

(2015) 07 AHC CK 0169
In the Allahabad High Court
Case No : Election Petition No. 2 of 2014

Avinash Chandra Jain

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 225

Representation of the People Act, 1951 — Section 100 (1), 109, 110, 112, 116

Citation : (2015) 112 ALR 178 : (2015) 6 AWC 5820

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : M.P. Pandey and Avinash Pandey, for the Appellant; Shailendra Sharma and Lalita Prasad Misra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dilip Gupta, J—Civil Misc. Application No. 124342 of 2014 has been filed by the election petitioner with a prayer that the Court may dispense with the requirement of publication of the notice of the election petition in the newspaper. Rule 6(b) of Chapter XV-A of the Allahabad High Court Rules, 1952 (the Rules) requires such a publication and the Court also on 22 August, 2014 had directed for publication of the notice in a newspaper to be selected by the Registrar of the High Court. This election petition was presented before the Registrar of the Court on 5 June, 2014 with a prayer that the election of the returned candidate from 35, Lucknow Parliamentary Constituency area be declared null and void and to determine whether the petitioner is eligible to contest the election as a candidate and if eligible then to compensate the petitioner for the sufferance faced by him.

2. Rule 1 of the Rules provides that the provisions of Chapter XV-A shall govern the trial of election petition under the Representation of the People Act, 1951 (the Act). Rule 3 provides that every election petition shall be presented to the Registrar. Rule 5 deals with issuance of notice to respondent and Rule 6 deals

with process fee and charges. Rules 5 and 6 are reproduced below:

"5. Issue of notice to respondent.--The election petition shall be laid before the Bench so constituted without delay, and unless it is dismissed under sub-section (1) of section 86 of the Act or for being otherwise defective, the Bench may direct issue of notice to the respondent to appear and answer the claim on a date to be specified therein. Such notice shall also direct that if he wishes to put up a defence he shall file his written statement together with a list of all documents, whether in his possession or power or not, upon which he intends to rely as evidence in support of his defence on or before the date fixed; and further, that in default of appearance being entered on or before the date fixed in the notice the election petition may be heard and determined in his absence. The notice shall be in Form No. 34-A.

6. Process fee and charges.--(a) Notice for the respondent shall issue by ordinary process and simultaneously by registered post.

(b) Notice of the election petition shall also be simultaneously published in a newspaper selected by the Registrar.

(c) Notices, process fee, charges and a sum of Rs. 250 as an initial deposit on account of the cost of publication in a newspaper shall be supplied by the petitioner within seven days of the order directing notice to issue. In default, the election petition shall be laid before the Bench for orders. The Bench may reject the election petition unless for sufficient cause it grants further time.

(d) Where the cost of publication in a newspaper exceeds to Rs. 50 the Registrar shall call upon the petitioner to deposit the excess amount in Court within the time to be fixed by him. On failure of the petitioner to deposit such costs, the petition shall be laid before the Bench for such orders as the Bench may think fit. In case the cost of publication is less than Rs. 50 the petitioner shall be entitled to refund of the amount in excess."

3. On 22 August, 2014, the Court issued notice to the respondents fixing 17 October, 2014. The order directed that notice shall be issued by ordinary post as well as registered post and shall also be published simultaneously in a newspaper having wide circulation in the area. The newspaper was to be selected by the Registrar of the Court. The Registrar of the Court on 30 August, 2014 directed that the notice should be published in "Dainik Jagran" which is a Hindi daily newspaper having wide circulation.

4. The election petitioner took steps for service on the respondents by ordinary post as well as by registered post. The office has reported that notices were sent by registered post with A.D. to opposite party Nos. 1 to 3 on 30 August, 2014 fixing 17 October, 2014. The petitioner was also informed that the cost of publication in Dainik Jagran newspaper would be Rs. 24,480/-. An application was, however, submitted by the petitioner before the Senior Registrar of the Court to select another newspaper having a wide circulation as, according to the

petitioner, the cost of publication in Dainik Jagran newspaper was "unaffordable because of his financial status". The petitioner also moved an application before the Senior Registrar of the High Court suggesting the name of Rashtriya Swaroop Newspaper" for publication of the notice in newspaper as, according to the petitioner, the cost of publication would be less. However, the Registrar rejected the request for the reason that the said newspaper did not have a wide circulation in the area.

5. The present application dated 13 November, 2014 supported by an affidavit of the petitioner was, thereafter, filed by the petitioner. In paragraph 11 of the affidavit it is stated that the deponent "is not in stage of bearing the cost of publication as the cost of publication is too expensive to be afforded by the average person like him". In paragraph 12, the petitioner has further stated that "the deponent has already suffered injustice and if the order of publication is not dispensed by this Hon''ble Court, the deponent will suffer irreparable loss". In paragraphs 13 and 14 of the affidavit, it has further been stated as follows:

"13. That some other alternate method may be allowed instead of publication or if the respondents make their presence before this Hon''ble Court, then the order of publication may be dispensed by this Hon''ble Court.

14. That the deponent is not in position to comply with the order of the Hon''ble Court of publishing the same in Dainik Jagran Newspaper, hence the same is liable to be dispense in the interest of justice."

6. Learned Counsel for the election petitioner has submitted that when respondent No. 3 has put in appearance through a Counsel and respondent Nos. 1 and 2 have also been served, there is no necessity of causing the notice to be published in a newspaper selected by the Registrar. According to the learned Counsel for the petitioner, the dispute is primarily between the petitioner and the respondents and when the respondents have either been served or have put in appearance before the Court, no useful purpose would be served by publishing the notice in the newspaper. A further submission that has been made by the learned Counsel for the petitioner is that the petitioner is not in a financial position to deposit the amount for publication of the notice in the newspaper and, therefore, the Court may dispense with the publication of the notice by exercising powers under section 151 of the Code of Civil Procedure, 1908.

7. Dr. L.P. Mishra, learned Counsel appearing for respondent No. 3 has, however, submitted that it was obligatory on the part of the petitioner to have complied with the requirement of Rule 6(b) of the Rules by causing publication of the notice in the newspaper simultaneously. He has further submitted that a dispute in an election petition is not merely between the petitioner and the respondents but is a dispute with which the entire constituency is concerned and it is for this purpose that Rule 6(b) of the Rules requires publication of the notice in the newspaper. In support of this contention, learned Counsel has placed before the Court the decisions of the Supreme Court in Inamati Mallappa Basappa Vs. Desai

Basavaraj Ayyappa and Others, AIR 1958 SC 698 : (1959) 1 SCR 611 and Dr. P. Nalla Thampy Thera Vs. B.L. Shanker and Others, AIR 1984 SC 135(1) : (1983) 2 SCALE 717 : (1984) 1 SCC 631 Supp : (1984) SCC 631 Supp : (1984) 1 SCR 687 .

8. Learned Counsel for the respondents has also placed before the Court the provisions of sections 109, 110, 112 and 116 of the Act and has pointed out that the statement made on oath by the petitioner in the affidavit filed in support of the application for dispensing with the publication of the notice in the newspaper that the petitioner is not in a position to bear the cost of publication is false. In this connection, learned Counsel has placed before the Court the nomination paper filed by the petitioner and the supporting documents enclosed with it to demonstrate that the petitioner is financially sound and in a position to pay the amount for publication of the notice in the newspaper.

9. The submissions advanced by the learned Counsel for the parties have been considered by the Court.

10. The first submission of learned Counsel for the petitioner that as the dispute is between the petitioner and the respondents, the Court should dispense with the publication of the notice in the newspaper since respondent Nos. 1 and 2 have been served and respondent No. 3 is represented by a Counsel, cannot be accepted.

11. As noticed above, Rule 3 contained in Chapter XV-A of the Rules provides that every election petition shall be presented to the Registrar. Rule 5 provides that the Bench may direct issue of notice to the respondent. Such notice shall also direct that if the respondent wishes to put up a defence he shall file his written statement together with a list of all documents, whether in his possession or power or not, upon which he intends to rely as evidence in support of his defence on or before the date fixed; and further, that in default of appearance being entered on or before the date fixed in the notice the election petition may be heard and determined in his absence. Sub-rule (a) of Rule 6 provides that notice for the respondent shall be issued by ordinary process and simultaneously by registered post. Sub-rule (b) of Rule 6, however, provides that the notice of the election petition shall also be simultaneously published in a newspaper selected by the Registrar. The Registrar had selected a newspaper and the petitioner was duly informed of this fact and the amount which he was required to deposit for publication of the notice. The petitioner, however, suggested another newspaper which suggestion was not accepted by the Registrar as the said newspaper did not have a wide circulation. It is at that stage that the petitioner moved the application for dispensation of the publication of the notice in the newspaper.

12. Dispute in an election petition is not restricted to the petitioner and the respondents alone but involves the entire constituency and every interested person should have notice of the presentation of the election petition. This is

what was observed by the Supreme Court in *Inamati Mallappa Basappa* (supra). The Supreme Court considered this issue in the light of the unamended provisions where the election petition was required to be presented before the Election Commission. The Supreme Court, after placing reliance upon its earlier decisions, observed that by publication of notice in the Official Gazette not only the respondents to the petition get notice but the entire constituency as a whole receives such a notice so that each and every voter of the constituency and all parties interested become duly aware of the presentation of the election petition. The whole constituency is thus alive to the fact that the result of the election duly declared has been questioned on various grounds with the likely result that the election of all or any of the returned candidates may be declared void and the petitioner or any other candidate declared duly elected in place of the returned candidate. The constituency, therefore, has a vital interest in the proceedings before the Tribunal which have a characteristic of their own different from the ordinary civil proceedings. Paragraphs 10 and 11 of the judgment are reproduced below:

"10. It is necessary at the outset, therefore, to understand the nature and scope of an Election Petition. As has been observed by us in the judgment just delivered in *K. Kamaraja Nadar Vs. Kunju Thevar and Others*, AIR 1958 SC 687 : (1959) 1 SCR 583 :

"An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power."

"An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process."

.....

"An election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested."

.....

11. An Election Petition presented to the Election Commission is scrutinised by it and if the Election Commission does not dismiss it for want of compliance with the provisions of section 81, section 82 or section 117 of the Act, it accepts the same and causes a copy thereof to be published in the official gazette and a copy thereof to be served by post on each respondent. The respondents to the petition not only get notice of the same but the constituency as a whole receives such notice by publication thereof in the official gazette so that each and every voter of the constituency and all parties interested become duly aware of the fact of such Election Petition having been presented. A copy of the Election Petition published in the official gazette would also show to all of them that the petitioner

in a particular Election Petition, in addition to claiming a declaration that the election of all or any of the returned candidates is void, has also claimed a further declaration that he himself or any other candidate has been duly elected. The whole constituency is thus alive to the fact that the result of the election duly declared is questioned on various grounds permitted by law with the likely result that the election of all or any of the returned candidates may be declared void and the petitioner or any other candidate may be declared duly elected, in place and stead of the returned candidate. The constituency may have an interest in either maintaining the status quo or if perchance the election of the returned candidate is set aside,- in seeing that some other deserving candidate is declared elected in his place and stead and not necessarily the petitioner or any other candidate sponsored by him whose election could be challenged on any of the grounds mentioned in section 100 (1). It is this interest of the constituency as a whole which invests the proceedings before the Election Tribunals with a characteristic of their own and differentiates them from ordinary civil proceedings....."

(Emphasis supplied)

13. This view was reiterated by the Supreme Court in *Dr. P. Nalla (supra)* and the contention that the view taken by the Supreme Court in *Inamati Mallappa Basappa (supra)* that the election dispute involves the entire constituency was not correct was not accepted. The relevant paragraph 22 of the decision in *Dr. P. Nalla (supra)* is reproduced below:

"22. The ratio of this decision as also the observations in *Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others*, AIR 1958 SC 698 : (1959) 1 SCR 611 , the appellant contends are, wrong in view of the earlier decisions of this Court taking the view that an election dispute involves the entire constituency because of the paramount necessity of having purity of an election in a democracy safeguarded. We do not think the appellant's contention can be accepted. The earlier decisions of this Court do not in any way militate against the view taken in *Dhoom Singh's* case (*supra*) and the observations made in *Basappas's* case (*supra*). Those decisions were not concerned with the question as to whether an election petition can be dismissed for default. The consensus of judicial opinion in this Court has always been that the law in regard to elections has to be strictly applied and to the extent provision has not been made, the Code would be applicable. About eight years back this Court had occasion to point out that if the intention of the legislature was that a case of this type should also be covered by special provision, this intention was not carried out and there was a lacuna in the Act. We find that even earlier in *Sheo Sadan Singh Vs. Mohan Lal Gautam*, AIR 1969 SC 1024 : (1969) 1 SCC 408 : (1969) 3 SCR 417 this Court had stated:

"From the above provisions it is seen that in an election petition, the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a

candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions noticed by us earlier is to ensure to the extent possible that the persons who offend the election law are not allowed to avoid the consequences of their misdeeds"

(Emphasis supplied)

14. In view of the aforesaid observations made by the Supreme Court in *Inamati Mallappa Basappa* (supra) and *Dr. P. Nulla* (supra) that dispute in an election petition is not centered around merely between the petitioner and the respondents but the entire constituency, the publication of the notice in the newspaper is necessary. The contention of learned Counsel for the petitioner that the publication of the notice in the newspaper should be dispensed with since all the respondents have been served cannot, therefore, be accepted.

15. The second contention of learned Counsel for the petitioner that the Court can dispense with the publication of the notice under section 151, C.P.C. cannot also be accepted.

16. In *Kailash Vs. Nanhku and Others*, AIR 2005 SC 2441 : (2005) 3 CTC 355 : (2005) 4 JT 204 : (2005) 141 PLR 558 : (2005) 4 SCC 480 : (2005) 3 SCR 289 the Supreme Court held that on the language of section 87 (1) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not attracted with all its rigidity and technicality. The rules of procedure contained in the C.P.C. apply to the trial of election petitions under the Act with flexibility and only as guidelines. The Supreme Court also observed that in case of any conflict between the provisions of the Act and the Rules framed thereunder or the Rules framed by the High Court in exercise of the powers conferred by Article 225 of the Constitution on the one hand, and the Rules of Procedure contained in the C.P.C. on the other hand, the former shall prevail over the latter. Thus, when the Rules require publication of the notices in a newspaper and Rule 6(c) provides that in case the petitioner does not deposit the cost, the election petition can be dismissed, the provisions of section 151, C.P. C cannot be resorted to by the petitioner for dispensing the publication.

17. The last contention advanced by learned Counsel for the petitioner for dispensing the publication of the notice in the newspaper is that the petitioner does not have the financial means to pay the amount for the publication of the notice cannot. Only a bald statement has been made in the affidavit filed in support of the application that the petitioner does not have sufficient means. This statement of the petitioner is contrary to the statement made on affidavit by the petitioner in the documents filed with the nomination paper. The petitioner clearly stated in the affidavit that he was possessed of Rs. 1,69,000/- in cash in his personal capacity and the Hindu Undivided Family had Rs. 6,10,000/- in cash; he had Rs. 4,86,000/- in his bank account and Rs. 25,000/- in HUF account; and that his wife had Rs. 60,000/- in cash and Rs. 12,52,000/- in her bank account. All that the petitioner was required to deposit for publication of the notice was

Rs. 24,480/-. This amount, the petitioner clearly possessed in cash and it has not been stated in the affidavit in support of the application that the amount mentioned in the nomination paper was wrongly mentioned or that it has been utilised.

18. It is, therefore, clearly a case where the petitioner is deliberately avoiding the publication of the notice in the newspaper. This would be contrary to the provisions of the Rules framed by the High Court under Chapter XV-A.

19. The application filed by the petitioner for dispensation with the publication of the notice in the newspaper is, therefore, without any substance and deserves to be rejected.

20. At this stage, learned Counsel for the petitioner submitted that some time may be granted to the petitioner to deposit the amount for publication of the notice in the newspaper and in support of his contention learned Counsel has placed reliance upon Rule 6(c) of the Rules.

21. This prayer has been strongly opposed by learned Counsel appearing for respondent No. 3 and it has been contended that such a prayer should have been made before the submissions started, more particularly in view of the order passed by the Court on 15 May, 2015. On that date the matter was adjourned because of the statement made by learned Counsel for the petitioner that the matter may be adjourned to enable him to seek instructions from the petitioner as to whether he would deposit the cost for publication of the notice in the newspaper.

22. This election petition was presented before the Registrar of the Court on 5 June 2014. Notice was issued on 22 August, 2014. The Court has to be satisfied that the grounds mentioned by the petitioner in the application filed for dispensing the publication of the notice in the newspaper are bona fide grounds and the intention behind moving of the application is not to merely avoid the deposit of the amount for publication in the newspaper. The Court is more than satisfied that the petitioner has, by filing the application, merely taken a chance to avoid payment of the amount for publication of the notice. The Court has found as a fact that the petitioner has deliberately made a wrong statement in the affidavit filed in support of the application that he does not have the sufficient financial means to deposit the amount as there was enough cash in hand with the petitioner in view of the statement made by the petitioner in the nomination paper.

23. The application also does not contain a prayer for grant of further time to deposit the amount for publication of notice in the newspaper and the prayer is to dispense with the publication.

24. Rule 6(c) provides that notices, process fee, charges and a sum of Rs. 250/- as an initial deposit on account of the cost of publication in a newspaper shall be supplied by the petitioner within seven days of the order directing notice to

issue. Rule 6(c) further provides that in default, the election petition shall be laid before the Bench for orders and the Bench may reject the election petition unless for sufficient cause it grants further time.

25. The Court is of the opinion that sufficient cause has neither been placed nor does it exist for granting further time to the petitioner to deposit the amount. If the petitioner was really desirous of pursuing the election petition, he would have, pursuant to the order dated 15 May, 2015 passed by the Court, made a categorical statement at the beginning of the hearing of this application that some time may be granted to the petitioner to deposit the amount for publication of the notice but such a statement was not made and the matter was vehemently argued on merits. It is only when the Court has not accepted the prayer for dispensation of the publication of the notice in the newspaper that a prayer has now been made for granting time. This cannot be permitted and, accordingly, the prayer now made for granting time is rejected.

26. Thus, for the reasons stated above, Civil Misc. Application No. 124342 of 2014 filed for dispensing with the publication of the notice in the newspaper is rejected. As a result of the rejection of the application, the election petition stands dismissed. Petition Dismissed.