
(1975) 03 AHC CK 0026
In the Allahabad High Court
Case No : E.F.A. No. 255 of 1973

Ram Lal Singh

APPELLANT

Vs

The District Judge, Fatehpur and Others

RESPONDENT

Date of Decision : 05-03-1975

Acts Referred:

Representation of the People Act, 1951 — Section 112

Citation : AIR 1976 All 79

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : S.C. Khare, B.N.L. Katiyar and V.K.S. Chaudhari, for the Appellant;
A.N. Varma, S.N. Varma, K.M. Dayal and B.L. Yadav, for the Respondent

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—This is the appellant's application praying that the instant election appeal be allowed, the order of the District Judge, Fatehpur dated 29th September. 1973. be set aside and the election petition be directed to have abated. In the alternative, it has been prayed that in case the aforementioned prayed cannot be granted then the name of the respondent No. 2 be struck off and a note be made that he is dead. This application is supported by an affidavit. A counter-aaffidavit has been filed on behalf of the respondent No. 4. Shri Sukhram, opposing the said application. The appellant has filed an affidavit-in-rejoinder in opposition to the aforesaid counter-affidavit and in support of his aforesaid application.

2. Brief facts necessary for the disposal of the application are these: An election took place to elect the Pramukh of Kshetra Samiti, Teliyani. District Fatehpur and the appellant. Ram Lal Singh, was declared to have been elected. There were four contesting candidates, including Ram Lal Singh. One of the unsuccessful candidates, Jai Ram Singh (respondent No. 2 herein) filed an election petition challenging the election of Ram Lal Singh and in the petition besides Ram Lal Singh two other unsuccessful candidates were also impleaded as opposite

parties. The said two unsuccessful candidates are Balkrishna Dubey and Sukh am who are respondents Nos. 3 and 4 herein.

In the election petition a declaration was sought that the election of the returned candidate Ram Lal Singh was void and that the petitioner, Jai Ram Singh. had been duly elected the Pramukh. The returned candidate contested the petition but the same was allowed by the Election Tribunal and the entire relief sought in the petition was granted i.e.. the election of the returned candidate. Ram Lal Singh, was declared to be invalid and the petitioner, Jai Ram Singh. was declared to be duly elected Pramukh. It may be stated that the petition was allowed "on technical points and for no fault of respondent No. 1."

3. Against the decision of the Election Tribunal the instant appeal was filed in this Court. During its pendency Jai Ram Singh. respondent No. 2 herein, and the petitioner before the Election Tribunal, died on 31-10-1974. After the said death the appellant moved the aforesaid application and in support of it I have heard Shri V. K. S. Chaudhari at length. In opposition Sri K. M. Dayal has made his submissions.

4. Sri Chaudhari has contended that the application should succeed on both the two grounds or on either of them firstly, because the petitioner, Jai Ram Singh. who filed the election petition and who died during the pendency of the appeal, had a personal cause of action and with his death the same came to an end. In other words, the cause of action has not survived and, therefore, the petition stands abated and the appeal accordingly should be allowed and it be declared that the petition has abated in consequence of the death of the petitioner and, secondly, the election petition stands abated upon the death of the petitioner by virtue of Rule 41 (2) of the U. P. Kshetra Samitis (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules. 1962 which should be held to be applicable not only to the proceedings before the Election Tribunal but also to the appellate stage on the ground that an appeal is a continuation of the proceedings before the Election Tribunal. Learned counsel's contention is that it makes no difference whether the death of the petitioner occurs at the trial stage or at the stage of the appeal. He has placed reliance on the following cases:

Sheo Sadan Singh Vs. Mohan Lal Gautam, ; Collector of Varanasi Vs. Gauri Shankar Misra and Others, ; Subodh Gopal Bose Vs. Ajit Kumar Haldar and Others, ; Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, ; Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, : National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), ; Ramsarup Das and Others Vs. Rameshwar Das and Others, ; AIR 1934 81 (Privy Council); AIR 1936 93 (Privy Council) : Secretary of State v. Rama Rao AIR 1916 PC 21.

5. Shri K. M. Dayal learned counsel for the respondents, has not disputed that if the death had taken place during the pendency of the election petition before the Election Tribunal then in view of Rule 41 (2) the election petition would have

abated upon the death of the sole petitioner, Jai Ram Singh. He however, contends that after the petition was allowed by the Tribunal and the election of the returned candidate (the appellant before me) was set aside then the said order took immediate effect from the date of the order as laid down in rule 46 of the aforesaid Rules and the death of the petitioner during the pendency of the appeal will not cause abatement of the petition and the appeal cannot be automatically allowed on the ground that the petitioner-respondent is dead during the pendency of the appeal.

6. Mr. Dayal's basic contention is that under the U. P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961, there are three clear and distinct stages, namely (1) the election to the office in question (2) Election Petition before the Judge and (3) appeals to the High Court against the order made by the Judge in the election petition. He contends that the three stages are absolutely unrelated and it would be wrong to treat the appeal as a continuation of the proceedings before the Election Tribunal.

7. The learned counsel contends that his contention that the appeal is not a continuation of the proceedings before the Election Tribunal is sustained by the fact that in the appeal there is a provision for the deposit of Rs. 500/- as security and the security deposited in the Court below amounting to Rs. 250/- is not considered to be of any avail when the matter travels to the appellate stage. Counsel's contention is that many quasi-judicial orders are passed during the conduct of the elections, e.g., Returning Officer decides about nomination and many other matters are similarly decided but despite the nature of such decision, the Election Petition before the Election Tribunal is not deemed to be a continuation of the proceedings relating to the conduct of the election.

Similarly, his contention is that the proceedings in the appeal are not deemed to be in continuation of the proceedings before the Election Tribunal. Counsel, therefore, submitted that the contingencies provided for in Rule 41 are merely applicable to the stage of the proceedings before the Election Tribunal and the said provisions have no applicability when the matter goes to the appellate stage. In the alternative, he has contended that once the petitioner is declared elected by the Election Tribunal, then he is in the position of a respondent in the appeal and, therefore, his death will not attract the provisions of Rule 41 (2).

Regarding the applicability of Order 22. CPC to the instant proceedings, Mr. Dayal contends that his submissions are two-fold; Firstly, that Order 22 is not applicable to these proceedings and, in the alternative, if it does apply, then by virtue of the provisions contained in Order 22, Rule 11. CPC the appellant shall be deemed to be in the position of the petitioner. Learned counsel contends that Section 107, CPC which enables the appellate court to exercise all the powers of the trial court is not applicable to the instant proceedings and. therefore, the Appellate Court cannot be deemed to have the powers which are exercisable by the Election Tribunal. He also emphasises that powers u/s 97, CPC are wide and comprehensive. Counsel places reliance on Amar Nath Vs. Ashta Bhuja Prasad, .

7-A. In Sheo Sadan Singh Vs. Mohan Lal Gautam, it was laid down in head note (B):--

"An election petition alleging corrupt practices etc.. against the respondent does not abate or become infructuous on the dissolution of the assembly as per the President's Proclamation under Article 356(1) of the Constitution.

In an election petition, the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions is to ensure to the extent possible that the persons who offend the election law are not allowed to avoid the consequences of their misdeeds.

The law relating to withdrawal and abatement of election petition is exhaustively dealt with in Chapter IV of Part VI of the Act. In deciding whether a petition has abated or not the Court cannot travel outside the provisions contained in that Chapter. There is no provision providing for the dropping of an election petition for any reason other than those mentioned therein. The Act does not provide for the abatement of an election petition either when the returned candidate whose election is challenged resigns or when the assembly is dissolved. As the law relating to abatement and withdrawal is exhaustively dealt with in the Act itself no reliance can be placed on the provisions of the CPC nor is there any provision in the CPC under which the election petition can be held to have abated."

8. In Collector of Varanasi Vs. Gauri Shankar Misra and Others, it has been laid down as under:--

"Neither the Act nor the rules framed thereunder prescribe any special procedure for the disposal of appeals u/s 19 (1) (f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal has reached the High Court it has to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a court already established then that appeal must be regulated by the practice and procedure of that Court.

It may be noted that the appeal provided in Section 19(1)(f) is an appeal to the High Court and not to any Judge of the High Court. Broadly speaking, Court is a place where justice is judicially administered.

The fact that the arbitrator appointed u/s 19(1)(f) is either a designated person or a tribunal does not in any way bear on the question whether the "High Court" referred to u/s 19(1)(f) is a court or not. Our statutes are full of instances where appeals or revisions to courts are provided as against the decisions of designated persons and tribunals."

9. In Subodh Gopal Bose Vs. Ajit Kumar Haldar and Others, it was held as under:

"that a pending appeal is a continuation of the suit out of which it arises. In other words, the suit is pending on appeal "

10. In *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, it was held as under:--

"A claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account or the party who is called upon to account dies. The maxim "*actio personalis moritur cum persona*" a personal action dies with the person, has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages, for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages or *ex delicto* and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property received by him does not, therefore, affect the liability of his estate."

11. In *AIR 1953 SC 253 (supra)* it was held as under:--

"The question is whether in the events which have happened, the appeal can proceed. We are of opinion that it cannot. It should be remembered in this connection that no decree had been passed in the suit. Only a finding has been given on a preliminary point and it is that finding that has been the subject of appeal to the High Court of Bombay and thereafter to this Court. There are other issues still to be tried and the action is thus undetermined. Now, the claim with which the plaintiff came to Court was that he was wrongly excommunicated, and that was an action personal to him. On the principle, "*actio personalis moritur cum persona*" when he died, the suit should abate. As a matter of fact, his legal representative applied to be brought on record, but the application was not pressed. The result is that the suit has abated. This would ordinarily entail the dismissal of this appeal."

12. In *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, it was held as under:--

"Ordinarily after an appeal reaches the High Court, it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court it constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Thus. Section 76, Trade Marks Act. confers a right of appeal to the High Court and says nothing more about it. That being so. the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act."

13. In Ramsarup Das and Others Vs. Rameshwar Das and Others, it was held as under:--

"If a plaintiff is suing to establish his right to a certain property in his own rights and not by virtue of his office, certainly the cause of action for the suit will survive, and his legal representative can continue the suit on the death of the original plaintiff, either during the pendency of the suit or of the appeal. But where the plaintiff's suit is primarily to establish his personal right to an office which would entitle him to possession of the property, on his death, either during the pendency of the suit or during the pendency of the appeal, the right to sue would not survive, and the suit will therefore, abate. The principle is well established that the substituted party can only prosecute the cause of action as originally framed in the suit, and, if it becomes necessary materially to alter the pleadings it becomes manifest that the original cause of action is being substituted for another cause of action which could very well form the subject-matter of a separate suit. In such a case, therefore, it is a new suit which has to be tried.

A dispute amongst three chelas as regards succession to the shebaitship was settled by an ekrarnama according to which the three chelas were to succeed one after another as shebait and after them worthy bairagi of Brahmin descent was to be selected by the locality and the Sadhus of neighbourhood. It was also agreed that those three persons would not nominate their successors. When the last of the aforesaid three chelas became she-bait and applied for mutation his application was opposed by the defendant. The land registration case ended in favour of the defendant who then dispossessed the former from the office of the shebaitship. Plaintiff therefore brought a suit for declaration according to the terms of the ekrarnama that he was a shebait, the defendant was a trespasser and for possession of property and mesne profits. The trial court decreed the suit holding the plaintiff as shebait and defendant in wrongful possession. During the pendency of appeal by the defendant the plaintiff died and his chela applied for substitution in his place;

Held that the plaintiff's right related to his personal rights as a shebait. The original plaintiff had based his cause of action on the ekrarnama which had enjoined upon the plaintiff not to nominate his successor. The person sought to be substituted in his place could succeed only by virtue of the appointment by election or selection according to the custom of the locality. If the Chela were to be substituted in place of the deceased a number of questions would arise for decision and plaint would have to be amended substantially giving rise to the defendant's right of amendment of his pleadings. Thus new issues would be raised necessitating a fresh trial which was not contemplated by the provisions of Order 22. Thus on the death of the plaintiff the suit became infructuous and the chela could not be substituted in place of the deceased plaintiff."

14. In AIR 1934 PC 81 (supra) it was held as under:--

"when a right of appeal is given to one of the ordinary courts of the country, the procedure, orders and decrees of that Court will be governed by the ordinary rules of the Civil Procedure Code. An appeal to the Privy Council is, therefore, maintainable from the decision of the High Court u/s 75 from the order of the District Judge u/s 4."

15. In AIR 1936 93 (Privy Council) it was held as under:--

"The provision in the Gurdwara Act that appeals from the tribunal are to be heard by a Division Court and not by a Single Judge does not indicate that the High Court in dealing with such matters would be exercising a special jurisdiction. The provisions of the CPC with reference to appeals to His Majesty apply to decrees of the High Court made u/s 34 and hence a right of appeal to the Privy Council from such decree exists:"

16. In AIR 1916 PC 21 (supra) it was held as under:--

"Where an appeal was preferred to the District Court against the decision of the Forest Settlement Officer u/s 10(2), the District Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders and decrees, the ordinary rules of the CPC apply."

17. In Amar Nath Vs. Ashta Bhuja Prasad, it was held as under:--

"An application by the appellant, who was the applicant u/s 81, on the death of the sole respondent asking the Court to exercise its powers u/s 116 and publish a notice in the Gazette that the sole respondent is dead and there is no other respondent opposing the petition, in order to enable any other person interested to get himself substituted in the place of the deceased respondent, does not lie u/s 116-A or any other provision of the Act.

Section 116 does not apply to appeals. Section 118 bears the title "Abatement or Substitution on death of respondent" and provides for the situation created by the death of the sole respondent. As the statute stands it seems that the intention is that the provisions about withdrawal and abatement would apply to petition only when it is either before the Commission or the tribunal and not to an appeal filed in the Court against the order of tribunal.

On the other hand the Court must decide such application under the provisions of Order 22 of the Civil P. C. in view of Section 116-A(2) of the Act. But the underlying assumption in all the rules under Order 22 is that the right to sue must have survived after death. It follows that if the right to sue itself does not survive the death of the deceased respondent, there can be no substitution and no continuation of the dispute. The appellant had a right u/s 81 of the Act to ask the tribunal to set aside the election of the respondent but on the death of the sole respondent that right did not survive against any other person. Hence the Court has no power to make a notification u/s 11 or to allow a third person to defend the petition."

18. In my view, the appellant is entitled to succeed on the first contention raised by Shri V. K. S. Chaudhari and, therefore, it is not necessary to examine his other contentions. There can be no denying the fact that the relief which is sought in the election petition is based on a personal cause of action and it does not survive either on the death of the petitioner or of the respondent. The Division Bench decision of our Court in Amar Nath Vs. Ashta Bhuja Prasad, has clearly laid down to the said effect. In the instant case when the respondent No. 2, Jai Ram Singh, died the cause of action did not survive and indeed it has not been contended by the learned counsel for the respondents that on the death of the respondent No. 2 any heir or legal representative of the deceased needed to be brought on record. Obviously the heirs and legal representatives of Jai Ram Singh have got nothing to do with the dispute which Jai Ram Singh was carrying on with the returned candidate as a result of the election for the office in question.

In my view, whether the death occurs during the pendency of the petition or at the appellate stage will make no difference in an election case. The Division Bench case reported in Ramsarup Das and Others Vs. Rameshwar Das and Others, undoubtedly supports the contention of Shri Chaudhari. It should be seen that in the said case the death of the plaintiff occurred during the pendency of the appeal and it should also be appreciated that the plaintiff (like the petitioner in the instant case) had succeeded in the trial court and a decree had been passed in his favour. Yet when he died it was held that as he was suing to establish his personal right to an office, therefore, on his death "either during the pendency of the suit or during the pendency of the appeal the right to sue could not survive and the suit will, therefore, abate". In the said case the defendant's appeal was, therefore, allowed and the judgment and the decree passed by the trial court was discharged.

19. It should be emphasised that the scheme under the Representation of the People Act, 1951 is materially different from the one under the enactment with which we are concerned here. A comparison between Section 112 of the Representation of the people Act, 1951 and Rule 41 of the U. P. Kshetra Samitis (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1962 is instructive. The said provisions are reproduced below:--

"112. Abatement of election petitions. -- (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Where an election petition abates under Sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit.

(3) Any person, who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

"41. Abatement of petitions. -- (1) An election petition claiming a declaration mentioned in Clause (a) of Rule 37 shall abate upon the death of the returned candidate.

(2) An election petition shall abate upon the death of the sole petitioner or all the petitioners.

(3) If any election petition claims the declaration mentioned in Clause (b) of Rule 37 and the returned candidate dies, the Judge shall cause notice of such event to be published in the Gazette and thereupon any person who might have been a petitioner, may within fourteen days of the publication apply to be substituted in place of the returned candidate to oppose the petition and shall be entitled to continue the proceedings upon such terms as the Judge may think fit."

20. It is obvious that there are material differences between the aforesaid provisions in the said two enactments. Under the Representation of the People Act even on the death of the sole petitioner a right has been given to a person who might himself have been a petitioner to apply within 14 days of the publication u/s 112(2) to be substituted as petitioner. This is not so under the aforesaid Rule 41. The only contingency when a person can apply to be substituted in an election petition arises when the returned candidate dies. No provision is, however, made for any substitution when the sole petitioner dies. This basic difference between the two enactments shows that the legislative intent underlying the rules framed under the U. P. Kshetra Samitis and Zila Parishads Adhiniyam, 1961. materially differs from such intention underlying the Representation of the People Act, 1951.

21. Shri Dayal has contended that the respondents on record, namely, respondents Nos. 3 and 4 have a right to contest the appeal and, therefore, the appeal cannot be automatically allowed on the death of the respondent No. 2. I cannot accept this contention. The said two respondents were the two unsuccessful candidates in the election. However, they did not file any petition to challenge the election of the returned candidate. Rules 36 and 37 of the said Rules are reproduced below:--

"36. Form, etc.. of petition. -- (1) An election petition shall specify the ground or grounds on which the election of the returned candidate is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such ground.

(2) The person whose election is questioned and where the petitioner claims that any other candidate shall be declared elected in the place of such person, every unsuccessful candidate shall be made a respondent to the petition."

"37. Relief that may be claimed by the petitioner. -- A petitioner may claim either of the following declarations-

(a) that the election of the returned candidate is void:

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected."

It is obvious that the unsuccessful candidates need to be impleaded only when a declaration is sought under rule 37 (b) otherwise they need not be impleaded in the election petition. In other words, if a petitioner merely seeks a declaration that the election of the returned candidate is void he has to implead only the returned candidate and not the other unsuccessful candidate. This clearly goes to show that the election of the returned candidate must be challenged by an election petition and it is not possible or open to challenge such election as a respondent in a petition. The limited right which has been granted to the unsuccessful candidates impleaded as respondents in an election petition is with reference to the declaration which is sought by the petitioner that he himself or any other candidate has been duly elected. It is obvious that this right has been given to the unsuccessful candidate because he may contend that not the petitioner but the respondent should be declared to be elected.

In the instant case, the respondents Nos. 3 and 4 were impleaded because they were the other unsuccessful candidates and because the petitioner was seeking a declaration under Rule 37 (b) of the aforesaid Rules. In respect of such declaration they had a locus standi but no such locus standi can be claimed by them with reference to the election of the returned candidate which they themselves did not challenge by filing any election petition.

22. I have not found it necessary to decide any of the other interesting questions which were raised at the Bar touching upon the applicability of the CPC to the instant proceeding because, in my opinion, it is not necessary to do so.

23. In the result, the application is allowed. The appeal succeeds and the order of the Election Tribunal dated 29th September, 1973. is discharged and the election petition is directed to have abated in consequence of the death of the respondent No. 2. There will be no order as to costs.