
Ramanand Gaur Vs Ram Sanehi and Others

Civil Misc. Writ Petition No. 44055 of 2011

Court: Allahabad High Court

Date of Decision: Feb. 9, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 9 Rule 10, Order 9 Rule 13#Representation of the People Act, 1951 " Section 117, 79, 81, 82, 86#Uttar Pradesh Panchayat Raj (Settlement of Election Disputes) Rules, 1994 " Rule 3, 3(2)#Uttar Pradesh Panchayat Raj Act, 1947 " Section 12C, 12C(6)

Citation: (2012) 4 ADJ 212

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Siddhartha Varma and Santosh Kumar Misra, for the Appellant; Arvind Kumar Singh - II, P.R. Maurya, Uma Kant, Rishu Mishra and C.S.C., for the Respondent

Final Decision: Partly Allowed

Judgement

Hon"ble Arun Tandon, J.

Petitioner before this Court was elected as Pradhan of the village Chutka Gaon as per the results of the elections

declared on 28.10.2010. Respondent No. 1 Ram Sanehi, who was the defeated candidate, filed an election petition u/s 12-C of the U.P.

Panchayat Raj Act, which was registered as Election Petition No. 1 of 2010.

The relief"s prayed for in the election petition are as follows:

The petitioner on service of the notice filed application dated 17th June, 2011 stating therein that the election petition suffers from the vice of non-

joinder of necessary party, inasmuch as three other persons, who were candidates in the said election, have not been made a party as required by

Rule 3 of the U.P. Panchayat Raj (Settlement of Election Disputes) Rules, 1994. It was, therefore, contended that in absence of necessary parties,

the election petition itself was liable to be dismissed.

2. Objections were filed to the application by the election petitioner stating therein that the petitioner has impleaded the elected candidate and it

was not necessary to implead other persons.

3. The Election Tribunal by means of the order dated 12.7.2011 held that the election petition did not suffer from the vice of non-joinder of the

necessary parties. It has been held that the elected candidate had been made party and that the objection taken by the elected Pradhan had no

substance.

4. Not being satisfied the petitioner filed a revision u/s 12-C(6) of the Act, which has been dismissed as not maintainable. It is against these two

orders that the present writ petition has been filed.

5. So far as the order passed by the revisional authority is concerned, this Court may record that a right to file revision has been provided u/s 12-

C(6) of the U.P. Panchayat Raj Act only against the final order passed in the election petition. Against the order of the Election Tribunal dated

23.7.2011 in the facts of the case revision was not maintainable and it has rightly been dismissed as such.

6. However, since the legality of the order dated 23.7.2011 has also been challenged in the present petition, this Court will now proceed to

examine the merits of the order dated 23.7.2011.

7. The contention raised on behalf of the parties revolves around the Rule 3(2) of 1994 Rules, which reads as follows:

3. Election Petition.-(1)...

(2) The person whose election is questioned and where the petition claims that the petitioner or any other candidates shall be declared elected in

place of such person, every unsuccessful candidate shall be made a respondent to the application.

8. According to the petitioner since in the facts of the case both the relief"s have been prayed for i.e. declaring the election of the petitioner as

invalid and thereafter to declare the election petitioner as elected, every unsuccessful candidate had to be made a party. Counsel for the petitioner

Sri S.K. Verma submits that non-impeachment of necessary party is fatal to the election petition. Reliance has been placed upon the judgment of the

Hon"ble Supreme Court in the cases of Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh and Others, , Gadnis Bhawani Shankar, V.

Vs. Faleiro Eduardo Martinho, and Ram Sukh Vs. Dinesh Aggarwal, . He further explains that unsuccessful candidates will mean every candidate

who had filed his nomination in the process of election and had not withdrawn the same up to the last date for withdrawal of the nomination.

9. There can be no quarrel with the proposition so canvassed by Sri Verma, insofar as impleadment of unsuccessful candidates in the election

petition, wherein the relief of declaring the election petitioner as elected is concerned.

10. In the opinion of the Court, from a simple reading of Rule 3, quoted above, it is apparently clear that every unsuccessful candidate alongwith

successful candidate has to be made a respondent in the election petition, if a declaration qua the election petitioner being elected is prayed for.

11. It is settled law that election petition proceedings are technical and special proceedings. The Supreme Court of India has explained the legal

position in that regard in para-8 of its judgment in the case of Ram Sukh (supra), which reads as follows:

8. Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be

appropriate to bear in mind the observations of this Court in Jagan Nath v. Jaswant Singh Speaking for the Constitution Bench, Mehr Chand

Mahajan, C.J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law

or a suit in equity, but is purely a statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also

well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such

interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the

election law is to safeguard the purity of the election process and, therefore, the Courts must zealously ensure that people do not get elected by

flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

12. The issue for consideration before this Court is as to whether the entire petition, as filed by the petitioner, is liable to be rejected on the ground

of non-impleadment of unsuccessful candidates or only to the extent the relief of the election petitioner being declared elected is prayed.

13. In the opinion of the Court Rule 3 is in two parts. First part deals with the petition where the relief of declaring the election of the elected

candidate as invalid and the other where the second relief of declaring the election petitioner as elected is also prayed. Non-impleadment of

unsuccessful candidates is fatal so far as relief second is concerned. In absence of such unsuccessful candidates being impleaded the second relief

of declaring the election petitioner as elected cannot be granted. To that extent the contention raised by Sri Verma is upheld and the relief prayed in

the election petition to that extent had to be declared as non-maintainable.

14. Reference may also be had to the judgment of the Hon"ble Supreme Court, relied upon by the counsel for the respondent, in the case of Jagan

Nath v. Jaswant Singh and others; MR 1954 SC 210, wherein it has been held that merely because consequences have not been provided

because of non-impleadment of unsuccessful candidates under the rules, the same may not be fatal and the Tribunal is entitled to deal with the

matter under proviso to Order IX Rule 10 and 13 of the Code of Civil Procedure.

15. Suffice is to refer to the judgment of the Hon"ble Supreme Court in Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh and Others, ,

wherein it has been explained that non-impleadment of the parties, as required under the statutory provision, would be fatal and having regard to

Section 82 of the Representation of Peoples Act, 1951 it has further been explained that no subsequent impleadment can be permitted, as it would

negate the statutory provision. It has been finally laid down as follows:

Unambiguous language and clear terms contained in Section 82(b) read with Section 79(b) is mandatory. Section 86(1) does not leave any option

to High Court but to dismiss an election petition for non-compliance with Sections 81, 82 and 117.

16. This takes the Court to the second issue as to whether in absence of unsuccessful candidates being impleaded in the election petition, the relief

of declaring the election of the elected candidate as null and void can be granted or not.

17. Under Rule 3 of 1994 Rules, an election petition, where only relief for declaring the election of the elected candidate as invalid is prayed for, it

is not necessary to implead all other unsuccessful candidates as a party. This Court would, therefore, in the facts of the case segregate two relief"s,

which have been prayed for by the election petitioner and would hold that so far as the first relief qua the election of the present petitioner being

declared invalid is concerned, the petition is maintainable and does not suffer from the vice of non-impleadment of necessary parties.

18. So far as the second relief prayed for in the election petition qua election petitioner being declared as elected after setting aside the election of

the elected candidate is concerned, the petition suffers from vice of non-impleadment of other unsuccessful candidate and therefore to that extent

the election petition stands dismissed.

19. Writ petition is partly allowed. Interim order is discharged. The Tribunal is directed to proceed with the matter in accordance with law without

granting any unnecessary adjournment to either of the parties.