
(2010) 11 GAU CK 0021

In the Gauhati High Court

Case No : CRP No's. 46, 47, 48, 49, 50, 51, 52, 53 and 54 of 2010

State Panchayat Election Commission and Others

APPELLANT

Vs

Haripada Shil and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 15(4), Order 6 Rule 16, Order 6 Rule 7, Order 7 Rule 11
Limitation Act, 1963 — Section 4
Tripura Panchayat (Conduct of Election) Rules, 1993 — Rule 70

Citation : (2011) 1 GLT 55

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : T.D. Majumder, Additional Government Advocate, for the Appellant;
S. Talapatra and H.K. Bhowmik, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—This batch of revision petitions are directed against the impugned order passed by the learned Civil Judge (Jr. Div.), West Tripura, acting as election Tribunal thereby rejecting the application filed by the Petitioner under Order 6, Rule 16 read with Order 7, Rule 11 of the Code of Civil Procedure. The points calling for adjudication and decision being more or less common and similar learned Counsel for appearing parties prayed for hearing the petitions analogously and accordingly these are heard analogously and are disposed of by this common judgment. As a lead case the facts of CRP No. 46/2010 is taken up for reference in this judgment.

2. Heard Mr. T.D. Majumder, learned Addl. Sr. Govt. Advocate for the Defendants/ Petitioners and Mr. S. Talapatra, learned senior counsel appearing for the Respondent No. 2 (returned candidate) as well as Mr. H.K. Bhowmik, learned Counsel appearing for the Plaintiff/Respondent No. 1.

3. The Respondent No. 1 as Plaintiff filed an application u/s 198 of the Tribunal

Panchayat Act read with Rule 70 of the Tripura Panchayat (Conduct of Election) Rules, 1993 praying for declaring the election of the returned candidate as member of Kalyanpur Gram Panchayat as void with further prayer for declaring the Petitioner as elected member of the aforesaid Panchayat from Constituency No. V, Seat No. 10. The aforesaid application was registered as Case No. T.S. 17/09.

4. Upon receipt of summon of the suit the Respondent No. 1 and Respondent No. 2 appeared but they have not yet filed their written statement. However, the Respondent Nos. 1 and 2 filed an application praying for rejecting the plaint filed by the Plaintiff under the provision of Order 6, Rule 16 read with Order 7, Rule 11 of the Code of Civil Procedure. In the aforesaid application, it is contended inter alia that the election petition is not maintainable in the present form, that the relief claimed in the petition is not permissible under the law as the Petitioner did not ask for recounting of the ballot papers before the returning officer and that the Petitioner has not disclosed materials particulars on which the election of the returned candidate is challenged, that the Petitioner alongwith the verification has not filed an affidavit as required u/s 26 read with Order 6, Rule 15(4) of the Code of Civil Procedure, that the Petitioner did not ask for recounting as provided Rule under 70 of the Rules. At the time of hearing of the aforesaid application, the Petitioner also agitated that the election petition is barred by limitation as it was not filed within sixty days from the date of declaration of the result of the election. The Plaintiff resisted the application and the arguments of both sides having been heard the learned Tribunal vide impugned order rejected the petition filed by the Respondents. The learned trial Tribunal came to the conclusion that the suit was neither barred by limitation nor it can be said that no material particulars have been disclosed by the Plaintiff in support of the petition. The learned Tribunal also held that although the plaint was not supported by an affidavit by the Plaintiff at the time of filing of the petition but later on the same was filed and the defect, if any, due to non-filing of the affidavit was rectified.

5. Mr. Majumder, learned Counsel for the Petitioner submits that the election petition was filed on 22.9.09 but at the time of filing of the application, the election petition was not supported by an affidavit alongwith the verification as required to be filed under the provisions of Section 26 read with Order 6, Rule 15(4) of the Code of Civil Procedure. It is contended that after the amendment of the CPC such requirement of furnishing an affidavit in support of the pleadings is a statutory requirement but the Plaintiff failed to comply with the said requirement and the affidavit was filed eventually on 27.9.09 and accordingly on the date of filing of the petition it was not properly instituted as required under the law and the affidavit having filed on 27.9.09, in the meantime, the period of sixty days have expired and the petition is barred by time. It is further contended that the Petitioner having filed the election petition on 22.9.09 and the result of the election having been declared on 23.7.09, the petition is barred by limitation as it was not filed within sixty days as required under Rule 70 of

Tripura (Conduct of Election) Rules, 1993. The other contention of Mr. Majumder is that on perusal of the averments made in the petition it cannot be said that the election Petitioner has disclosed the material particulars as required to be pleaded for getting relief as prayed in the petition. The learned Counsel further contends that as required under Order 7, Rule 14, the Petitioner has not filed necessary documents and the Petitioner has not asked in writing for recounting of the ballot papers before the returning officer and in view of the aforesaid defects pertaining to the election petition the petition is liable to be rejected under Order 7, Rule 11 of the CPC and/or the pleadings are liable to be struck off under Order 6, Rule 16 of the Code of Civil Procedure. In view of the case as projected by the present Petitioner and the averments made in the application filed before the Tribunal the case of the Petitioner falls under the category of Order 7, Rule 11 of the Code of Civil Procedure. The Petitioner has also not mentioned the paragraphs which is/are vexatious or scandalous so to be required to be struck off under Order 6, Rule 16 Code of Civil Procedure.

6. Mr. S. Talapatra, learned senior counsel appearing for the returned candidate endorsing the submissions made by Mr. Majumder further referring to paragraph 3 of the election petition submits that on bare reading of the averments made therein shows that the averments do not disclose that the Petitioner had pleaded material particulars in challenging the election of the returned candidate.

7. Per contra, Mr. Bhowmik, learned Counsel appearing for the election Petitioner supporting the impugned order submits that on the 60th day which is the last day for filing the election petition was a public holiday due to Id-UI-Fitr and accordingly for not filing the election on that day which was a public holiday, it cannot be said that the petition is barred by limitation in terms of Section 4 of the Limitation Act. It is further contended that for non-furnishing of the affidavit alongwith the plaint, the petition is not liable to be rejected inasmuch as, no such provision is there in the CPC that for want of such affidavit alongwith the verification the plaint can be rejected. Learned Counsel further contends that paragraph 3 of the election petition fully discloses the material facts on the basis of which the election petition is filed and the Petitioner would be entitled to prove those facts by adducing evidence at the time of trial. The averments made at paragraphs 3, 4 and 4 are categorically the materials relevant materials on the basis of which it can safely be contended that the election of a returned candidate have been vitiated and there has been wrong counting of ballot papers. Finally, it is contended by the learned Counsel that the election petition filed before the learned Tribunal is quite maintainable and the prayer for recounting was rejected by the returning officer. The learned Tribunal has served summons upon the Respondents and they had not yet filed their written statement controverting the averments made in the election petition and on such circumstances, the impugned order is not liable to be interfered with.

8. I have considered the rival submissions made by the learned Counsel for the appearing parties.

9. Upon hearing the learned Counsel, I find that it is an admitted position that the last date on which day the election petition was required to be filed was a public holiday due to Id-UI-Fitr and accordingly the election petition was filed on the very next day. The last day being a public holiday and the election petition having been filed on the very next day, the Petitioner is entitled to get the benefit of the said holiday and accordingly the election petition cannot be said to be barred by limitation. The learned Tribunal has rightly held that the petition was filed within the period of limitation as prescribed under the Rules in terms of provision of Section 4 of the Limitation Act.

It is also not disputed at the Bar that at the time of filing of the election petition the election Petitioner did not submit the affidavit alongwith the verification and such affidavit was filed subsequently on 27.9.09 although the petition was filed on 22.9.09. The procedure for filing the election petition is provided under Chapter-VI of the Tripura Panchayat (Conduct of Election) Rules, 1993 which provides that the election petition shall contain a statement in brief of the material facts on which the Petitioner relies and it shall be filed by the Petitioner and verified in the manner prescribed for verification of the pleadings in the Code of Civil Procedure.

The verification of pleadings is provided under Order 6, Rule 15 Code of Civil Procedure. After the amendment of the Code of Civil Procedure, 2002, new Sub-section (3) in Section 26 has been added which provides that in every plaint the facts shall be proved by affidavit. The provisions of Order 6, Rule 15 has also been amended by adding a new Sub-clause 4 which provides that a person verifying the pleading shall file an affidavit in support of his pleading. As per newly inserted Sub-section (3) of Order 4, Rule 1 of the CPC plaint shall not be deemed to be duly instituted unless it complies with the requirement as specified in the Sub-rules 1 and 2. Sub-rule 2 provides that every plaint shall comply with the provisions contained in Order 6, Rule 7 of the Code of Civil Procedure.

10. In view of the aforesaid provisions, it is strenuously urged by Mr. Majumder that the election Petitioner not having complied with the requirement of submission of affidavit alongwith the verification of the petition it cannot be said that the suit was duly instituted on 22.9.09.

11. From the provisions contained under Rule 70 of the Tripura Panchayat (Conduct of Election) Rules, 1993, it is to be found that the election petition is to be verified in the manner prescribed for verification of the pleading under the Code of Civil Procedure. The Rule provides for filing of the petition challenging the election whereas the provision contained u/s 26 of the CPC relates to institution of suit. Rider of Order 4, Rule 3 and Order 6, Rule 15 of the CPC relate to institution of a suit. Filing of the petition is complete when the petition is presented before the concerned officer who is authorized to receive. On the other hand institution indicates that the petition is ready to be presented before the Presiding Officer of the Court, complying with all the necessary requirement and removing defects if any. The Petitioner subsequently, within five days, filed the

affidavit alongwith the pleadings in compliance with the requirement of the CPC for institution of a suit which has been accepted by the learned Tribunal. Consequently, the learned Tribunal, in my considered opinion, has not committed any jurisdictional error in accepting the election petition as properly filed. That apart, neither Section 26 nor Order 4, Rule 1 or Order 6, Rule 15 provides for any penal consequences for not filing the affidavit alongwith the plaint, and on such count it is difficult to hold those provisions as mandatory one.

So far non-disclosure of material facts as argued by the learned Counsel for the Petitioner, I find that on perusal of the averments made in paragraphs 3, 4 and 5 of the plaint relevant facts have been described by the election Petitioner with sufficient certainty. May be those particulars are not correct but it cannot be said that there is no such disclosure as required to be pleaded for getting the relief as sought for in the election petition. The Petitioner is to state the material facts but no material particulars, as required in alleging corrupt practice when election is challenged under the Representation of People's Act, 1951. The Petitioner has alleged that the election Petitioner has also made allegations against the Respondent No. 2 in the petition and in order to appreciate the correctness or otherwise the statement made in the election petition the Petitioner would be entitled to prove those facts by way of evidence.

12. Although Mr. Majumder has submitted that the election Petitioner has not submitted the documents alongwith the election petition in compliance with the provision of Order 7, Rule 15 of the Code of Civil Procedure, the Petitioner would get necessary opportunity to file such document at the subsequent stage and for that reason the plaint cannot be rejected at its threshold. The learned Tribunal passed the impugned order keeping himself within the jurisdiction vested on him by law. I do not find that the learned Tribunal has committed any such error justifying its interference in this revision petition in exercise of revisional jurisdiction of this Court u/s 115 of the Code of Civil Procedure.

13. Accordingly, this revision petition lacks merit and it stands dismissed.

14. No costs.