
(1995) 12 BOM CK 0039

In the Bombay High Court

Case No : Chamber Summons No's. 1079 and 1100 of 1995 in Election Petition No. 23 of 1995

Pannalal Shanti Swaroop

APPELLANT

Vs

Chief Election Commissioner and others

RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:

Representation of the People Act, 1951 — Section 82, 86(4), 87, 99

Citation : AIR 1996 Bom 131 : (1996) 98 BOMLR 230 : (1996) 1 MhLj 413

Hon'ble Judges : R.G. Vaidyanantha, J

Bench : Single Bench

Advocate : Pannalal Shanti Swaroop, Petitioner in person, Pradeep Rajgopal, instructed by Mrs. Rekha Rajgopal, for the Appellant; R.V. Govilkar, Government Pleader, for the Respondent

Judgement

R.G. Vaidyanantha, J.—This is an election petition filed by the petitioner challenging the validity of the election of respondent No.3. He has impleaded respondents 1, 2 and 4 viz. Chief Election Commissioner, Returning Officer, Vasai-61 and Superintendent of Police, respectively as parties to the election petition. The first respondent, the Chief Election Commissioner, has filed an application dated 25-8-1995 to strike off the first respondent from the petition. The Returning Officer, respondent No.2 has also filed a similar application for striking down his name and that application is numbered as Chamber Summons No.1079 of 1995. Similar application is filed by Superintendent of Police, respondent No. 4 to delete him from the cause title of the petition and that application is numbered as Chamber Summons No, 1100 of 1995. The petitioner has filed reply opposing all the three applications. Heard the petitioner who is in person and the learned Counsels appearing for the respondents.

2. The petitioner has filed the election petition challenging the election of respondent No.3 who was elected from Vasai constituency to the Maharashtra Legislative Assembly in the elections that was held on 26-2-1995. The petitioner

is challenging the election of respondent No.3 on the ground of corrupt practices. It is also alleged that respondents 1, 2 and 4 have not conducted the election in a free and proper manner and he has also alleged that these respondents have colluded with respondent No.3 in conducting the election in question.

As already stated respondents 1, 2 and 4 have filed applications for deleting them from the cause title of the petition on the ground that they are not necessary parties to the petition and their presence is not required for the disposal of the election petition.

3. The petitioner who appeared in person contended that since he has made serious allegations about the conduct of election and collusion of respondents 1, 2 and 4 with respondent No, 3 these respondents are necessary parties and their presence is absolutely necessary for the disposal of the election petition. On the other hand, the learned Counsel appearing for respondents 1, 2 and 4 contended that the election tribunal holding the trial of an election petition has limited jurisdiction and is bound by the provisions of the Representation of the People Act, 1951 which does not give scope for impleading third parties to the petition who are not candidates in the election in question.

The petitioner wants the election of respondent No. 3 to be set aside on the ground of corrupt practices. In such a case, only the returned candidate should be made as party, as provided in Section 82 of the Representation of the People Act, 1951, which provides that where the petitioner seek that he or any other candidate should be declared as elected after setting aside the election of the returned candidate, then all the contesting candidates should be made as parties to the elections petition.

Section 82 does not provide for making any other person as party to an election petition.

4. The argument of the petitioner that since he has made allegations against respondents 1, 2 and 4 they should be made as parties has no support from the provisions the Act. This is not a suit under common law or in equity where all interested parties can be made as parties. This is an election Tribunal trying an election petition vide 1951 Act and is bound by the provisions of the Act. The only two provisions which provide for impleading parties are Sections 82 and 99. As far as Section 82 is concerned, it speaks of only a candidate who is returned being made as party. u/s 99 of the Act if the Court comes to the conclusion that some third person has indulged in corrupt practices, then alone he can be made as party after giving him a notice about alleged corrupt practices.

There is no other provision in the Act which enables the Court to make third parties and other parties as parties to the election petition.

No doubt, Section 87 of the Act provides that the while trying an election petition, the Court can adopt procedure applicable under the CPC for trial of suits, but the section starts with a clause "subject to the provisions of this Act".

Therefore, we have to read the applicability of CPC subject to the provisions of the Act. The Act specifically provides as to who are to be made parties vide Section 82 of the Act. Therefore, we cannot import the principles of CPC to make proper parties as parties to an election petition.

5. The learned Counsels for the respondents 1, 2 and 4 invited my attention to two decisions of the apex Court which are directly on the point.

In *Jyoti Basu and Others Vs. Debi Ghosal and Others*, , a similar question arose for consideration. In that case of challenge to election of a returned candidate, the Chief Minister and some other Ministers of West Bengal were made parties on the allegation that they had colluded with the returned candidate in committing various alleged corrupt practices, and therefore, they are necessary parties to the election petition. This argument found favour with the High court. But on appeal, the apex Court took the view that an election dispute is not an action under common law nor in equity and it is a statutory proceeding, and therefore, governed by the provisions of the statute under which the remedy is provided. The apex Court observed in para 13 as follows:--

"We are of the opinion that no one may be joined as a party to an election petition otherwise than as provided by Sections 82 and 86(4) of the Act. It follows that a person who is not a candidate may not be joined as a respondent to the election petition".

In view of this finding, the apex Court allowed the appeal and ordered that the names of the appellants and 7th respondent should be struck off from the array of parties in the election petition.

Similarly in *B. Sundara Rami Reddy v. Election Commission of India*, a similar question arose for consideration. In that case, the Election Commission had been made as a party as in the present case where the Election Commission is made as First Respondent. Then the Election Commission filed an application to the High Court for deleting it from the array of parties on the ground that it was not a necessary party. The High Court allowed that application, and therefore, the election-petitioner took the matter in appeal before the Supreme Court.

An argument was addressed before the apex Court that though Election Commission may not a necessary party, it was still a proper party since its orders have been challenged in the election petition. This argument was rejected by the apex Court with the observation that the concept of joining proper parties to an election petition is ruled out by the provisions of the Act. That the concept of joining of a proper party to a suit or proceeding under Order I of the CPC cannot be imported to the trial of an election petition, in view of the express provisions of Sections 82 and 87 of the Act. It was further pointed out that 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 a proper party. Then it is observed as follows (at p.773 of AIR SCW):--

"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."

In view of this finding, the apex Court declined to interfere with the order of the High court.

6. In my view, both the decisions apply with equal force to the facts of the present case. Though the petitioner has made some grievance against respondents 1, 2 and 4, they cannot be joined as neither necessary nor proper parties to the election petition. Hence their names are liable to be struck off from the array of parties.

Since the petitioner has filed the petition in person and may not be fully aware of the legal provisions, I feel that he should not be burdened with costs for impleading respondents 1, 2 and 4 as parties to the petition.

7. In the result, the three applications filed by respondents 1, 2 and 4 are hereby allowed. The names of respondents 1, 2 and 4 shall be deleted from the array of parties. However, there will be no order as to costs in these three applications.

Office to make necessary corrections in the cause title as per this order.

8. Applications allowed.