

(1985) 07 CAL CK 0023

Calcutta High Court

Case No: Election Petition Case No. 1 of 1982

Shyam Sundar Gupta

APPELLANT

Vs

Deoki Nandan Podder

RESPONDENT

Date of Decision: July 1, 1985**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 17
- Constitution of India, 1950 - Article 173
- Limitation Act, 1963 - Section 29(2), 5
- Representation of the People Act, 1951 - 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 West Bengal and as such was not qualified to be chosen to fill seat in the Legislative Assembly of the State of West Bengal

(ii) In paragraph 7 in the last sentence was not an elector within the meaning of section 5 of the Representation of the People Act, 1951.

Amendment sought for the elector named in Serial No. 661 Part No. 92 of the electoral roll 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.

Had not complied with the requirements laid down in Sub-section (5) of Section 33 of the "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 your petitioner states that on the date of his election, namely May 19, 1982 and/or May 20, 1982 when the result of the said election was purportedly declared, the respondent no. 1 being the alleged returned candidate was not qualified to be chosen to fill a seat in West Bengal Legislative Assembly and/or the said seat from 143 - Jorasanko Assembly Constituency under the Constitution of India and/or under the Representation of People Act, 1951, and in the premises, the 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 and/or on

" In the premises aforesaid the petitioner states that the respondent no. 1 the alleged returned candidate did not file valid or proper nomination papers in conformity with the relevant provisions of the Representation of the People Act, 1951 to contest the said election from the 143 Jorasanko Assembly Constituency and in the premises the purported election of the respondent no. 1 was and is void and should be declared as such by this Hon"ble Court."

VI. For that the respondent No. 1 being the. 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, namely May 20, 1982, the respondent no. 1 being the alleged returned candidate was not qualified to be chosen to fill the seat from 143-Jorasanko Assembly Constituency in view of article 173 of the Constitution of India read with Section 5 and in particular Section 5(c) of the Representation of People Act, 1951.

roll or the relevant part thereof or a certified copy of the relevant entries therein of the 146-Chowringhee Assembly Constituency of which he was an elector but filed/produced a certified copy of the entry at Serial No. 661 Part No. 92 of the 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 contended 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 be 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.