of an election of a Councillor, by any voter of the ward concerned;

(ii) in the case of nomination of a Councillor, by any Councillor;

(iii) in the case of election of Mayor, by any voter of the Municipal area.

to the principal Civil Court of original jurisdiction (hereinafter referred as the Court) within the local limits of whose jurisdiction the election or (nomination) was held.

(3) No petition presented under sub-section (2) shall be admitted unless -

(i) it is presented within thirty days from the date on which the result of such election or (nomination) was notified in the Gazette; and (ii) it is accompanied by a Government Treasury receipt showing a deposit of two hundred and fifty rupees.

(4) A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election or (nomination), as the case may be, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected or (nominated), all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates;

(b) any other candidates against whom allegations of any corrupt practices are made in the petition.

(5) An election petition shall -

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) with sufficient particulars, set forth the ground or grounds on which the election or

(nomination) is called in question.

(c) be signed by the petitioner and verified in the manner prescribed in the Code of Civil Procedure, 1908 (V of

1908), for the verification of pleadings."

Aforesaid provisions provide in sub-section (2) that such petition may be presented by any candidate at such election or nomination. Sub-section (3) provides in respect of the consequences that no petition shall be admitted unless it is presented within thirty days from the date on which the result of such election or nomination was notified in the Gazette and it is accompanied by a Government Treasury receipt showing a deposit of two hundred and fifty rupees. So in the M.P. Municipal Corporation (Election Petition) Rules, 1963, there is no provision providing any consequences of non-filing of the election petition by the candidate himself. In absence of this, the aforesaid provision cannot be said to be mandatory in nature and if the election petition is filed by the counsel of the election petitioner and the election petitioner has accompanied the counsel, the aforesaid presentation cannot be said to be defective presentation resulting dismissal of the election petition.

11. So far as second objection in the petition that the security was deposited in wrong head is concerned, the Tribunal has deferred the aforesaid issue by order dated 15/4/2010 on the ground that it was subject matter of the evidence and the relevant documents were not before the Election Tribunal. It is not disputed before us that the amount of security was deposited before the Tribunal. Merely it was deposited in the wrong head, will not be a ground to dismiss the election petition. The election petitioner deposited the amount of security to the Election Tribunal and merely it was deposited in a wrong head, will not be a ground to dismiss the election petition. See *Budhinath V. Nanilal Jatav*, 22 ELR 86 and *Kaushlendra Prasad V. Nand Kishore*, 22 ELR 484. In spite of this, Election Tribunal decided to defer the issue to ascertain the factual position, in which no fault is found.

12. We do not find any error in the impugned order warranting any interference. This petition is dismissed with no order as to costs.

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