
(1963) 02 AHC CK 0009
In the Allahabad High Court
Case No : First Appeal No. 103 of 1963

Amar Nath

APPELLANT

Vs

Ashta Bhuja Prasad

RESPONDENT

Date of Decision : 04-02-1963

Acts Referred:

Representation of the People Act, 1951 — Section 116, 116A, 116A(2), 81

Citation : AIR 1964 All 431

Hon'ble Judges : S.S. Dhavan, J;K.B. Asthana, J

Bench : Division Bench

Advocate : S.C. Khare and V.N. Khare, for the Appellant; V.B. Khare, S.B. Johri and T.N. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application u/s 116A(2) of the Representation of People Act filed after the death of the sole respondent in the appeal. The applicant, who is the appellant, prays that this Court should exercise its powers u/s 116 of the Act and cause a notice to be published in the Official Gazette that the sole respondent is dead and there is no other respondent opposing this petition, so that any person who might have been a petitioner may apply to be substituted in the place of the deceased respondent. The petitioner states that he is interested in prosecuting the appeal even though the respondent, who was the successful candidate, is dead, and he claims the right to establish that the election of the deceased respondent should have been set aside by the election Tribunal. The question before us is whether such an application lies u/s 116A or any other provision of the Act. After hearing learned counsel and examining the Act we are of the opinion that it does not.

The facts very briefly are these. The deceased respondent Ashta Bhuja Prasad and the appellant Amar Nath contested the election to the Uttar Pradesh Legislative Assembly from the Shiam Deruwa Constituency No. 200 in the general election of 1982. There were four other candidates, making six in all.

Ashta Bhujra Prasad was elected, the appellant being third according to votes polled. After the election, the appellant filed a petition u/s 81 of the Act challenging the election on various grounds and praying that it be set aside. There was no prayer for declaring the "petitioner or any other candidate elected. It was alleged against the deceased respondent that he had committed several corrupt practices and had also taken the help of a peon attached to Qurq Amin for the furtherance of his election. The appellant's allegations were disbelieved and his petition was dismissed and he came to this Court in appeal. The only respondent was the deceased Ashta Bhujra Prasad,

2. We heard the appeal at considerable length but the hearing was adjourned several times at the request of learned counsel for the appellant and the respondent. During this interval, the respondent Ashta Bhujra Prasad, the successful candidate, died. The appellant had made this application for the purpose of enabling him to continue the appeal in spite of the death of the sole respondent.

3. Learned counsel for the applicant submits that this case is governed by Section 116 of the Act which according to him, empowers the Court to permit third parties to defend an appeal even after the death of the sole respondent. That section runs thus:

"If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the Tribunal shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Tribunal may think fit."

The question is whether this section would apply to appeals, The opening words are "If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice." The words "before the conclusion of the trial of an election petition" appear to indicate that the section is applicable to the trial of an election petition and not to an appeal filed against the decision in the trial.

However, it is not necessary for us to consider this point because the matter seems to be concluded by a recent decision of the Supreme Court in *Bijayananda Patnaik v. Satrughna Sahu* AIR 1963 S C 1586. That case did not involve the precise question which has arisen before us namely, whether an appeal against the decision of the election Tribunal can be continued after the death of the sole respondent but the Supreme Court considered the scheme of Ch. IV (which contains Section 116) and Ch. IV-A which confers the right of appeal, and

observed, "As the statute stands it seems that the intention was that the provisions about withdrawal and abatement would apply to petition only when it is either before the Commission or the Tribunal". Section 116 bears the title "Abatement or substitution on death of respondent" and provides for the situation created by the death of the sole respondent to an election petition. Therefore, the observation of the Supreme Court extends to a case where the sole respondent dies and an application is made praying for the publication of a notice of the death of the respondent to enable any third person to defend the petition if he so desires. Section 116 would not apply in such a case.

4. Therefore, as observed by the Supreme Court, the Court must decide this E application under the provisions of the Civil P. C., in view of Sub-section (2) of Section 116A which provides,

"The High Court shall, subject to the provisions of this Act, have the same powers jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by civil Court situated within the local limits of its civil appellate jurisdiction,"

Order 22 of the Code provides for a situation resulting from the death, marriage and insolvency of parties. Rule 1 provides, "The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives." Then follow number of rules providing for the substitution of the heirs of a deceased plaintiff or defendant in case of death, but the underlying assumption, in all these rules is that the right to sue must have survived after death. The condition prescribed in Rule 1 governs all the subsequent rules. It follows that if the right to sue itself does not survive the death of a deceased defendant, there can be no substitution and no continuation of the dispute. Rule 11 makes the provisions of Order 22 applicable to appeals, for it says that the word "plaintiff" shall be held to include an "appellant" and the word "defendant" a "respondent" and the word "suit" an "appeal."

5. In the present case the applicant had a right u/s 81 of the Act to. ask the Tribunal to set aside the election of the respondent. That petition was dismissed and he filed an appeal in this Court. During the pendency of this appeal the respondent died. He conceded that but for Section 116 of the Act, the right under Section 81 does not survive against any other person. In these circumstances this Court has no power to make a notification u/s 116 or to allow a third person to defend the petition. The appeal must abate on the death of the respondent. The application is rejected.