

(1963) 08 GAU CK 0014

In the Gauhati High Court

Case No : Civil Rule No's. 294 and 297 of 1962

Abhoy Charan Huzuri and another

APPELLANT

Vs

Surendra Ballav Datta and others

RESPONDENT

Date of Decision : 12-08-1963

Acts Referred:

Citation : AIR 1964 Guw 101

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : J.C. Medhi, for the Appellant;

Final Decision : Allowed

Judgement

C.S. Nayudu, J.—In Civil Rule 294 of 1962, the petitioner is one Abhoy Charan Huzuri, who was successfully elected as a member of the Majbat Gaon Panchayat, and the petitioner in Civil Rule 297 of 1962 is one Liladhar Barua, who was successfully elected as the President of the said Panchayat. The complaint of both the petitioners is more or less the same on a point of law and jurisdiction, namely that on a single petition filed by one Surendra Ballav Datta, a candidate for the Presidentship of the Panchayat, the correctness of a number of elections had been called into question. These elections included (1) election to the Presidentship of the Panchayat, (2) election as member of the Anchalik Panchayat and (3) election as members of the Gaon Panchayat. The petition before the Munsif, filed under Rule 25 of the Assam Panchayats (Constitution) Rules, 1960, hereinafter referred to as the Rules, covered all these elections and called all these elections into question.

2. Dr. Medhi, the learned counsel for the petitioner in these civil rules, takes the objection that this single election petition calling into question several elections of different categories is not an election petition in accordance with law and the rules, and, therefore, could not have been entertained and dealt with under the Rules. Rule 25 of the Rules is as follows :

(1) The validity of any election held under these Rules may be questioned only by a petition in writing to the Munsiff, having jurisdiction over the area by an unsuccessful candidate at such election or jointly by not less than twenty voters or one third of the electorate whichever is less at any time within thirty days after the day on which the election was held. Such petition shall be accompanied by a deposit of fifty rupees, which shall be subject to forfeiture, if it is held by the Court that the petition has been made without reasonable cause or that it is frivolous or vexatious

Provided that the validity of such election shall not be questioned in any such petition--

(a) on the ground that the name of any person qualified to vote had been omitted from the electoral roll; or

(b) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll.

(2) A petitioner under sub-rule, (1) shall join as respondents to his petition--

Where the petitioner, in addition to claiming a declaration that election 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 all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates.

(3) An appeal petition under this rule, shall be based neither on any one or all of the following grounds that there has been omission, mistake or irregularity in the proceedings under these Rules or the Act.

* * * *

3. It is seen from the above that what the Jaw contemplates is the filing of an election petition, in which only one election that is the election at which the petitioner was an unsuccessful candidate, is called into question, a conclusion which is fully borne out and supported by the language employed in the rule. This, in our opinion, is also in accordance with the general law wherein an election petition could only be preferred in respect of one election. In the instant case, we notice that three different elections were called into question and of three different kinds and categories, firstly the election to the Presidentship of the Gaon Panchayat, secondly the election of a member to the Anchalik Panchayat, and thirdly the election of a number of members to the Gaon Panchayat. Each of these constitutes a separate election, and ought to have been questioned in separate election petitions filed by the individuals entitled to file the same, namely the unsuccessful candidates in these elections. What we find in this case is that the petitioner before the Munsif was one Surendra Ballav Dutta and this individual was an unsuccessful candidate only at the election to the Presidentship of the Panchayat. Obviously, he had no locus standi to question the other elections at which he was not an unsuccessful candidate.

By permitting Surendra Ballav Dutta, the petitioner before the Munsiff, to call into question a number of elections in which he was not interested and the result whereof he could not question, there has been a gross misjoinder of causes of action with the result that a number of elections were called into question by one single petition preferred by an individual who could only question one of the elections. There has thus been a complete confusion in the matter of the election petition that has been filed in this case which is not obviously a petition in accordance with Rule 25 of the Rules. In our opinion, as that petition was not a petition in conformity with the Rules and could not have been accepted as a petition under Rule 25 and did not conform to the conditions laid down therein, that petition could not be regarded as a valid petition presented under Rule 25, and we have no hesitation in quashing the order of the Munsif dealing with such a petition on its merits. The only proper order in the circumstances that could be made is to quash the order of the Munsif made on this petition and to direct rejection of the same.

4. The petitions are accordingly allowed, but as the other side has not appeared, there will be no order as to costs.