

Shyam Sundar Gupta Vs Deoki Nandan Podder

Court: Calcutta High Court

Date of Decision: July 1, 1985

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17, 17
Constitution of India, 1950 â€” Article 173
Limitation Act, 1963 â€” Section 29(2), 5
Representation of the People Act, 1951 â€” Section 100(1)(d)(i), 117, 29(2), 33, 33(5)

Citation: 90 CWN 162

Hon'ble Judges: A.K. Sengupta, J

Bench: Single Bench

Advocate: Amiya Nath Bose, for the Appellant; R.K. Lala, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sengupta, J.

This is an application by the election petitioner for amendment of the election petition. The petitioner, Shyam Sundar

Gupta filed the election petition challenging the election on 20th May, 1982 of the respondent No.1, Deoki Nandan Podder as returned candidate

from 143 - Jorasanko Assembly - Constituency. It is alleged by the petitioner that, at the time of scrutiny of the nomination papers of the

candidates for the said constituency for election held on 19th May, 1982 it appeared that the said Deoki Nandan Podder has purported to

describe himself in his nomination papers as elector of 157 - Vidyasagar Assembly Constituency in the State of West Bengal and that his name

was allegedly registered as alleged elector in Part No. 92 at serial No. 661 of the Electoral Roll of 157 - Vidyasagar Assembly Constituency. The

certified copy of the entry in the Electoral Roll shows that one Deoki Nandan Podder son of Gurupratap Podder and resident of premises No.

116/1/1, Mahatma Gandhi Road was an elector from 157 - Vidyasagar Assembly Constituency. The petitioner objected to the consideration of

the said nomination papers of the respondent No. 1 at the time of the scrutiny on the ground that respondent No. 1 was not an elector within the

meaning of Section 5 of the Representation of the People Act, 1951. It was also alleged that respondent No. 1 was neither an ordinary resident

nor resident of No. 116/1/1, Mahatma Gandhi Road nor he is the son of Gurupratap Podder nor aged fifty years as on January 1, 1981 as

indicated in the said certified copy of the entry in the Electoral Roll. By the order dated 27th April, 1982 the Returning Officer of the said

Constituency held that the nomination papers of the respondent No. 1 were valid. The main grounds of challenge of the said election of the

respondent No. 1 are that respondent No. 1 is not an elector of 143 - Jorasanko Assembly Constituency for the election held on May 19, 1982;

that the respondent No. 1 was not on the date of the said election or at all an elector for 157 - Vidyasagar Assembly Constituency in the State of

West Bengal; that the entry at Serial No. 661 Part No. 92 of 157 - Vidyasagar Assembly Constituency did not and could not relate to respondent

No. 1 and the elector mentioned in the said entry and respondent No. 1 cannot be and are not one and the same person but are different persons.

2. This application has been made by the petitioner on 17th April, 1985 for amendment of the said election petition. It has been alleged that when

the election petition was filed the petitioner was not aware that the respondent No. 1 was elector in the Electoral Roll of 1982 for the 146 -

Chowringhee Assembly Constituency his name being entered at serial No. 339 Part No. 93 of the said Electoral Roll. On the contrary, the

information available to the petitioner at that time was that the said deoki Nandan podder was not at all registered as the elector in any assembly

constituency in the State of West Bengal for the 1982 election. It is alleged that due to non-availability of correct information certain statements

have been made in the election, petition as originally filed which on later discovery have proved to be incorrect and unless the said incorrect

statements are corrected by suitable amendment the petitioner's actual case would not be made in his election petition. In order to enable the

petitioner to set out his actual case in his said election petition and for proper adjudication of the real issues between the parties, the petitioner asks

for leave to amend the election petition.

3. The following amendments inter-alia have been sought for the petitioner by deletion of the original averments and insertion of new averments as

indicated below :

Original petition

In paragraph - 7 (in 4th Line)

(i)... an elector for any Assembly Constituency in the State of WestAmendment sought for the elector named in

Bengal and as such was not qualified to be chosen to fill seat in the Serial No. 661 Part No. 92 of the electoral roll

Legislative Assembly of the State of West Bengal for 1982 for the 157

Vidyasagar Assembly Constituency of the West

Bengal Legislative Assembly but was an elector

registered at Serial No. 339 Part No. 93 of the
electoral roll for 1982 146 - Chowringhee
Assembly constituency of the West Bengal
Legislative Assembly.

(ii) In paragraph 7 in the last sentence was not an elector within the Had not complied with the requirements laid
meaning of section 5 of the Representation of the People Act, down in Sub-section (5) of Section 33 of the
1951. "Representation of the People Act, 1951 and as
such the purported nomination paper filed by
respondent no. 1 should not be considered.

(iii) Paragraph 16 "" In the premises aforesaid the petitioner states
that the respondent no. 1 the alleged returned

In the premises aforesaid your petitioner states that on the date of candidate did not file valid or proper nomination
his election,. namely May 19, 1 982 and/or May 20, 1982 when papers in conformity with the relevant provisions
the result of the said election was purportedly declared, the of the Representation of the People Act, 1951 to
respondent no. 1 being the alleged returned candidate was not contest the said election from the 143 Jorasanko
qualified to be chosen to fill a seat in West Bengal Legislative Assembly Constituency and in the premises the
Assembly and/or the said seat from 143 - Jorasanko Assembly purported election of the respondent no. 1 was
Constituency under the Constitution of India and/or under the and is void and should be declared as such by
Representation of People Act, 1951, and in the premises, the this Hon"ble Court.

purported election of the respondent no. 1 was and is void and
should be declared as such by this Hon"ble Court.

Similarly, the following ground is sought to be amended by deletion of the original ground and by insertion of a new
ground as indicated below :

VI. For that on the date of the election, namely, may 19, 1982 VI. For that the respondent No. 1 being the.
and/or on alleged returned candidate did not file along with
his purported nomination papers or produce at
the time of scrutiny thereof a copy of the electoral
the date of declaration of result of the said purported election, roll or the relevant part thereof or a certified copy
namely May 20, 1982, the respondent no. 1 being the alleged of the relevant entries therein of the 146-
returned candidate was not qualified to be chosen to fill the seat Chowringhee Assembly Constituency of which he
from 143-Jorasanko Assembly Constituency in view of article 173 was an elector but filed/produced a certified copy
of the Constitution of India read with Section 5 and in particular of the entry at Serial No. 661 Part No. 92 of the

Section 5(c) of the Representation of People Act, 1951. 157-Vidyasagar Assembly Constituency whereof

he was not an elector and the said entry did not

relate to him.

4. One additional ground is also sought to be inserted which is as follows :

for that the respondent No. 1 did not file along with his purported nomination paper or produce at the time of his scrutiny thereof a copy of the

electoral roll or the relevant part thereof or a certified copy of the relevant entry at serial no. 339 Part No. 93 of the electoral roll for 1982 for

146-chowringhee assembly Constituency of the West Bengal Legislative Assembly whereof he was an elector and the said entry related to him but

he falsely filed and relied upon a certified copy of the entry at serial No. 661 Part No. 92 of 157-Vidyasagar Assembly Constituency whereof he

was not an elector and which entry did not relate to him but related to another person.

5. This application has been opposed by the respondent no. 1. The case of the respondent no. 1 is that his name is appearing as an elector in the

electoral roll of 157-Vidyasagar Assembly Constituency and certified copy of the electoral roll of the said Constituency was filed by the

respondent no. 1 in accordance with the provisions of section 33(5) of the Representation of the People Act, 1951.

6. At the hearing it is contended by Mr. R.K. Lala on behalf of the respondent no. 1 that this application for amendment is not maintainable. His

first contention is that Order 6 Rule 17 of the CPC does not apply to an election petition and as such no amendment can be allowed secondly, he

submits that even assuming any amendment can be allowed the petitioner cannot change the case made put in the election petition and make out a

new case by introduction of the amendment. It is his submission that the issue in the election petition is whether the respondent no. 1 impersonated

the elector whose name is registered at serial no. 661, Part No. 92 of the electoral roll for 1982 for 157-Vidyasagar Assembly Constituency. The

case which is now made out is whether the respondent no. 1 was at all an elector of any Assembly Constituency in the state of West Bengal. Such

amendment which seeks to set up a new case cannot be allowed as it is barred by limitation. In support of his contention Mr. Lala has relied on a

decision of the Supreme Court in the case of K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, . There an

application was filed in the High Court of Andhra Pradesh challenging the election of the first respondent to the Andhra Pradesh Legislative

Assembly from the Kollapur Constituency, inter-alia, on the ground of corrupt practices committed by him. In the election petition, it was stated

that one V.K. Reddi, who had filed his nomination paper had been made to withdraw his candidature by the first respondent on payment of an

illegal gratification of a sum of Rs. 10,000 but the said V.K. Reddi was not impleaded as a party respondent. The first respondent made an

application for dismissal of the election petition on the ground that although V. K. Reddi has been charged with corrupt practices he had not been

impleaded as a party to the petition which was liable to be dismissed under the provisions of Section 82(b) of the said Act. The election petitioners

filed application for withdrawing allegations against V. K. Redi or in alternative to implead him as a respondent. An application was also filed for

condoning the delay in seeking to implead the said V.K. Reddi. The application for amendment by impleading V.K. Reddi was dismissed by the

learned trial judge. It was urged before the Supreme Court that an election petition was in essence an application to the High Court for the purpose

of Indian Limitation Act and as such Section 29(2) of the Limitation Act was applicable to such petition drawing in its chain the applicability of

Section 5 of the Limitation Act giving the Court the power to admit the same if it was satisfied that the applicant has sufficient cause for not

preferring the application within the prescribed period of limitation. The Supreme Court after considering various provisions of the Representation

of the People Act, 1951 held thus :

Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a

suit, the Act itself makes important provisions of the code in applicable to the trial of an election petition. Under O.6 R. 17 C.P.C. a Court of Law

trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the Court in disposing of

the matters in dispute between the parties are as a rule allowed subject to the law of Limitation. But S. 86(5) of the Act provides for restrictions on

the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of

introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case

of a suit under the provisions of O. 1, R.10 subject to the added party's right to contend that suit as against him was barred by limitation when

he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of section 86.

Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in

Section 81. u/s 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or

Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act. (Paragraph

13).

It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject

to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the Court in respect

thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and

other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal

proceedings which can be taken thereof has been excluded by any enactment: the extent of such application is governed by Section 29(2) of the

Limitation Act. In our opinion, however, the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of

the People act is a complete and self-contained code which does not admit of the introduction of the principles of the provisions of law contained

in the Indian Limitation Act. (Paragraph 14)

7. Mr. Lala has also relied on another decision of the Supreme Court in the case of Ram Dayal Vs. Brijraj Singh and Others, . In that case at the

general elections held in February, 1967, Brijraj Singh, first respondent was declared elected to a seat in the Madhya Pradesh Legislative

Assembly from the Sabalgarh Constituency defeating his rival candidate Raja Pancham Singh. The appellant Ram Dayal who was a voter in the

Constituency moved an election petition in the High Court for an order setting aside the election on two grounds: that the nomination paper of one

Dhani Ram was illegally rejected by the Returning Officer and that Brijraj Singh and his agents committed several corrupt practices in relation to

the election. A third ground that Dataram (third respondent) when his nomination was accepted was below the age of 25 and was on that account

incompetent to stand for election, was sought to be set up by an application for amendment of the election petition. The application was disallowed

by the High Court. The High Court held that the application for amendment which was sought to set up a new ground made after expiry of the

period prescribed for filing an election petition cannot be entertained. The Supreme Court held as follows :

An election petition has, u/s 81(1) of the Representation, of the People Act, 1951, to be filed within 45 days of the date of the publication of the

result of the election. An application for setting aside the election, that Dataram was below the age of 25 and on that account the election was liable

to be set aside u/s 100(1)(d)(i) of the Act made on August 15, 1967 would plainly have been barred, and by amendment the ground could not be

permitted to be added. This Court in Harish Chandra Bajpai Vs. Triloki Singh, held that the Election Tribunal has power to allow an amendment in

respect of particulars of illegal and corrupt practices, or to permit new instances to be included, provided the grounds or charges, are specifically

stated in the petition, but its power to permit amendment of a petition under Order VI, Rule 17 of the CPC will not be exercised so as to allow new

grounds or charges to be raised or the character of the petition to be so altered as to make it in substance a new petition, if a fresh petition on

those allegations would on the date of the proposed amendment be barred. By the amendment a new ground for setting aside election was sought

to be introduced and the High Court was right in rejecting the application for amendment.

8. Mr. Amiya Nath Bose, learned Counsel appearing for the application has submitted that it is not a new case which is sought to be made by way

of amendment. The case of the election petitioner is that the respondent no. 1 was not an elector for any Assembly Constituency in the State of

West Bengal as enjoined by Section 5 of the Representation of the People Act. This ground is now being supported by the fact that the respondent

no. 1 did not file valid or proper nomination paper in conformity with the provision of Section 33(5) of the said Act inasmuch as the respondent no.

1 is an elector of 146-Chowringhee Assembly Constituency and not an elector of 157 - Vidyasagar Assembly Constituency. Mr. Bose relied on a

decision of the Supreme Court in the case of Harish Chandra Bajpai Vs. Triloki Singh, and contended that the Supreme Court has not laid down

that Order 6 Rule 17 of the CPC would not be applicable to an election petition. He has also relied on a decision of this Court in the case of Bhakti

Bh. Mondal Vs. Khagendra K. Bandopadhyaya and Others, , in support of his contention that even if a new case has been introduced, the delay

may be condoned u/s 5 of the Limitation Act as the Limitation Act applies to the election petition.

9. I have given my anxious consideration to the submissions of the learned Counsel appearing for the parties. In my judgment by the proposed

amendment the petitioner has sought to introduce a new case. In paragraph 5 of the election petition the petitioner alleged that the respondent no. 1

being the alleged returned candidate is the son of Chashilal Podder and is aged about 48 years and the said respondent is a resident of 80D Sarat

Bose Road, Calcutta-25 for the last several years. Thus the case of the petitioner in the election petition is that the elector mentioned at serial no.

661, Part No. 92 of 157-Vidyasagar Assembly Constituency and the respondent no. 1 are not one and same person but are different persons and

the respondent no. 1 impersonated the elector whose name is registered at serial no. 661, Part No. 92 of the said electoral roll. In other words, the

respondent no. 1 was not an elector at all for any assembly constituency and as such was not qualified to be chosen as a candidate in view of the

provision of Section 5 of the said Act. The case which is sought to be introduced now is that the respondent no. 1 was not an elector of 157-

Vidyasagar Assembly constituency but an elector of 146-Chowringhee Assembly Constituency and as such the provision of section 33(5) for filing

a certified copy by the respondent no. 1 had not been complied with. Section 33(5) provides that where the candidate is an elector of a different

constituency a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall

unless it had been filed along with the nomination paper, be produced before the returning Officer at the time of scrutiny. The proposed amendment

seeks to introduce a new case which was not made out in the election petition. In Harish Chandra's case (supra) an application was made for

amendment of the election petition. The said application was presented u/s 83(3) of the Representation of the People Act as it stood then and

prayed that the petitioner ""be allowed to amend the details of para 7(c) by adding the words "Village Headmen" with their" names and the fact that

they worked and issued appeal and subsequently they became the polling agents of the respondent nos. 1 and 2.""
There the Supreme Court

considered, inter alia, the provisions of Sections 83(1), 83(2), 83(3) and 90(2) as they stood then and held that u/s 83(3) the Tribunal has

power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and

this power extends to permitting new instance to be given.

10. Supreme Court also held that the Tribunal has power under Order 6, Rule 17 to order amendment of a petition, but that power cannot be

exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh

petition on those allegations will then be barred.

11. I am thereof, unable to accept the contention of Mr. Lala that the Supreme Court in K. Venkateswara Rao and Another Vs. Bekkam

Narasimha Reddi and Others, held that the provision of Order 6 Rule 17 of the CPC would not apply to an election petition. In Harish Chandra

Bajpai and another vs. Triloki Singh and another (supra) as well as in K. Venkateswara Rao another, vs. Bekkam Narasimha Reddi (supra) it has

been laid down by the Supreme Court that the High Court has the power to allow amendment of the election petition but that power cannot be

exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh

petition on those allegations will then be barred. In this case by the proposed amendment the petitioner has sought to make out a new case and in

fact seeks to introduce a ground not put forward in the petition. The amendments sought to be introduced are new grounds of attack.

12. The last contention of Mr. Bose is that even if by new grounds are introduced or new case is made out since the provisions of Limitation Act

apply to election petition as held by this Court in the case of Bhakti Bh. Mondal (supra) the Court should allow the amendment by condoning the

delay by applying Section 5 of the Limitation Act, 1963. This contention is however cannot be accepted in view of the categorical pronouncement

of the Supreme Court in K. Venkateswara Rao and another (supra). In view of the principles laid down by the Supreme Court in the said case the

decision of this Court in Bhakti Bh. Mondal (supra) must held to be no longer good law in so far as it held that the Limitation Act will apply in a

proceeding instituted under the Representation of the People Act. There is another aspect of this matter. In this case the written statement was filed

by the respondent no. 1 in august 1983. Documents have been disclosed. List of witnesses have been disclosed. Issues had been settled on 8th

December 1983. In the documents disclosed by the respondent no. 1 a letter dated 18th May, 1982 of the respondent no. 1 addressed to the

Chief Electoral Officer, the Returning Officer, 143-Jorasanko assembly Constituency and the Presiding Officer of Beltola Girls" School, polling

Station of 146 - Chowringhee Assembly Constituency that in part No. 93 of the Chowringhee Assembly Constituency against the premises No.

83-D, Sarat Bose Road at serial No. 339 the name of the respondent appeared but at no point of time any request was made by the respondent

no. 1 for inclusion of his name in the said Chowringhee Assembly Constituency nor there is any premises as premises No. 83-D, Sarat Bose Road.

In the said letter the respondent no. 1 requested the authorities to delete his name from the Chowringhee Assembly Constituency to ensure that no

vote was polled against the said Constituency. The petitioner was aware of the said document but no application was made for amendment until

17th April, 1985. No explanation has been given for such inordinate delay in making this application. Even assuming that delay can be condoned,

no ground has been made out for such condonation. No averment has been made why the delay should be condoned in making this application at

this stage. For the aforesaid reasons this application fails and is dismissed with costs.