

(2016) 08 JH CK 0071
JHARKHAND HIGH COURT
Case No: E.P. No. 11 of 2015.

Krishna Nand Tripathi -
Petitioner @HASH Alok
Chaurasiya - Opposite Party

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 19, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 3A
- Representation of the People Act, 1950 - Section 87

Citation: (2017) AIR(Jharkhand) 22 : (2017) 1 AIRJharR 334 : (2016) 4 JBCJ 297 : (2017) 1 JCR 383

Hon'ble Judges: H.C. Mishra, J.

Bench: Single Bench

Advocate: Mr. R.N. Sahay, Sr. Advocate, Mr. Mahesh Tewari, Mr. Abhishek Dubey and Mr. Yashvardhan Sahay, Advocates, for the Petitioner; Mr. V.P. Singh, Sr. Advocate, Ms. Rashmi Kumar and Mr. Arun Kumar, Advocates, for the Opposite Party

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Mr. H.C. Mishra, J. - I.A No. 3778 of 2016

The present interlocutory application has been filed for permitting the election petitioner to lead his evidence at a later stage. The necessity of filing this application has been arisen, due to the fact that two witnesses on behalf of the election petitioner have already been examined on 29.4.2016. Thereafter, the present interlocutory application has been filed on 23.6.2016.

2. Counter affidavit to this interlocutory application has been filed by the sole respondent, wherein it is stated that two witnesses had been examined on

29.4.2016, on which date, the election petitioner was also present in the Court. The election petitioner, however, failed to get his evidence recorded as required under Order 18, Rule 3A of the C.P.C., and as such, now his evidence should not be recorded.

3. Learned counsel for the election petitioner has drawn the attention of this Court towards Section 87 of the Representation of the People Act, which says that the 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, to the trial of suits. It is submitted by the learned counsel for the petitioner that there is no bar in the C.P.C., to examine the plaintiff at a later stage. Learned counsel submitted that there is no illegality in examining the election petitioner after the examination of two witnesses on his behalf.

4. Learned counsel for the sole respondent, on the other hand, has opposed the prayer and has placed reliance of the Order 18, Rule 3A of the Code of Civil Procedure, which reads as follows :

"Party to appear before other witnesses

- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his on witness at a later stage."

5. It is submitted by the learned counsel for the sole respondent that since two witnesses have already been examined in presence of the election petitioner, the election petitioner himself cannot examine as a witness now. It is submitted that if the election petitioner desired to be examined at a later stage, he should have filed the application for the same on the same date, but he did not seek the permission of the Court for his examination at a later stage and allowed the other witnesses to be examined in his presence. Alternatively, it is submitted by the learned counsel for the sole respondent that in any event, the election petitioner should be examined after the examination of all the witnesses.

6. Having heard the learned counsels for both the parties, I am of the considered view that the Order 18, Rule 3A of the Code of Civil Procedure is not an absolute bar for examination of party to a suit at a later stage. There is always a discretion of the Court to allow the party to be examined at the later stage. Even Section 87 of the Representation of the People Act only states that the procedure applicable under the Code of Civil Procedure for the trial of the suits shall be followed by the High Court while trying an election petition, as nearly as may be. There is no requirement of strict adherence to the provisions of CPC, while trying an election petition.

7. In view of the aforesaid discussions, it is directed that the election petitioner shall be examined in the case as witness on the next date. At the request of the learned counsels for the parties, put up this matter on 26.08.2016 at 2.15 P.M for

examination of the election petitioner.

This interlocutory application is accordingly, allowed.

I.A Nos. 351 of 2016, 2624 of 2016 & 3041 of 2016

8. These interlocutory applications have been filed for issuing summons to the witnesses namely (i) Headmaster, Giriwar Uchha Vidyalaya, Daltonganj, Palamau, (ii) Principal, G.L.A College, Medininagar, Palamau (iii) Secretary, Jharkhand Academic Council, Ranchi, (iv) Public Information Officer-cum-Deputy Election Officer, Palamau and (v) Deputy Superintendent, Sadar hospital, Palamau, also mentioning the documents, which may not be called for, to be proved by them.

9. An objection has been filed on behalf of the sole respondent to I.A No. 3041 of 2016, wherein it is stated that the witnesses as detailed in I.A No. 3041 of 2016 may not be asked to appear with the documents, which have not been enclosed in the election petition.

10. In the present case, the date of birth of the returned candidate is in dispute. Photostat copies of the documents relating to the educational certificate of the returned candidate have been brought on record in the Election Petition to show that the date of birth of the returned candidate is 15.2.1995 and accordingly, he was not of 25 years of age in the year 2014, when the election had taken place. In the written statement to the Election Petition, it has been stated by the sole respondent that he had got those documents corrected.

11. It is submitted by the learned counsel for the petitioner that in view of the written statement filed on behalf of the returned candidate, that the documents relied upon by the petitioner were got corrected by the returned candidate, the necessary information as sought under the R.T.I Act, which also needs to be proved in the ends of justice. It is further submitted that these witnesses are necessary to be examined and to prove the documents, as these documents were obtained by the election petitioner subsequently, when it was disclosed for the first time in the written statement that the documents relied upon in the election petition had subsequently got corrected by the returned candidate. It is submitted that these documents may be taken in evidence even with objection, the admissibility whereof may be decided later on.

12. Learned counsel for the sole respondent, on the other hand, has objected to the same and has submitted that there is no pleading in the election petition regarding the documents which are being sought to be proved through I.A No. 3041 of 2016 and as such, they may not be admitted in evidence.

13. Having heard the learned counsels for both sides, I find that in the present case, the certificates relating to the date of birth of the returned candidate have been disputed by the sole respondent, i.e., the returned candidate on the sole ground that subsequently those documents got corrected. This fact for the first time came

within the knowledge of the election petitioner after filing of the written statement, which necessitated the election petitioner to get the necessary information under the R.T.I. Act. Accordingly, I.A No. 3041 of 2016 has been filed, giving the details of some documents which the election petitioner intends to prove in view of the statement made in the written statement. As such, prima facie, they appear to be relevant facts, and in the ends of justice, those documents are taken into the evidence and the sole respondent shall be at liberty to get his objection recorded at the time of taking those documents in evidence. The admissibility of such evidence shall be decided at the time of final arguments.

14. Let the Dasti summons be given to the election petitioner for examination of the witnesses namely, (i) Headmaster/Principal In-charge, Giriwar Uchha Vidyalaya, Daltonganj, Palamau, (ii) Professor-in-Charge/Principal, G.L.A College, Medininagar, Palamau (iii) Secretary, Jharkhand Academic Council, Ranchi, upon deposit of cost of the witnesses, if applicable, for their appearance for their examination as witnesses of the election petition on 02.09.2016 at 2.15 P.M.

15. In the Dasti summons, the documents as detailed in I.A No. 3041 of 2016 which are required to be called for and proved by the respective witnesses, shall also be mentioned asking the concerned witness to appear with those documents.

16. No summons needs to be issued to the Public Information Officer-cum-Deputy Election Officer, Palamau and the Deputy Superintendent, Sadar hospital, Palamau, as they are not required to be examined for proving any fact in issue or relevant fact.

17. The other witnesses, mentioned in I.A No. 351 of 2016, may be produced by the petitioner at the later stage.

18. All the aforesaid three Interlocutory applications accordingly, stand disposed of.