
(2001) 03 PAT CK 0014
In the Patna High Court
Case No : E.P. No. 10 of 2000

Mundrika Singh Yadav

APPELLANT

Vs

Shiv Bachan Yadav and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 03 PAT CK 0014

Judgement

M.L. Visa, J.—Respondent No. 1 has filed an application u/s 87 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") read with Order VII Rule 11 of the CPC (in short, CPC) challenging the maintainability of the election petition and praying for its dismissal.

2. The objection raised by Respondent No. 1 is that the election petitioner has challenged the election of respondent No. 1 on the sole ground of illegalities alleged to have been committed by the counting authorities and the petitioner has levelled allegations against the District Election Officer, Returning Officer and Assistant Returning Officer that they committed illegalities in the counting of votes but these officials have not been made* parties by the election petitioner in his petition and all the allegations levelled by the election petitioner in his petition cannot be inquired into in absence of the aforesaid officials and on this ground the election petition is liable to be dismissed.

3. Second objection raised by respondent No. 1 as to the maintainability of this election petition is that the election petition does not disclose any cause of action because it does not contain material facts as required u/s 83 of the Act and no roving inquiry can be allowed on the basis of vexatious and baseless claim as made in the present election petition and on this account also the election petition is liable to be dismissed.

4. The election petitioner has opposed the prayer of respondent No. 1 by filing rejoinder to the aforesaid petition of respondent No. 1 stating therein that the objections raised by respondent No. 1 on the point of maintainability of election petition are misconceived, uncalled for, unwarranted and contrary to law and the

petition has been filed in order to delay the disposal of the election petition. According to the election petitioner the counting officials are not necessary parties to an election petition and only those candidates are required to be joined as party to an election petition who are named in Section 82 of the Act and this Court on a number of occasions has passed orders directing the election petitioners to delete the names of such parties who are not mentioned in Section 82 of the Act. On the point of election petition not disclosing any cause of action it has been stated that the election petitioner has given adequate statement of material facts including the relevant details of table number, round number, booth number, number of ballot papers and tabular charts and in various paragraphs of election petition the details of commission of irregularities and illegalities in the counting of ballot papers have been given and at the time of counting several objections were raised by petitioner and in this behalf and copies of these objections have already been annexed to the election petition. The election petitioner has prayed for rejecting the petition filed by respondent No. 1 with heavy cost. .

5. On the point of non-joinder of officials as parties to the election petition learned Counsel appearing on behalf of respondent No. 1 by relying upon two decisions of the Apex Court has submitted that provisions of CPC are applicable to the election petition. These decisions are in the cases of Jagan Nath Vs. Jaswant Singh and Others, , Sahodrabai Rai Vs. Ram Singh Aharwar, and K.T. Kosalram Vs. Dr. Santhosham and Others, . According to him non-compliance of provisions of Order i Rule 9 will be fatal to an election petition.

6. Before I enter into the discussion of the submissions made on behalf of both the parties I would like to state some of the provisions of the Act which are relevant for deciding the present issue. So far it relates to joining the parties to an election petition, Section 82 of the Act reads as follows:

82. Parties to the petition. A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void claims a further declaration that he himself or any other candidates has been duly elected, all the contesting other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are . made in the petition.

7. About dismissal of the election petition provision has been made u/s 86(1) of the Act which reads as follows:

86. Trial of election petition.-(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 17.

8. For the applicability of CPC in deciding an election petition Section 87(1) of the

Act lays down as follows:

87. Procedure before the High Court.-(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits.

....

9. Learned Counsel appearing on behalf of the election petitioner relying upon a number of decisions has argued that Section 82 of the Act gives a list of the parties to be joined as respondents in an election petition and any party which is not included in the list cannot be joined as a respondent to an election petition in view of the express provisions of this section. He has relied upon a number of decisions in support of his argument which I am referring hereinafter.

10. In *B. Sundara Rami Reddy v. Election Commission of India and Ors.* the order of Election Commission declaring the polling at a number of polling stations as void and directing re-poll at that polling station was an issue and Election Commission was impleaded as one of the respondents. The Election Commission made an application before the High Court for deleting it from the array of the parties on the ground that it was not necessary party and the order was allowed by the High Court. The election petitioner challenged this order of the High Court but his petition was dismissed. The following paragraphs of the decision which are relevant for the present case are quoted below:

3. After hearing learned Counsel for the petitioner we do not find any merit in the petition. Section 82 of the Representation of the People Act, 1951 specifies the persons who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is, therefore, not a necessary party to an election petition.

4. Learned Counsel for the petitioner urged that even if the Election Commission may not be a necessary party, it was a proper party since its orders have been challenged in the election petition. He further urged that since Civil Procedure Code, 1908 is applicable to trial of an election petition the concept of proper party is applicable to the trial of election petition. We find no merit in the contention. Section 87 of the Act lays down that subject to the provisions of the Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits, Provisions of the CPC have thus been made applicable to the trial of an election petition to, a limited extent as would appear from the expression "subject to the provisions of

this Act". Since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but the Representation of the People Act, 1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order of the CPC cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self-contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. In *K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others*, , this Court while discussing the application of Order I Rule 10 of the CPC to an election petition held that there could not be any addition of parties in the case of an election petition except under the provisions of Sub-section (4) of Section 86 of the Act. Again in *Jyoti Basu and Others Vs. Debi Ghosal and Others*, , this Court held that the concept of "proper party" is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondent to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to-be, none else shall be joined as respondents.

(Emphasis supplied).

11. In the case of *Jyoti Basu and Others Vs. Debi Ghosal and Others*, , which was referred in the aforesaid decision and which has also been relied upon by the learned Counsel appearing on behalf of election petitioner, it was held that persons mentioned in Sections 82 and 86(4) of the Act can only be joined as respondents. Paras 9 and 10 of this decision are as follows:

9. Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else. Section 82 is headed "Parties to the petition" and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Section 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition, Section 86(4) enables any candidate not already respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while Clause (b) of Section 82 obliges the petitioner to join as a respondent any candidate against whom allegations of corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against,

whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already respondent may seek and, if he so seeks, is entitled to be joined as a respondent u/s 86(4), any other person cannot, under that provision seek to be joined as a respondent, even if allegations of any corrupt practice are made against him. It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of "proper parties" enter the picture at all? We think that the concept of "proper parties" is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents.

(Emphasis supplied)

10. It is said, the CPC applies to the trial of election petitions and so proper parties whose presence may be necessary in order to enable the Court "effectually and completely to adjudicate upon and settle all questions involved" may be joined as respondents to the petitions. The question is not whether the Civil Procedure Code, applies because it undoubtedly does, but only "as far as may be" and subject to the provisions of the Representation of the People Act, 1951 and the rules made thereunder. Section 87(1) expressly says so. The question is whether the provisions of the CPC can be invoked to permit that which the Representation of the People Act does not. Quite obviously the provisions of the Code cannot be so invoked. In *Mohan Raj Vs. Surendra Kumar Taparia and Others*, , this Court held that the undoubted power of the Court (i.e. the Election Court) to permit an amendment of the petition cannot be used to strike out allegations against a candidate as respondent so as to save the election petition from dismissal for non-joinder of necessary parties. It was said, "The Court can order an amendment and even strike out a party who is not necessary. But where the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder. When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of CPC cannot be used as a curative means to save the petition." Again, in *K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others*, , it was observed that:

"With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1, Rule 10 subject to the added party's right to contend that the suit as against him"was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of Sub-section (4) of Section 86.

12. In the case of *Shrilal Java v. Udai Ram Dhakad* AIR1981 Rajasthan 251, which is a decision of a single Judge and in which the allegation against the Returning Officer was that he wrongly rejected the nomination paper filed by election petitioner, it was held that Returning Officer was not necessary party and it cannot be said that because of his non-joinder as respondent to the election petition it suffers from the defect of non-joinder of necessary party. Similarly in the case of *Rama Pr. Roy Chowdhury Baidyanath Bandopadhyaya*, Vol. XXXI ELR 167, in which various allegations against Presiding Officer and other officers of the Government connected with the election petition working under Returning Officer were made it was held that Returning Officer was not a necessary party to an election petition in view of the provisions of Section 82 of the Act.

13. Learned Counsel appearing on behalf of the respondent No. 1 has argued that ratio decided in the case of *Jyoti Basu v. Devi Ghosal* (supra) that provisions of CPC cannot be invoked for arraying persons not named in Section 82 of the Act is not applicable in view of decision in the case of *Jagan Nath v. Jaswant Singh* (supra) because decision in the case of *Jyoti Basu v. Devi Ghosal* is by a smaller Bench than the Bench which has decided the case of *Jagan Nath v. Jaswant Singh*. According to him in case of conflicting decisions the decision of a larger Bench has to be followed. In support of his argument he has relied upon the decision in the case of *The State of U.P. Vs. Ram Chandra Trivedi*, . Here it may be mentioned that in the case of *Jyoti Basu v. Devi Ghosal* (supra) the case *Jagan Nath v. Jaswant Singh* was also considered and thereafter, the Apex Court gave the findings as stated above. Besides this, in the case of *Jagan Nath v. Jaswant Singh*, "one of the candidates whose nomination had been accepted but who had withdrawn his candidature was not impleaded as respondent along with other respondents. A preliminary objection was raised by the election candidate that omission to implead a candidate who after acceptance of his nomination had withdrawn his candidature was fatal. The Tribunal before whom the matter was pending decided that non-joinder of such a candidate as respondent was not fatal, but however, it directed that since he was a proper party he may be added as a respondent. The election petitioner challenged this Order of Tribunal and the Apex Court while considering this issue observed that the matter was such as can be dealt with under the provisions of CPC. The basis of giving such observation in this case was that because Section 82 as it stood then provided that "the petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated and also that Section 85 of the Act as it stood then did not include Section 82 and it was not provided at that time in the Act that non-compliance of provisions of Section 82 would involve dismissal of a petition in limine. Admittedly this decision was given on 20-1-1954 before amendment of certain provisions of the Act introduced by Act 27 of 1956 and Act 40 of 1961. Old Section 85 the corresponding section of which after amendment of the Act is now 86 of the Act did not provide dismissal of an election petition at preliminary stage in case of non-compliance of the provisions of old Section 82 and the question in that

circumstance arose that what will be the effect of non-compliance of the provisions of old Section 82 and in absence of consequences of such non-compliance for laying down any penalty for such non-compliance of the Act what will be the procedure for dismissing the petition in limine. In view of these facts the Apex Court held that in such situation the provisions of CPC can be invoked which has been made applicable in the trial of the election petition subject to provisions in the Act. It has not laid down that provisions of CPC will be applicable in those matter also for which provision has been made in the Act itself. This is further clear from the following observation made in this decision:"

Para 7. The general -rule is well-settled that the statutory requirements of election law must be strictly observed and that 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. It is also well-settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. None of these propositions however, has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected.

14. Now after amendment in Section 86 of the Act Section 82 of the Act has already been introduced and Section 86 of the Act now prescribes that in case of non-compliance of the provisions of Section 81 or 82 or 117 an election petition can be dismissed. I, therefore find that the decision in the case of Jagan Nath v. Jaswant Singh, on which much reliance has been placed by the learned Counsel appearing on behalf of respondent No. 1 is not applicable to the facts of the present case because this decision is based on some old provisions of the Act which after subsequent amendments have either undergone major changes or have been repealed. In my opinion, when provisions of CPC have been made applicable to the proceedings under the Act making it subject to the provisions of the Act the provisions of CPC will not be applicable in the matters for which there is clear provision in the Act for those matters. When the Act lays down that particular persons are to be joined as respondents in an election petition only those persons will be respondents and no body else irrespective of any provision of the CPC. Officials for whom non-joining as respondents in the present election

petition objections have been raised on behalf of respondent No. 1 are not required u/s 82 of the Act to be added as parties and their non-joining as respondents is not a ground for dismissing the election petition at this preliminary stage.

15. So far second objection raised by respondent No. 1 that the election petition does not disclose any cause of action because it does not contain material facts as required u/s 83 of the Act is liable to be dismissed/outright is concerned, learned Counsel appearing on behalf of respondent No. 1 has relied upon two judgments of the Apex Court in the cases of Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, and Bhabhi Vs. Sheo Govind and Others, , but both these decisions are in the matter of an order for inspection of ballot papers. In the case reported in 1975 SC 2117 some conditions have been made imperative before passing an order for inspection of ballot papers. One of the conditions is that the Court must be prima facie satisfied that material produced before the Court regarding the truth of allegations made for recount. In the case of Jitendra Bahadur v. Krishna Behari, it was held that if scrutiny of ballot papers is sought on the basis of assertions which are neither accompanied by statement of material fact nor supported by any evidence such scrutiny should not be ordered. At present the question of passing an order for recounting of ballot papers is not under consideration and besides this, the plaintiff is yet to adduce his evidence. Therefore, these two decisions relied upon by respondent No. 1 are not applicable at this stage of the case. The another decision cited by learned Counsel appearing on behalf of respondent No. 1 in the case of Azhar Hussain Vs. Rajiv Gandhi, , but this decision is in respect of non-compliance of provision of Section 83 in respect of failure to incorporate in the petition the material facts and particulars relating to corrupt practice whereas the present election petition is not in respect of any allegation regarding any corrupt practice adopted by defendant. It is in respect of irregularities and illegalities committed in the counting of ballot papers.

16. Learned Counsel for the election petitioner has argued that scheme in Section 83(1) of the Act is in respect of general allegations which simply requires that a concise statement of material facts is to be furnished in the election petition while Clause (b) of this section refers to corrupt practice and in that case all details are to be given in the election petition. According to him, the election petitioner in his petition by giving the booth number, table number, round number and total number of ballot papers of the petitioner mixed with ballot papers of respondent and details of illegalities committed in the counting by again giving booth number, table number, round number and number of illegally rejected votes of petitioner has fulfilled the requirement of Section 83(1) of the Act. He has relied upon the decision in the case of Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, , in which it has been held that only in cases of allegations of corrupt practice which being in the nature of criminal charge the Act requires that full particulars should be given and in other cases only a concise statement of material facts is to be furnished and failure of mentioning

the particulars of the number of ballot papers rejected cannot be considered to be a defect in the pleading. In another decision in the case of Km. Shradha Devi Vs. Krishna Chandra Pant and Others, , it has been held that "it is not requirement of law that in respect of each ballot paper rejected as invalid a specific averment must be so made as to identify the ballot paper and only those that can be co-related to the allegations in the petition specifically and not shown shall be recounted and that is contrary to the requirement of the rules."

17. Learned Counsel appearing on behalf of the petitioner has also relied upon a decision in the case of Manphul Singh Vs. Surinder Singh, , where it has been held that it is not necessary that election petition should not only contain material fact but also the evidence on which the petitioner relies to prove those material facts.

18. Considering the arguments advanced on behalf of both the parties, I find no merit in both the objections raised on behalf of respondent No. 1. The prayer of respondent No. 1 for dismissing the election petition at this stage is rejected.

19. Put up this matter on 23-3-2001 for filing written statement