
(1961) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 8 of 1961

Govardhanlal Nandlal Gupta and Another

APPELLANT

Vs

Ramcharan Dalluram Sahu and Others

RESPONDENT

Date of Decision : 20-07-1961

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 20A

Municipal Election Petition Rules, 1947 — Rule 3, 5

Representation of the People Act, 1951 — Section 82

Citation : AIR 1962 MP 176 : (1962) J LJ 872 : (1962) 7 MPLJ 480

Hon'ble Judges : T.C. Shrivastava, J; S.P. Bhargava, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and P.C. Pathak, for the Appellant; R.K. Pandey, for No. 1 and H.L. Khaskalam, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Shrivastava, J.

This petition under Articles 226 and 227 of the Constitution has been filed by the petitioners for a writ of certiorari quashing the order dated 28-11-1960 passed by the respondent No. 3 as an Election Tribunal u/s 20-A of the M. P. Municipalities Act.

Petitioner No. 1, Govardhanlal was duly elected as a member of the Municipal Committee, Bilaspur, on 25-5-1959, from Ward No. 10. Respondent No. 1, Ramcharan who had contested the election, filed an election petition before the respondent No. 3, challenging the validity of the election and also praying that in case the election was set aside, he should be declared as properly elected. The petitioner No. 2, Laxmi, who was also a candidate at the election, raised a preliminary objection that respondent No. 2 Kanhaiyalal, who was a duly nominated candidate for the election but had withdrawn from the contest, was a necessary party. The Election Tribunal passed the impugned order dated 28-11-1960, holding that Kanhaiyalal was not a necessary party.

The only question which arises for decision in this petition is whether a candidate who has been duly nominated for election but has withdrawn from the contest is a necessary party and the failure to implead him is fatal to the application under Rule 3(b) of the Municipal Election Petition Rules, 1947, printed on page 292 of the M. P. Municipal Manual.

We may here refer to the relevant rules u/s 176(2)(i) of the M, P. Municipalities Act. Rule 3(b) reads thus:

"3 (a)....."

"3(b) The petitioner may, if he so desires in addition to calling in question the election or selection of a returned candidate, claim a declaration that he himself or any other candidate has been duly elected or selected; in which case he shall join as respondents to his petition. all other candidates who were nominated at the election or selection."

Rule 4 requires that a deposit of Rs. 250/- shall be made by the petitioner as security for the costs of the petition. Rule 5 then provides that if the provisions of Rule 4 are not complied with the Judge shall dismiss the petition. It is pertinent to observe that this rule, which is the only one providing for dismissal of the petition for non-compliance with the rules, does not refer to Rule 3(b).

It is necessary here to refer to the relevant provisions of the Representation of the People Act, 1951 and the amendments made thereto in 1955 as the decisions relied on by the learned counsel on both sides relate to election under that Act. Section 82 of the said Act, as it stood in 1951, provided that a petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election, other than himself if he is so nominated. Section 85 provided that if the provisions of Sections 81, 83 or 117 are not complied with, the petition shall be dismissed. Here also there was no reference to Section 82, which provided for joinder of parties. The Act, was amended in 1955 and Section 82 was added to the list of sections, non-compliance of which rendered the petition liable to dismissal.

Shri Dharmadhikari for the petitioner relies upon the decision of the Supreme Court in *Kamaraja Nadar v. Kunju Thevar* ATR 1958 SC 687 in which it was held that failure to implead a candidate who had retired from the contest entailed a dismissal of the petition and the Tribunal had no power to permit joinder of such a candidate as a party during the pendency of the proceedings. It will be noted that this decision was given when the Act had been amended in 1955 and is, therefore, based on the amended provision in Section 85 of the Act which is materially different.

The decision of the Supreme Court in *Jagan Nath Vs. Jaswant Singh and Others*, , is more appropriate to the provisions of the M. P. Municipalities Act. That decision was given under the Representation of the People Act, 1951, when Section 85 of the Act did not provide for the dismissal of the petition for non-

compliance with the provisions in Section 82. It was held by their Lordships that although the word "shall" has been used in Section 82 of the Act the provision is not mandatory and the non-compliance thereof does not enable the Court to dismiss the petition forthwith. Order XXXIV, Rule 1, of the Code of Civil Procedure, which contains a similar provision, was referred to in the discussion and their Lordships observed as follows:

"There is ample authority for the view that this is merely a directory provision and non-joinder of any party is not a fatal defect and a decree can be passed so far as the parties actually on record are concerned unless the party omitted is a necessary party in the sense that in his absence no relief could be given at all as regards parties actually on record."

Their Lordships went on to say:

"There is no valid reason for treating the word "shall" in Section 82 in a manner different from the same word used in Order 34, Rule 1, Civil P. C. It is one of the rules of construction that a provision like this is not mandatory unless non-compliance with it is made penal." The above decision was referred to in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, and it was again held that the provisions in Section 82 are not mandatory.

Rule 3(b) of the Municipal Election Petition Rules is almost identical to Section 82 of the Representation of the People Act, 1951, as it originally stood before amendment. Rule 5 further is similar to the un-amended Section 85 inasmuch as both do not refer to the provision regarding joinder of parties as a ground for dismissal of the petition. As the omission to implead the candidate who has withdrawn from the contest is not made penal, it must be held that the provision is only directory and the petition could not_ therefore, have been dismissed for non-joinder of Kanhaiyalal.

Shri R.K. Pandey for the respondents contended that a candidate who withdraws from the contest after nomination is not covered by the words "all other candidates who were nominated at the election."" The use of the preposition "at" according to him, implies that the candidate must have contested the poll. He relied on Sitaram Hirachand Birla Vs. Yograjsing Shankarsing Parihar and Others, for this proposition. This point was raised in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, but was left undecided. In view of our decision on the first point, we do not find it necessary to decide this question.

In the result, the petition is dismissed with costs. Hearing fee is fixed at Rs. 50/- only. After payment of costs from the amount of security the balance shall be refunded to the petitioner.