
(2019) 08 DEL CK 0204

In the Delhi High Court

Case No : Election Petition No. 4 Of 2019

Sanjay Gupta & Anr

APPELLANT

Vs

Election Commission Of India & Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 329(b)
Code Of Civil Procedure, 1908 — Order 1 Rule 10Representation Of People Act, 1951
— Section 14, 80, 80A, 82, 86(1), 86(4), 87

Citation : (2019) 8 AD(Delhi) 182

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Anil K. Aggarwal, Madan Mohan, Sidhant Kumar, P.R.Chopra

Final Decision : Allowed

Judgement

Jayant Nath, J

IA No. 10001/2019

1. This application is filed by respondents No.1 and 2 under Order 1 Rule 10 CPC read with section 82 of the Representation of People Act, 1951 for striking out the names of the applicants/respondents No.1 and 2 i.e. the Election Commission of India and The Returning Officer, West Delhi 06 Parliamentary Constituency from the array of parties.

2. The present petition is filed by the petitioner under section 80A of The Representation of People Act, 1951 seeking to set aside the entire process and conduct of elections by respondents No.1 and 2 for the West Delhi Parliamentary Constituency in the NCT of Delhi as null and void and the election result of the said constituency declared by respondent No.1 be set aside, quashed and be declared null and void.

3. Some of the salient facts as stated in the present petition are that respondent No.1/Election Commission of India on 16.4.2019 issued a notification under

section 14 of The Representation of the People Act, 1951. On 23.4.2019, the petitioner No.1 filed/submitted his nomination paper from the West Delhi Parliamentary Constituency of NCT of Delhi as a candidate set up by the Shiv Sena Party. It is stated that on 24.4.2019 the day fixed for scrutiny of nomination papers the Returning Officer summarily rejected the nomination paper filed by the petitioner No.1 solely on the ground that the nomination paper is subscribed by only one proposer.

4. The present application is filed by respondents No.1 and 2 relying upon section 82 of The Representation of People Act, 1951 to state that the parties who were to be impleaded are clearly stipulated in the said provision. The provision does not provide for impleadment of respondents No.1 and 2 as respondents.

5. I have heard learned counsel for the parties. Learned counsel for the applicant/respondent No.1 has relied upon judgment of the Supreme Court in *B.Sundara Rami Reddy vs. Election Commission of India and Others*, 1991 Supp (2) 624 and the case of *Jyoti Basu and Others vs. Debi Ghosal and Others*, (1982) 1 SCC 691 to support his contention that in terms of section 82 of The Representation of People Act, 1951 respondents No.1 and 2 are not necessary parties and have to be deleted from the array of parties.

6. Learned counsel appearing for the petitioner has, however, opposed the said submission. He has relied upon the judgment of the Supreme Court in *B.S.Yadiyurappa vs. Mahalingappa and Ors.*, AIR 2001 SC 4041 and also the case of the Supreme Court in *Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851. He states that his basic grievance is that it was respondent No.2 who had wrongly and illegally rejected his nomination papers. The effect of deleting respondents No.1 and 2 would be that they would go scot free though the petitioner has suffered on account of their conduct. He further states that the Supreme Court in the case of *Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi* (supra) held that only Election Petition lies to question the result of an election and no Writ Petition would lie. Hence, he states that the said respondents No.1 and 2 only want to go scot free.

7. Section 82 of The Representation of People Act, 1951 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 candidate has been duly elected, all the contesting candidates 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."

8. Hence, in terms of the above section the necessary parties to the Election Petition have been duly stated. Reference may be had to the judgment of the Supreme Court in *B.Sundara Rami Reddy vs. Election Commission of India and Others*, (supra).

9. In that case the Election Petition was filed challenging the validity of the order of the Election Commission declaring the polling at a particular polling station as void and direct re-poll at that polling station. In that petition Election Commission of India was impleaded as one of the respondents. The Commission made an application before the High Court for being deleted from the array of parties on the ground that it was not a necessary party. On those facts the Supreme Court on the issue of impleadment of parties to an Election Petition held as follows:-

"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 Civil Procedure Code 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 I of the Civil Procedure Code 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 v. Bakkam Narasimha Reddi* [AIR 1969 SC 872: (1969) 1 SCR 679] , this Court while discussing the application of Order I Rule 10 of the Civil Procedure Code 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 v. Debi Ghosal* [(1982) 1 SCC 691: (1982) 3 SCR 318] , 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 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."

10. Clearly, in terms of the above noted judgment, no authority including the Election Commission of India is a necessary party to an Election Petition. This is so even where an act of the said Commission has been challenged. The aforesaid judgment clearly applies to the facts of this case.

11. The only plea raised by the petitioner is that he seeks to impugn the act of respondent No.2 in rejecting his nomination paper. It is clear from a reading of section 82 of The Representation of People Act, 1951 and the above judgment of the Supreme Court that this plea would not entitle the petitioner to implead respondents No.1 and 2 as a party.

12. I may also look at the judgments relied upon by learned counsel for the petitioner. In *B.S.Yadiyurappa vs. Mahalingappa and Ors.* (supra) the Supreme Court held as follows:-

"8. It is, therefore, clear, on the authorities of this Court, that those who are mentioned in Section 82 of the said Act must be made parties to an election petition and, if they are not, the election petition is one which does not comply with the provisions of Section 82 and must, therefore, be dismissed by reason of the terms of Section 86(1). It does not, however, follow that if to an election petition parties other than those who are necessary parties under Section 82 have been impleaded, the election petition is one that does not comply with the provisions of Section 82 and must be dismissed. Such a petition can be amended by striking out from the array of parties those additionally impleaded."

13. The aforesaid judgment does not help the case of the petitioners to explain their submission regarding impleadment of the applicants. However, clearly this court would have powers to strike out such wrong parties from the array of parties.

14. The other judgment relied upon by learned counsel for the petitioner is the judgment in the case of *Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi* (supra). In that case the Supreme Court held as follows:-

"135. The above being the legal position, Article 329(b) rules out the maintainability of the writ application. Article 329(b) provides that notwithstanding anything in this Constitution: no election to either house of Parliament shall be called in question except by an election petition presented to such Authority and In such 'manner as may be provided for by or under any law made by the appropriate Legislature.'" It is undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides, that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act' We find that all the substantial reliefs' which 'the appellants seek ' in the writ application? including the declaration" of 'the election to "be void and the declaration of appellant No. 1 to be duly elected, can be claimed in the election petition. 'It will be within the power of the High Court, as the election court, to give all appropriate reliefs to do complete justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to enable it to "grant the necessary relief provided under the Act. The writ application is" therefore barred under Article 329(b) of the Constitution and the High Court rightly dismissed it on that ground."

15. Learned counsel for the petitioner has not been able to show how the above judgment helps the case of the petitioner, namely, that the Election Commission of India and its functionaries are proper parties to this petition.

16. There is clearly no merit in the submissions of learned counsel for the petitioners.

17. In view of the above, application is allowed. Respondents No.1 and 2 are deleted from the array of parties.