

(1996) 03 AHC CK 0021
In the Allahabad High Court
Case No : Election Petition No. 31 of 1991

Akbar Ahmad

APPELLANT

Vs

Santosh Kumar Gangwar and Others

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 1, Order 7 Rule 7
Representation of the People Act, 1951 — Section 80, 81, 81(3), 82, 83

Citation : (1996) 03 AHC CK 0021

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : K.C. Sinha and R.C. Sinha, for the Appellant; A.K. Dwivedi, T.N. Pandey, K.R. Singh and B.R. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—Election for electing a Member of Parliament from 12-Bareilly Parliamentary Constituency in district. Bareilly was held on 15.6.1991 and the result of the polling was declared on 18.6.1991 in which Respondent No. 1 Santosh Kumar Gangwar was declared to have been duly elected. The Election Petitioner Akbar Ahmad then filed an election petition in this court on 2.8.1991 u/s 80 of the Representation of People Act (hereinafter referred to as the Act) impleading 24 Respondents including Santosh Kumar Gangwar, as Respondent No. 1. On 9.1.1992, an amendment application under Order VI, Rule 17, CPC read with Section 84 of the Act was filed praying that the Petitioner may be allowed to amend his election petition by adding prayer in following terms:

- (a) set aside the election of Respondent No. 1 by declaring the election of Respondent No. 1 as void from 12-Bareilly Parliamentary Constituency;
- (b) order for inspection, scrutiny and recount all ballot papers of 12-Bareilly Parliamentary Constituency;
- (c) declare the Petitioner as returned candidate from 12-Bareilly Parliamentary

Constituency;

(d) pass such other and further orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case;

(e) award costs.

A counter-affidavit to the amendment application was filed by Santosh Kumar Gangwar, Respondent No. 1 on 2.4.1992. Thereafter a second amendment application was filed under Order VI, Rule 17, CPC read with Section 84 of the Act on 19.10.1994 in which an exactly similar prayer was made, namely, that the Petitioner may be allowed to amend his election petition by adding prayer in the same terms in which it was sought in the first amendment application. The Respondent No. 1 filed a counter-affidavit on 23.11.1995 opposing the amendment application. No rejoinder-affidavit has been filed by the Petitioner in reply to the aforesaid counter-affidavit.

2. The necessity for filing the amendment application arose as in the election petition, there is no prayer clause at all and the petition is conspicuously silent about it. The only reason given in the first amendment application for moving the amendment application is contained in para 2 of the application and thereafter in para 3, it is stated that it is in the interest of justice that the Petitioner may be allowed to amend his election petition by adding prayer in following terms which has been quoted above, para 2 of the petition reads as follows:

That at the time of filing of aforesaid Election Petition inadvertently at page 97 of the Election Petition which deals with the Prayer of the Petitioner could not be stitched in the petition as well as other copies of the petition meant for service on other sides.

The election petition is fairly bulky and it runs into 250 pages. The main body of the petition runs into 98 pages and thereafter annexures and schedules have been given which run from page No. 99 to page 248 and thereafter there is affidavit of the election Petitioner from pages 247 to 249 and on page 250 list of documents has been given. The last para in the body of the petition is para 15 which is given on page 96. Thereafter pages 97 and 98 contain the verification clause wherein the different paragraphs of the election petition and annexures are verified on the basis of personal knowledge, record, information received and on legal advice. Paragraph 15 of the election petition reads as follows:

That the Petitioner is filing the Election Petition including Schedule, List of Documents, duly verified, alongwith the documents/Tape Record/Cassette, affidavit in support of allegation of corrupt practice which are the integral part of the petition alongwith its 24 copies duly attested to be true copies under the hand of the Petitioner.

Page 97 commences with the heading VERIFICATION. It is noteworthy that the election petition is a cyclostyled one and the figure 96 is mentioned at the top of the page at two places, namely, in the middle and on the extreme right hand

side. On the bottom of the page, following is mentioned:

...97.

On the next page figure 97 is mentioned on the top and below it is the heading VERIFICATION. The plea taken in the amendment application is that at the time of filing the election petition inadvertently page 97 of the petition, which deals with the prayer clause, could not be stitched. The aforesaid plea does not appear to be correct. If page 97 of the election petition containing the prayer clause had not been stitched in the original petition then after page 96, page 98 would have been there. However, in the original election petition page 97 is in existence and it contains the verification clause. The way paging has been done in the original election petition, it does not show that any page has either been omitted to be stitched or is missing. Another noticeable feature is that there are as many as 24 Respondents to the election petition and if an inadvertent mistake had occurred in not stitching the page containing the prayer clause in the election petition, the same could not have been repeated in all the copies of the election petition which had been supplied for the Respondents. It is not possible to accept the plea of the election Petitioner that the same mistake was repeated every time while stitching all such 24 election petitions. Thus, the ground given by the election Petitioner for moving the amendment application does not at all appear to be correct. It shows that the election petition was filed without containing any prayer clause and the ground mentioned for moving the amendment application is simply an after-thought.

3. As stated earlier, in this case two amendment applications containing exactly similar prayer have been moved. The first amendment application does not bear any date but was filed in court on 9.1.1992 with the signature of the learned counsel for the election Petitioner. The affidavit in support of this application was filed by one Ram Kesh, son of Sri Manraj, resident of 20 A.D.A. Flats, Ashok Nagar, Allahabad and he has described himself as pairokar of the Petitioner. Para 21 of the affidavit was sworn on personal knowledge and para 3 on legal advice of the counsel. The Respondent No. 1 Santosh Kumar Gangwar filed a counter-affidavit in reply to the aforesaid amendment application on 2.4.1992 after serving a copy of the same on the clerk of learned counsel for the election Petitioner on 25.2.1992. In the counter-affidavit, it was said that the application by the affidavit filed in support thereof had neither been sworn by the election Petitioner Akbar Ahmad nor had been signed by him and thus it was liable to be rejected, being in violation of Section 83(1)(c) of the Act. It was further asserted in para 6 that the plea taken that "page 97" could not be stitched in the election petition was incorrect and at any rate, the amendment application having been moved after expiry of the period of limitation of 45 days prescribed by Section 81 of the Act, the same was liable to be rejected. It was thereafter that the second amendment application was filed in court on 19.10.1994 which is a verbatim copy of the first amendment application. The affidavit in support of this application has been sworn by the election Petitioner Akbar Ahmad on 17.4.1994

and he was identified by Ramkesh, clerk of Sri K. C. Sinha, advocate. The first amendment application was thus supported by an affidavit of the clerk of the counsel and it bears the signature of the counsel alone. The application does not at all contain the signature of the election Petitioner Sri Akbar Ahmad, nor has been verified by him. Section 83(1)(c) lays down that an election petition shall be signed by the Petitioner and verified in the manner laid down in the CPC for verification of pleadings. Section 81(3) provides that 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) lays down that the High Court shall dismiss an election petition which does not comply with the provision of Section 81 or Section 82 or Section 117. Since the amendment sought was on a very vital part, namely, the Prayer clause of the petition, the application ought to have been filed either by the election Petitioner himself with his signature or atleast the affidavit in support thereof should have been filed by him. Had this course been adopted, there would have been compliance of Section 83(1)(c) for the Prayer clause as well. The affidavit filed by the clerk of the counsel cannot be accepted for the purpose of amending the election petition on an important point which has a strong bearing on the case. I am, therefore, of the opinion that the first amendment application filed on 9.1.1992 having not been signed and verified by the Petitioner himself, cannot be accepted. It is accordingly rejected,

4. Apprehending the aforesaid difficulty, the election Petitioner filed a second amendment application on 19.10.1994. This application bears the signature of the learned counsel for the election Petitioner alone but the affidavit in support thereof has been sworn by Akbar Ahmad himself on 17.4.1994. The record shows that copy of the amendment application was served on the learned counsel for the contesting Respondent on 26.4.94 but it was filed in court almost after six months on 19.10.1994. A counter-affidavit opposing the second amendment application has been filed by Respondent No. 1 but no rejoinder affidavit has been filed. The dates mentioned above would show that this application has been filed more than three years and two months after the filing of the election petition or expiry of the period of limitation for the same. Even after the application had been prepared and a copy of the same had been served upon learned counsel for the Respondent No. 1, the same was not filed for about six months. This shows that the election Petitioner has been proceeding at a leisurly pace. There is absolutely no explanation whatsoever why this amendment application was not moved earlier, specially when in the counter-affidavit filed by Respondent No. 1 in reply to the first amendment application, a specific plea had been taken that the application was not maintainable as it did not bear the signature of the election Petitioner and was not supported by his own affidavit. Copy of the counter-affidavit had been served upon the learned counsel for the election Petitioner on 25.2.1992 but the second application has been filed on 19.10.1994, i.e., after about two years and eight months after the

defect had been pointed out. At any rate, the amendment application has seen the light of the day more than three years after the election petition had been filed or the period of limitation of 45 days prescribed for filing the petition had expired. In my opinion, the Petitioner has been grossly negligent and careless in prosecuting the present election petition. There is no explanation whatsoever why this second amendment application has been moved after such a long delay. This second application is a verbatim copy of the first amendment application and there is not even a whisper as to why a second application is being moved seeking the same prayer and why the same was being moved after such an inordinate delay. The term of a Member of Parliament or a Member of a Legislative Assembly normally does not extend beyond five years. The Act, therefore, has made specific provision for a very expeditious hearing of an election petition. Sub-section (6) of Section 86 provides that the trial of an election petition shall, so far as it is practicable consistently with the interests of justice in respect of the trial, be continued day-to-day until its conclusion and Sub-section (7) lays down that every election petition shall be tried as expeditiously as possible, an endeavour shall be made to conclude the trial within six months from the date of the presentation of the petition. If it is not possible to literally follow the mandate of the aforesaid statutory provision, it does not mean that it is open to a party to proceed at a very leisurely pace with the sole object of keeping the matter pending without making any serious effort for the decision of the case. The conduct of the election Petitioner here cannot at all be said to be bona fide. Due to lapse of time, a right has accrued in favour of Respondent No. 1. It is well-settled principle that a party should not be allowed by means of an amendment to set up a new cause of action particularly when a suit on the new case or cause of action is barred by time. It is not a case where an amendment of the relief clause is being sought but here the relief clause was ab initio absent and for the first time, a relief clause is sought to be added. I am, therefore, of the opinion that the second amendment application cannot be allowed. Learned counsel for the election Petitioner has urged that even if the prayer clause is absent, an amendment application to add such a clause can be allowed in view of a Full Bench decision in *Ram Dhan v. Bhanwar Lal* AIR 1987 Raj 185. In this case, the result of the election was declared on 1.6.1980, the election petition was filed on 14.7.1980 and the amendment application was filed on 26.7.1980, i.e., within twelve days of the filing of the election petition. Undoubtedly in this case, there was no delay or inaction on part of the election Petitioner. The amendment application had been moved even before notice of the election petition had been served on any of the Respondents. Therefore, this case is clearly distinguishable on facts. The second amendment application is consequently rejected.

5. The next question which arises for consideration is what is the effect of rejection of the amendment applications on the election petition. Learned counsel for the Petitioner has submitted that Section 83 nowhere lays down that there should be any prayer clause in the election petition and in view of this statutory

provision, even if the prayer clause is absent, the petition will not be defective and has to be decided on merits. Learned counsel for the Respondent No. 1, on the other hand, submitted that in absence of a prayer clause, the petition cannot proceed as it seeks no relief and as such, the question of its trial by the High Court does not arise. He has further submitted that there are 24 Respondents in the present petition and the reason why at other Respondents except Respondent No. 1 have not chosen to put in appearance is that the election petition having sought no relief is a meaningless document, which can have no consequence of any kind. The Representation of the People Act, 1951 is no doubt a complete Code but Section 87 thereof lays down that subject to the provisions of the 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 CPC to the trial of suits. This specific provision in the Act makes the CPC applicable. The amendment applications have been moved by the election Petitioner by taking recourse to the Code, namely, to Order VI, Rule 17, CPC and not under any provision of the Act. Order VII, Rule 1, CPC lays down that the plaint shall contain the particulars enumerated in Clauses (a) to (i) and Sub-clause (g) is the relief which the Plaintiff claims. Order VII, Rule 7, CPC provides that every plaint shall state specifically the relief which the Plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. These provisions show that a plaint must contain a relief clause and in view of Section 87 of the Act, the same principle shall apply to an election petition also, namely, that it must contain a relief clause. Section 83 of the Act is not to be read in isolation but has to be read alongwith Section 84 which lays down that a Petitioner may in addition to claiming a declaration that the election of all, or any of the returned candidate is void, claim a further declaration that he himself or any other candidate has been duly elected. The scheme of the Act appears to be that though the heading of Section 83 is contents of petition but instead of making a provision for the relief which the Petitioner may claim, in this section, a separate section, namely, Section 84 has been enacted for this purpose. Sections 83 and 84, if read together, can in no case be interpreted to mean that an election petition containing no relief clause would be a valid election petition and would be competent and maintainable for a trial. A court trying an election petition must be aware about the reliefs claimed by the Petitioner as in its absence neither proper issues can be framed nor a proper trial can be held. In such a case, the Respondents to the petition would be genuinely misled and can neither file their written statements nor can effectively defend the petition. Since in the present case, the election petition does not contain any relief clause, it is not maintainable and the court has no option but to dismiss the same.

6. The election petition is accordingly dismissed but without any order as to costs.