
(2005) 03 AHC CK 0179
In the Allahabad High Court
Case No : Election Petition No. 7 of 2004

Shankar Prasad Jaiswal

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Representation of the People Act, 1951 — Section 82

Citation : (2005) 2 ESC 1233

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

Bench : Single Bench

Advocate : K.R. Singh, S.D. Singh, R.S. Gupta and R.P. Pandey, for the Appellant; Mohd. Islam, Himanshu Singh and Ajit Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Mehrotra, J.—Pursuant to the order dated 17.12.2004, the ease is listed today.

2. In the order dated 15.10.2004, It was, interalia, noted that as regards the respondent Nos. 2, 4, 6, 8, 10,12, 14, 15 and 15, the Office had submitted its Report dated 15.10.2004 stating that the notices sent by Ordinary Process to the said respondents had been served.

3. As regards the notices sent to the said respondent Nos. 2, 4, 6, 8, 10, 11, 12, 14, 15 and 16 by Registered Post A/D, the Office Report dated 4.3.2005 shows) that neither A/D nor undelivered envelopes in respect of the Registered Post A/D sent to the said respondents have been returned back so far.

4. As the notices sent to the said respondent Nos. 2, 4, 6, 8, 10, 11, 12, 14, 15 and 16 by Ordinary Process have been served; service of notices sent to the said respondents by Registered Post A/D is deemed to be sufficient

5. By the order dated 17.12.2004, fresh notices were directed to be issued by

Ordinary Process to the respondent Nos. 3, 5, 7, 9, 13, 17 and 18.

6. Office Report dated 4.3.2005 shows that white notices, pursuant to the said directions, were issued by Ordinary Process to the respondent Nos. 3, 5, 7, 9, 13 and 17, but no notice could be issued to the respondent No. 18, as copy of the Election Petition had not been supplied by the learned counsel for the petitioner for the said purpose.

7. Shri K.R. Singh, learned counsel for the petitioner prays that one week's time be granted to him for supplying copy of the Election, Petition for issuance of notice by Ordinary Process to the respondent No. 18, as per the directions given in the order dated 17.12.2004. Notice will be issued to the respondent No. 18 fixing the next date fixed in the matter.

8. As regards notice issued by Ordinary Process to the respondent No. 3, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 3 by Ordinary Process has been returned back unserved. In the circumstances, let fresh notice by Ordinary Process be issued to the respondent No. 3 fixing the next date fixed in the matter.

9. As regards notice issued by Ordinary Process to the respondent No. 5, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 5 by Ordinary Process has been served.

10. As regards notice issued by Ordinary Process to the respondent No. 7, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 7 by Ordinary Process has been served.

11. As regards notice issued by Ordinary Process to the respondent No. 9, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 9 by Ordinary Process has been returned back unserved. In the circumstances, let fresh notice by Ordinary Process be issued to the respondent No. 9 fixing the next date fixed in the matter.

12. As regards notice issued by Ordinary Process to the respondent No. 13, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 13 by Ordinary Process has been returned back unserved. In the circumstances, let fresh notice by Ordinary Process be issued to the respondent No. 13 fixing the next date fixed in the matter.

13. As regards notice issued by Ordinary Process to the respondent No. 17, pursuant to the directions given in the order dated 17.12.2004, the said Office Report dated 4.3.2005 shows that the notice sent to the said respondent No. 17 by Ordinary Process has been served on the said respondent by affixation. In the

circumstances, service of notice issued by Ordinary Process to the respondent No. 17 is held to be sufficient.

14. As regards notices sent to the respondent Nos. 5 and 7 by Registered Post A/D, the said Office Report dated 4.3.2005 shows that neither A/D nor undelivered envelopes relating to the Registered Post A/D sent to the said respondents have been returned back so far.

15. As the notices sent to the said respondent Nos. 5 and 7 by Ordinary Process have been served on the said respondents, service of notices by Registered Post A/D on the said respondents is held to be sufficient.

16. As regards notice sent by Registered Post A/D to the respondent No. 17, the said Office Report dated 4.3.2005 shows that neither A/D nor undelivered envelope in respect of the Registered Post A/D sent to the said respondent has been returned back so far.

17. As service of notice sent to the respondent No. 17 by Ordinary Process has been held to be sufficient, service of notice by Registered Post A/D on the said respondent No. 17 is held to be sufficient.

18. As regards service of notices sent to the respondent Nos. 3, 9 and 13 by Registered Post A/D, the said Office Report dated 4.3.2005 shows that neither A/D nor undelivered envelopes in respect of the Registered Post A/D sent to the said respondents have been returned back so far.

19. The matter in regard to the service of notices sent by Registered Post A/D in respect of the said respondent Nos. 3, 9 and 13 will be considered on the next date fixed in the matter.

20. As regards the respondent No. 1, Shri K.R. Singh, learned counsel for the petitioner took further time for supplying the correct and complete address of the said respondent No. 1, as is evident from the order dated 17.12.2004.

21. Today, however, Shri K.R. Singh, learned counsel for the petitioner has filed an application on behalf of the petitioner under Order 1 Rule 10 of the CPC read with Section 82 of the Representation of the People Act, 1951.

22. Registry is directed to give appropriate number to the said application.

23. It is, inter alia, prayed in the said application that the petitioner be permitted to delete the name of the respondent No. 1 from array of parties of the Election Petition, as he is neither proper nor necessary party in the present Election Petition.

24. The application is supported by an affidavit sworn by Shanker Prasad Jaiswal (petitioner) on 3.3.2005.

25. It is submitted by Shri K.R. Singh, learned counsel for the petitioner that the respondent No. 1, namely, Election Commission of India, is neither a proper party nor a necessary party in the Election Petition, and the respondent No. 1

was impleaded on account of inadvertence on the part of the petitioner. It is further submitted that the continuance of the Election Commission of India as the respondent No. 1 in the Election Petition would unnecessarily delay the trial of the Election Petition.

26. I have considered the submissions made by Shri K.R. Singh, learned counsel for the petitioner, and perused the averments made in the aforesaid application and its accompanying affidavit filed today on behalf of the petitioner.

27. Having regard to the averments made in the aforesaid application and its accompanying affidavit filed today on behalf of the petitioner, and having considered the submissions made by Shri K.R. Singh, learned counsel for the petitioner, I am of the opinion that it is in the interest of justice that the prayer made in the aforesaid application be granted.

28. Accordingly, the aforesaid application is allowed. The petitioner is permitted to delete the name of Election Commission of India as the respondent No. 1 in the Election Petition.

29. Let necessary amendments be made in the Election Petition within two weeks.

30. List this case on 15.4.2005.