

(1958) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Application (O.J.) No. 40 of 1956

Kashi Nath Pandey

APPELLANT

Vs

Shibban Lal Saxena and Others

RESPONDENT

Date of Decision : 05-05-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

General Clauses Act, 1897 — Section 9

Representation of the People Act, 1951 — Section 110(3), 81, 92

Citation : AIR 1959 All 54

Hon'ble Judges : V. Bhargava, J; B.N. Nigam, J

Bench : Division Bench

Advocate : H.D. Srivastava and Umesh Chandra, for the Appellant; Iqbal Ahmad, K.S. Verma and G.T. Wadhvani, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhargava, J.—Sri Kashi Nath Pandey has filed this petition under Article 226 of the Constitution praying for the issue of a writ of certiorari quashing the order of opposite party No. 5, Election Tribunal, Gorakhpur, at Sitapur and for issue of a writ of mandamus prohibiting opposite party No. 5 from proceeding any further with the trial of Election Petition No. 463 of 1957.

2. In the last general elections the petitioner Sri Kashi Nath Pandey, opposite party No. 1 Sri Shibban Lal Saxena and opposite parties 2 to 4 were candidates for election to the House of the People from Hata Constituency in the district of Deoria. This was a single member constituency and the petitioner Sri Kashi Nath was declared elected. Sri Kapildeo an elector, filed an, election petition on 6-5-1957 praying that the election of Sri Kashi Nath Pandey petitioner be declared void on grounds given in that petition. Opposite parties Nos. 1 to 4 in the present petition were respondents in that election petition. The election petition filed by Sri Kapildeo was sent by the Election Commission for trial to the Election Tribunal at Gorakhpur which later held sittings at Sitapur.

On 9-10-1957 Sri Kapildeo presented an application for withdrawal of the Election Petition u/s 109 of the Representation of the People Act (Act XLIII of 1951). On 28-11-1957, opposite party No. 1 filed an objection against that application for withdrawal. On 16-12-1957, the Election Tribunal dismissed the objection of opposite party No. 1 and allowed the application of withdrawal presented by Sri Kapildeo the election petitioner. Notice of withdrawal was published in the official gazette by the Tribunal on 26-12-1957. On 9-1-1958, opposite party No. 1 made an application for being substituted as petitioner in the election petition in place of Sri Kapildeo whose withdrawal had been published in the gazette.

An objection against this application was filed by Sri Kashi Nath Pandey petitioner on 31-1-1958. On the same day, the Tribunal rejected this objection and allowed the application of opposite party No. 1 for substitution as petitioner in the election petition. In these circumstances, the petitioner has come to this Court challenging the correctness of the order of the Tribunal dated 31-1-1958 on two grounds.

3. One of the grounds is that the application for substitution presented by opposite party No. 1 was filed beyond the period of limitation prescribed by Section 110(3)(c) of the Representation of the People Act. When this petition was argued before us, learned Counsel for the petitioner admitted that he was unable to support the 1st ground relating to the question of limitation. The facts given above show that the notice of withdrawal was published in the official gazette on 26-12-1957 whereas the application for substitution was presented by opposite party No. 1 on 9-1-1958. The period from 26-12-1957 to 9-1-1958 is a period of 15 days if both the dates mentioned herein are counted whereas it is a period of only 14 days if the date of publication of the notice of withdrawal, viz, 26-12-1957 is not counted.

Under Section 110(3)(c) an application for substitution has to be presented within 14 days of publication of the notice of withdrawal. The contention on the basis of which the petitioner came to this Court was that, for the purposes of calculating the period of 14 days laid down in Section 110(3)(C) of the Representation of the People Act, the day of publication of notice of withdrawal should also be counted. It appears that the contention was given up by the learned counsel before us because he was unable to contend that the language used in Section 110(3)(c) of the Representation of the People Act was such as to require the day of the publication of the notice of withdrawal also to be included in the period of 14 days prescribed therein.

There would, of course, have been difficulty at all if, in Section 110(3)(c) of the Representation of the People Act, the word used had been "from" instead of the word "of". Had the language been that the application for substitution had to be presented within 14 days "from" such date, no argument could at all have been raised as Section 9 of the Central General Clauses Act would have applied under which the day of publication would have been excluded. A slight confusion has

arisen because the Legislature used the word "of" instead of the word "from". However, we have also to take into account the principle laid down in Section 12 (1) of the Limitation Act. The principle contained in Section 12(1) is that "in computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded." u/s 110(3) (c) of the Representation of the People Act the period of 14 days has to be computed from the date of publication of the notice of withdrawal even though the word "from" is not used and the word "of" is used. In computing the period of 14 days u/s 110(3)(c) of the Representation of the People Act, therefore, the day of publication of the notice of withdrawal has to be excluded. That day being excluded, the application presented on 9-1-1958 must be held to have been within 14 days of the publication of the notice of withdrawal so that there is no force in this contention which was raised on behalf of the petitioner.

We may incidentally mention that, in the objection which was filed by the petitioner before the Election Tribunal against the application for substitution presented by opposite party No. 1, the ground taken was not that the application for substitution had not been presented within 14 days of the date of publication but was that it had not been presented within 14 days "from" the date of publication. It would indicate that the petitioner himself, even from the first stage, made no distinction between the words "of" and "from" and rightly considered that, whether the word used be one or the other, the interpretation would be the same so that Section 9 of the General Clauses Act would be applicable. The first point urged in favour of the present petition, therefore, fails.

4. The second ground is the one on which reliance has been mainly placed by the learned counsel for the petitioner in his arguments before us. The contention of the learned counsel was that Sri Shibban Lal Saxena should not be held to be a person who might have been a petitioner within the meaning of this expression as used in Section 110(3)(c) of the Representation of the People Act. When questioned, the learned counsel had to admit that he could not contend that Sri Shibban Lal Saxena, opposite party No. 1, was not such "a person". Reliance was, however, placed by him on the interpretation of the qualifying words "who might himself have been a petitioner."

In dealing with the interpretation of this expression, learned counsel again admitted that Sri Shibban Lal, opposite party No. 1, could have filed an election petition challenging this very election on those very grounds on which the present election petition was filed; but it was contended by him that, if Sri Shibban Lal Saxena presented such a petition, it had to be a separate one and that this particular petition could not have been filed by him, as it was filed by a person who was an elector while Sri Shibban Lal was not an elector in constituency and was merely a candidate for election from this constituency.

Further questioned, learned counsel conceded that, u/s 81 of the Representation of the People Act, two candidates could file a joint election petition against a successful candidate and similarly two electors could file a joint election petition

against a successful candidate. What learned counsel contended was that a candidate who was not an elector could not file a petition jointly with an elector. We can see no reason at all in support of this contention. The right to file a joint petition depends on four circumstances. Firstly, persons filing a joint petition or joining as plaintiffs in a suit must come under a concurrent right which exists in each of them simultaneously.

In the present case, the right to challenge the election of the petitioner vested in Sri Kapildeo as well as Sri Shibban Lal concurrently and existed in both of them simultaneously. No doubt, Sri Shibban Lal acquired that right in his capacity as a candidate while Sri Kapildeo acquired that right in his capacity as an elector, but once those rights had been acquired simultaneously by these two persons the legal remedy which they could seek in pursuance of it was identical.

The second requirement that both must be en-titled to come before the same forum also existed. Either of them filing an election petition had to present it in the same manner and that petition had to be tried by the same procedure. The cause of action which is the third factor to be taken into account was also identical, being the existence of a ground u/s 100 of the Representation of the People Act on account of which the election of the present petitioner could be declared void. Finally, there was identity of relief. The same relief could have been claimed by Sri Shibban Lal Saxena which could and actually was claimed by Sri Kapildeo.

This being so, Sri Shibban Lal Saxena and Sri Kapildeo could have joined as co-petitioners in this very election petition. Consequently, it must be held that Sri Shibban Lal Saxena was a person, who might himself have been a petitioner in this very election petition, so that he has been rightly allowed to be substituted in place of Sri Kapildeo whose notice of withdrawal had been published in the official gazette.

5. On other aspect in which this question was discussed before us by the learned counsel for the petitioner may be dealt with. The point raised by learned Counsel was that the Representation of the People Act had made no provision at all for transposition of a party and, Sri Shibban Lal Saxena already being a respondent, he could not be substituted in place of Sri Kapildeo as petitioner unless such transposition was permitted by the Election Tribunal.

It appears to us that, in dealing with this point, it is not correct to describe the action taken even in a regular suit in such circumstances as transposition of parties.

That term has been popularly used but is nowhere used in any law itself that the CPC makes provision for is the addition or substitution of parties or striking off of names from the array of parties. That is the provision contained in Order 1 Rule 10, C. P. C. In the case of an election petition a special provision is contained in Ss. 109 and 110 of the Representation of the People Act for dealing with the contingency arising out of a withdrawal by an election petitioner. The special

provision with which we are concerned is that, if an election petitioner withdraws, the petition is not to be dismissed and u/s 110(3)(c) of that Act a person who might have himself been a petitioner is given the right to have himself substituted.

For his substitution as a party in place of the withdrawing petitioner, the Election Tribunal has thus to rely upon the provisions of Section 110(3)(c) of the Representation of the People Act and consequently cannot rely upon any provision of the Code of Civil Procedure. The provisions of the CPC have been made applicable to the trial of an election petition subject to the provisions of the Representation of the People Act and the rules framed thereunder, and where, as in the present case, there is a specific provision in the Re-presentation of the People Act its corresponding provision in the CPC becomes inapplicable.

Sri Shibban Lal Saxena, as we have held above, was entitled to apply that he be substituted in place of Sri Kapildeo u/s 110(3)(c) of the Representation of the People Act. That prayer having been granted, the question arises as to what is to be done in regard to the existence of his name as one of the respondents in the election petition. Firstly, it appears to us that his name must be struck off from the array of respondents as a consequential action to be taken by the Tribunal for the purpose of giving effect to the provisions contained in Section 110(3)(c) of the Representation of the People Act.

Secondly, the Election Tribunal could rely upon Order 1, Rule 10, C. P. C. for the purpose of striking off the name of Sri Shibban Lal Saxena from the array of respondents because there is nothing at all in the Representation of the People Act which conflicts with or bars the application of Order 1, Rule 10, C. P. C. for this purpose. It is true that it has been held in various cases that Order 1, Rule 10, C. P. C. cannot always be applied but we must also take notice of the principle that, even if any provision of the CPC does not apply to the facts and circumstances of a particular case, it does not mean that it cannot apply under different circumstances and to different facts. Order 6, Rule 17, C. P. C. has been held by the Supreme Court to be applicable to the trial of an election petition but with the qualification that under certain circumstances that provision cannot be applied, the two main conditions being that the application of Order 6, Rule 17, C. P. C. should not permit the addition of a new ground after the period of limitation has expired and should not be allowed to bring about an amendment the result of which would be to defeat the purpose of any provisions of the Representation of the People Act.

If these two conditions are satisfied, Order 6, Rule 17, C. P. C. is applicable. Similarly Order 1, Rule 10 of the CPC cannot apply where it would have the effect of defeating any provision of the Representation of the People Act. In the present case, if this provision is applied instead of defeating any provision of the Representation of the People Act it would be specifically for the purpose of giving effect to a provision of the Representation of the People Act, u/s 110(3)(c) of the Representation of the People Act Sri Shibban Lal Saxena had the right to be

substituted as the election petitioner and it is for the purpose of giving effect to this provision that the Tribunal could rely upon Order 1, Rule 10, C. P. C. to strike off his name from the array of respondents.

6. Two other points that were urged by the learned counsel may be briefly noticed by us. Learned counsel attempted to draw a distinction based on the fact that the word "person" used in Section 110(3)(c) of the Representation of the People Act is preceded by the article "a" whereas the same word used in Ss. 115 and 116 of that Act is preceded by the article "any". We do not think any difference in interpretation of the word arises by the mere use of the article "a" or the article "any" at different places.

7. The second point raised by the learned counsel was that, Sri Shibban Lal Saxena having already been elected to the House of the People from another constituency, he no longer had any interest as a candidate in challenging the election of the petitioner from this constituency and consequently he is not a person who might himself have been a petitioner. The fact that Sri Shibban Lal Saxena was elected from another constituency did not take away his right to present an election petition u/s 81 of the Representation of the People Act in respect of this constituency where he was a candidate.

Even if he might not be interested in again standing from this constituency he might have interest in getting the election of the petitioner set aside. At the stage when the election petition was filed, he might have considered it unnecessary to file a petition of his own when the election of the petitioner was challenged by Sri Kapildeo on those very grounds which he himself could have relied upon. When Sri Kapildeo withdrew, Sri Shibban Lal Saxena decided to exercise his option of challenging the election of the petitioner.

If he could be interested in challenging the election by becoming the election petitioner at this stage, it is not possible to say that he might not have been a person to do so at the earlier stage by presenting a petition u/s 81 of the Representation of the People Act if Sri Kapildeo had not already done so. There can be other reasons why Sri Shibban Lal Saxena may still desire to pursue the election petition against the present petitioner. The law nowhere requires that a person entitled to pre-sent an election petition u/s 81 must show that at the time of presenting the petition or at the time of seeking substitution as an election petitioner, he has an interest in having the election of the successful candidate set aside.

8. For all these reasons we hold that there is no force in this petition and the petition is dismissed with costs.