

(1958) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : First Appeal No. 138 of 1957

Chakrapani Jagannath Prasad Shukla

APPELLANT

Vs

Chandoo Sahadeo Satnami and Another

RESPONDENT

Date of Decision : 22-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Representation of the People Act, 1951 — Section 116A(2), 98

Citation : AIR 1959 MP 81 : (1958) 3 MPLJ 601

Hon'ble Judges : M. Hidayatullah, C.J.;G.P. Bhutt, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; A.P. Sen and Ratan Singh, for the Respondent

Judgement

This appeal is by Chakrapani Shukla against an order of the Election Tribunal, Raipur, in Election Petition No. 87 of 1957, decided on 19-12-1957. By this order the Election Tribunal has declared the election of the present appellant void for the reason that one of the contesting candidates, by name Chandoo son of Sahadev, had not withdrawn from the contest but that a notice of retirement was spuriously filed on his behalf before the Assistant Returning Officer, as a result of which his ballot box was not placed in the polling booth.

We heard arguments in this appeal, during which it was pointed out to us that the notice of retirement prima facie appeared to be signed by one Chandoo son of Sonu of Balodabazar, to compare whose signatures two documents executed by him long before the present election were exhibited. A handwriting expert was also examined on behalf of the respondents to support this conclusion.

The facts of the case are as follows: The election was for the Bhatanara constituency of the Legislative Assembly of this State. Among the contesting candidates were Chakrapani, who was returned by an adequate majority, and the two respondents, Chandoo son of Sahadev and Surya Prasad son of Sarweshwar Prasad. We are not concerned with the other candidates, who in fact are not

parties before us. Before the election took place, on 22-2-1957 a notice of retirement was allegedly filed before the Assistant Returning Officer, Shri M. T. Mahajan.

As a result of this, the Election Officer decided that the ballot box of Chandoo, on whose behalf the alleged notice of retirement was filed, should not be placed in the polling booth. It appears that both Chakrapani and Chandoo contested the position that Chandoo had retired from the contest. Later, however, Chakrapani took the stand that Chandoo had presented the notice of retirement in person. Chandoo attempted to prove that he was not even present at the time in Raipur but was to the interior, canvassing for votes.

During the trial, two documents were exhibited purporting to be signed by one Chandoo son of Sonu of Balodabazar. The signatures on each were compared by the handwriting expert with the signature on the notice of retirement. We have looked into these documents and we see a similarity in the signatures, calling for a further enquiry as to whether the signature is of Chandoo, the candidate, or Chandoo son of Sonu of Balodabazar. The question which has arisen is accentuated by the fact that both sides had summoned Chandoo son of Sonu of Balodabazar as a witness on their behalf but they gave him up before the Tribunal,

Now today both sides agree that Chandoo should be summoned as a Court witness and examined to clear the position as to whether the notice of retirement was signed by him and also if the documents which were the basis of the comparison were executed by him or not. This leads us to consider whether we have power to take additional evidence in an appeal arising u/s 116A of the Representation of the People Act.

The Representation of the People Act, as has been stated by their Lordships of the Supreme Court, is a special law, and all powers and authorities to decide election disputes must necessarily be taken from that law. However, the Representation of the People Act in terms applies in most of its parts the CPC and enjoins on Tribunals and High Courts to follow it. The question that arises is whether we have the power under Order 41, Rule 27 of the Code to call for additional evidence for any of the reasons given in the rule. A reference to the scheme of Section 90 will show that in addition to certain enumerated powers which are derived from the Code of Civil Procedure, the Tribunals have been directed to exercise powers as nearly as they may be in accordance with the CPC in the trial of election petitions.

A reference to the second sub-section of Section 116A shows that the High Courts are enjoined in the disposal of appeals arising u/s 98 of the Act to exercise the same powers, jurisdiction and authority and to follow the same procedure with respect to an appeal against a decision u/s 98 as if the appeal were one from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction. The latter section shows that though the

appeal is not a civil appeal arising from a civil cause of action it is to be treated as such and the same powers, jurisdiction and authority have to be exercised in its disposal and the same procedure has to be utilized as for the disposal of civil appeals.

In our opinion, Order 41, R, 27 of the Code of Civil Procedure is attracted on account of the generality of the words contained in Sub-section (2) of Section 116A of the Act, If we are to follow the same procedure and if we are to exercise precisely the same powers, jurisdiction and authority as we exercise in dealing with an appeal under the Code of Civil Procedure, our powers must extend to the utilization of every jurisdiction and authority necessary to reach a correct decision in the case. Rule 27 of Order 41 as amended by this Court is based upon three requirements.

The first is that some additional evidence which ought to have been admitted has not been admitted by the Court from whose decree the appeal is preferred; secondly, that there is some additional evidence which was not within the knowledge of the parties or could not with due diligence be produced by them; or thirdly, that the Court requires some more evidence to decide the case effectively. We need not go into the dispute which was settled by their Lordships of the Privy Council in (1922) ILR 3 LAH 127 (Privy Council) as to the meaning of the words "any other sufficient reason", because in our opinion the present matter is covered by the fact of the provisions we have mentioned.

The facts of the case clearly show that Chandoo, the candidate, has been challenging the authenticity of the document purporting to be his notice of retirement. He has also been contending that he never presented the document in person. One of the points is the authorship of that notice, and in this connection the name of Chandoo son of Sonu of Balodabazar has been mentioned, and two documents have been exhibited to show his signature. No doubt, there is some proof of the two documents, but Chandoo son of Sonu should have been examined in the case because his denial or acceptance of the signature would have been a material fact, at any rate on one part of the case.

We think that in a case of this type, where an issue hangs *prima facie* upon the testimony of a witness, we should examine that witness so as to reach a correct and effective solution on that part of the case. In our opinion, Chandoo's evidence is not only material but is essential, and we think that he ought to have been examined. Unfortunately, both sides summoned the witness, and we do not think that we can draw an inference adverse to either of them. We considered whether we should draw an inference adverse to the party whose witness Chandoo son of Sonu of Balodabazar could logically be said to be, but we think that in the circumstances of the case there can be no greater burden upon one side or the other.

In this state of affairs, we are conscious of the lacuna in the case particularly as by giving a finding adverse to Chandoo, he would be open to a criminal charge

and his testimony should be before us before reaching a conclusion about the alleged authorship of the notice of retirement. For these reasons we are satisfied that this is a fit case where we should exercise the powers conferred on the appellate Court by the 27th rule of Order 41 and examine Chandoo son of Sonu to reach a full and complete and effective solution of the controversy, or at any rate a major part of it. We, therefore, order that Chandoo son of Sonu shall be summoned before us, and we shall examine him as a Court witness, giving opportunity to both sides to cross-examine him in the order to be settled by us, regard being had to the kind of testimony he gives.

Side by side with the testimony of Chandoo of Balodabazar, we think we should have at least present before us two other witnesses in case their testimony becomes necessary for the purposes of this case. They are Uma Shankar Bajpai and Shri M.T. Mahajan, the Assistant Returning Officer, who received the notice of retirement. Accordingly, without deciding at present whether we would take their evidence or not, we think that they should be summoned for the same day to be present in Court. After examining Chandu son of Sonu, we shall give additional reasons if we feel disposed to taking further evidence from them.

We do not think that we can allow parties to reopen the proceeding with a view to improving their part of the case. What we have ordered is what we considered necessary in the interest of justice and for the disposal of this appeal. Though the parties before us agree that these witnesses be summoned, and though by agreement of parties the *cursus curiae* can be altered, unless there be a prohibition against such an alteration, we rest the case not upon their request but upon the requirements, of the Court to reach a correct decision of the controversy before it.

We need hardly say that for the purity of the conduct of election it is necessary to unravel this mystery and to discover how the notice of retirement came to be filed and to find out to its bottom the entire fact connected therewith. For this purpose, we think that we should have not only Chandoo son of Sonu but the other two witnesses also present, in case we need then evidence further.

We, therefore, direct that Chandoo son of Sonu of Balodabazar shall be summoned before us to give his evidence on 24-4-1958. We further direct that Uma Shankar Bajpai and Shri M.T. Mahajan shall also be summoned before us for the same day to be in attendance in case we need their evidence for any reasons to be given by us hereafter. Summonses to the first two shall go to the Collector, Raipur, and that to Shri Mahajan, to the Collector, Bilaspur, where we understand he is now posted. Telephonic communications may be sent to the Collectors concerned to be in readiness to receive these notices and to serve them without any delay. The case is adjourned to 24-4-1958. The office shall see that the original notice of retirement and the nomination form of Chandoo son of Sahadev are requisitioned and placed before as at the hearing.