

Anuj Tyagi vs District Election Officer (Municipal ... on 15 April, 2025

Author: Rohit Ranjan Agarwal

Bench: Rohit Ranjan Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. 2025:AHC:54279

Reserved on :04.04.2025

Delivered on :15.04.2025

Court No. - 9

Case :- WRIT - C No. - 6327 of 2025

Petitioner :- Anuj Tyagi

Respondent :- District Election Officer (Municipal Board General Election -2023), Collec

Counsel for Petitioner :- Akash Tyagi,Neha Tyagi,Pankaj Kumar Tyagi,Satish Kumar Tyagi

Counsel for Respondent :- C.S.C.,Ramesh Kumar Pandey,Tarun Agrawal

Hon'ble Rohit Ranjan Agarwal,J.

1. The short controversy before the Court is - "As to whether by amendment application moved under Order VI Rule 17 CPC, amendment can be made in an election petition filed by an unsuccessful candidate impleading the other contesting candidates who were not initially joined in the election petition?"

2. Facts in brief, leading to the present case, are that an election for Corporator for Ward No. 87, Gyankhand Indirapuram, Ghaziabad was held on 11.05.2023. Counting was held on 13.05.2023 and result was declared and petitioner was declared to be successful getting 1291 votes, while the election petitioner, respondent no. 4 secured only 1181 votes.

3. An Election Petition No. 06 of 2023 was filed by respondent no. 4 in which only returned candidate/petitioner along with District Election Officer, Ghaziabad; State Election Commissioner, Lucknow and Returning Officer, Ward No. 87, Ghaziabad were made parties. For the election of Ward No. 87, seven candidates had contested the election, but petitioner had not impleaded the other five unsuccessful candidates as party in the election petition.

4. Petitioner contested the election petition and filed his written statement. An amendment application was moved by election petitioner/respondent no. 4 on 12.09.2024 which was allowed by an ex-parte order on 17.09.2024 permitting the election petitioner to implead the other five unsuccessful candidates as respondents in the election petition. Petitioner/returned candidate filed a recall application which has been rejected by order dated 29.01.2025 which is under challenge in the present writ petition along with order dated 17.09.2024 allowing the amendment application.

5. Counsel for petitioner submitted that election petition filed by respondent no. 4 is defective and Section 62(4) of The Uttar Pradesh Municipal Corporations Act, 1959 (hereinafter called as "the Act of 1959") prescribes the period for filing an election petition. Further, Section 63(3) provides that where the petitioner claims a declaration under Section 64, all the contesting candidates, other than the petitioner, shall be joined as respondents. According to him, the petition moved was defective and non-joinder of necessary party will lead to inevitable conclusion that petition has to be dismissed being beyond time under Section 66.

6. Reliance has been placed upon the decision rendered by co-ordinate Bench of this Court in case of Smt. Jyoti vs. Kusma Devi, 2019 (2) All LJ 262; Ramanand Gaur vs. Ram Sanahi and others, 2012 (4) ADJ 212 and decision of Supreme Court rendered in Patangrao Kadam vs. Prithviraj Sayajirao Yadav Deshmukh and others, (2001) 3 SCC 594.

7. Counsel appearing for respondent no. 4 submitted that defect is a curable defect and the case laws cited by petitioner are not applicable in the instant case as it is under the Act of 1959 while the decision so placed is in regard to Representation of People Act, 1951. According to him, Section 66 envisages that an election petition may be dismissed if not presented within the time allowed by this Act or the provisions of Section 79 relating to deposit of security or the necessary court-fee has not been complied with.

8. In the instant case, the election petition was filed within the prescribed period and only the other contesting candidates were not joined as respondents in the election petition which will not go to the root of the matter and election petition cannot be thrown out. The amendment sought does not change the character of the case and only the other contesting respondents have joined in the election petition.

9. I have heard rival submissions and perused the material on record.

10. Before advertng to decide the issue in hand, a cursory glance of Section 62, 63, 64, 66 of the Act of 1959 are necessary for better appreciation of the case, which are extracted here-asunder:-

"Section 62. Questioning of election of Corporator. - (1) The election of any person as Corporator may be questioned by any unsuccessful candidate at the election or by any person whose nomination paper was rejected at the election, or by any elector of the ward concerned.

(2) The petition may be presented on any one or more of the grounds mentioned in section 71.

(3) The election of any person as Corporator shall not be questioned on the ground that the name of any person qualified to vote, has been omitted from, or the name of any person not qualified to vote, has been inserted in the electoral roll or rolls.

(4) The petition shall be presented to the District Judge, exercising jurisdiction in the City within 30 days of the declaration of result of the election.

Section 63. Forms and contents of petitions. - (1) An election petition shall specify the ground or grounds on which the election of respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies, and shall set forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

(2) The petition and if there is any schedule or annexure to the petition, such schedule or annexure also, shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(3) A petitioner shall join as respondent to his petition. -

(a) where the petitioner claims a declaration under section 64, all the contesting candidates, other than the petitioner, and in any other case all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 64. Relief that may be claimed by the petitioner. - A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

Section 66. Petition when to be dismissed. - If an election petition has not been presented within the time allowed by this Act or it does not comply with any previsions made under section 79 relating to

deposit of security or the necessary court-fee payable thereon is not furnished within the time allowed therefor it shall forthwith be rejected by the District Judge."

11. Section 62 provides for the questioning of election of a Corporator by any unsuccessful candidate. It can be presented on any one or more grounds as mentioned in section 71. Sub-section (4) of Section 62 is of great relevance as it prescribes the time limit within which an election petition could be presented. A period of 30 days has been provided from the declaration of result for the presentation of election petition.

12. Section 63 provides forms and contents of petitions. It lays down that an election petition shall specify the ground or grounds on which the election of respondent is questioned and it shall contain a concise statement of the material facts on which the petitioner relies. Sub-section (2) provides that if there are any schedule or annexure to the election petition, it shall be signed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure, 1908, for verification of pleadings. Sub-section (3) of Section 63 is of great relevance as it clearly provides that petitioner shall join as respondent to his petition, all the contesting candidates, other than the petitioner, where the petitioner claims a declaration under Section 64, and in any other case all the returned candidates. Thus, sub-section (3) clearly clarifies that all contesting candidates has to be joined as respondents in an election petition. This provision has to be read in consonance with sub-section (4) of Section 62, which requires an election petition to be presented within 30 days of the declarations of the result. Joinder of all contesting candidates is must for the maintainability of the petition questioning election of any Corporator under Section 62 read with Section 63. Result of non-joinder of all necessary parties would lead to an inevitable conclusion that election petition as mandated under sub-section (4) of Section 64 was not presented within 30 days from the date of declaration of result, which would lead to a situation where the petition may be dismissed under Section 66.

13. The defect of non-joinder of all contesting candidates in an election petition is not a curable defect. The Hon'ble Supreme Court while dealing with matter under Representation of People Act in Patangrao Kadam (supra) considering the earlier view of Apex Court rendered in Har Swarup vs. Brij Bhushan Saran, AIR 1967 SC 836; Amin Lal vs. Hunna Lal, AIR 1965 SC 1243 and decision in Mohan Raj vs. Surendra Kumar, AIR 1969 SC 677; Chaturbhuj Chunnilal vs. Election Tribunal, Kanpur AIR 1958 All 809 held that impleadment under Order I Rule 10 and amendment under Order VI Rule 17 is power preserved to the Court, but when the Act makes a person necessary party and provides that petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. Relevant para 20 is extracted here-asunder:-

"20. The view that a candidate, who is duly nominated, continues to be a candidate for the purpose of Section 82(b) in spite of withdrawal, is supported by the decisions of Har Swarup [AIR 1967 SC 836 : (1967) 1 SCR 342] and Amin Lal v. Hunna Mal [AIR 1965 SC 1243 : (1965) 1 SCR 393]. This Court referring to the said decisions in Mohan Raj v. Surendra Kumar Taparia [AIR 1969 SC 677 : (1969) 1 SCR 630] agreed with the said view. Further the decision in Chaturbhuj Chunnilal v. Election Tribunal, Kanpur [AIR 1958 All 809] taking the same view after elaborate consideration on all aspects touching the question is approved. Dealing with the applications made for

impleadment under Order 1 Rule 10 and amendment under Order 6 Rule 17, in para 10 of the same judgment, this Court had stated thus: (AIR p. 681) "No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition."

14. The co-ordinate Bench of this Court in Smt. Jyoti (supra) while dealing with a matter under U.P. Municipalities Act, 1916 where the provisions are somewhat similar to those of the Act of 1959 held that an amendment cannot be allowed to remove a defect that may warrant rejection of an election petition.

15. For better understanding, Section 20 of the U.P. Municipalities Act, 1916 is extracted here-asunder:-

"20. From and presentation of election petitions:-

(1) An election petition shall be presented within 30 days after the day on which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set forth the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the dates and place of the commission of each such practice.

(2) The petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.

(3) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality or by a person who claims that his nomination paper was improperly rejected.

(4) The person whose election is questioned and, where the petitioner claims that any other candidate should be declared elected in the room of such person, every

unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition.

(5) The petition shall be presented to the District Judge exercising jurisdiction in the area in which the municipality, to which the election petition relates, is situate:

Provided that the petition shall not be entertained by the District Judge unless it is accompanied by a treasury challan showing that the prescribed security has been deposited."

16. Sub-section (4) of Section 20 provides that where an election is questioned and petitioner claims that any other candidate should be declared elected in the room of such person, every unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition. Sub-section (4) of Section 20 is somewhat similar to sub-section (3) of Section 63 of the Act of 1959 which also provides that petitioner shall join all the contesting candidates as respondents to his petition. The Court proceeded to hold that amendment if allowed would be against the statutory provisions of Section 20(4) of the Act of 1916. Relevant paras 20, 21, 22 and 23 are extracted here-asunder:-

"20. By virtue of section 23 of the Act, 1916, courts have applied the general provisions of Order 6 Rule 17 of the Code of Civil Procedure to allow amendments. However, a plain reading of section 23 of the Act, 1916 would go to show that general provisions of the Code of Civil Procedure could be applied only if there is no inconsistent provision in the Act or the Rules. Sub-section (4) of section 20 of the Act, 1916 clearly provides that where the election petition claims that any other candidate should be declared elected in the room of such person whose election is questioned, every unsuccessful candidates, if not impleaded as the petitioner, be made a respondent to the petition. A defect in that regard would have to be dealt with in the manner provided in Section 22 of the Act, 1916. Under the circumstances, the general powers available under Order 6 Rule 17 C.P.C. cannot be invoked to remove a defect that may warrant rejection of the petition under Section 22 of the Act, 1916, unless removal of such defect is sought within such period of time as may be permissible under the Act, 1916.

21. The decision of the apex court in the case of Harish Chandra's case (supra) as well as K. Venkateswara Rao's case (supra) is clear on the issue that power under Order 6 Rule 17 C.P.C. cannot be exercised to alter the character of the election petition so as to make it in substance a new petition, if a fresh petition on that cause of action would by then be barred.

22. In the instant case, the election petition as instituted was only to declare the election of the returned candidate as null and void. There was no prayer by the election petitioner to declare him elected in the room of the person whose election was questioned i.e. the returned candidate. With the amendment, the character of the

petition was sought to be changed so as to include a relief for such declaration and, to maintain such a relief, to add every unsuccessful candidate as party respondent.

23. Admittedly, the amendment application was filed after the period of limitation provided under the Act, 1916 for presentation of such an election petition had expired. Therefore such an amendment application could not have been entertained and allowed in view of the law laid down by the apex court in Harish Chandra's case (supra) and K. Venkateswara Rao's case (supra). The decision in Smt. Sarita Gupta's case (supra) relied upon by the learned counsel for the respondent, with due respect, cannot come to the rescue of the respondent inasmuch as the said decision fails to notice the apex court's decisions that have been noticed herein above."

17. Thus, sub-section (3) of Section 63 clearly spells out that in an election petition, petitioner has to join as respondents in his petition all the contesting candidates.

18. In the instant case, election petition filed on 31.05.2023 did not include the other five unsuccessful candidates - 1. Ashwani Kumar Singh 2. Salek Chandra Tyagi 3. Nand Lal Sharma 4. Gaurav Kumar and 5. Rahul Mani Kudesiya. It was by amendment made after more than one year that an application under Order VI Rule 17 was moved on 12.09.2024 for impleading the other five unsuccessful candidates as respondents in the petition. The said amendment application is not maintainable as the Act clearly provides in sub-section (3) of Section 63 that election petition should be joined by all contesting candidates as respondents.

19. The defect in the election petition cannot be cured through an amendment application moved by election petitioner. Section 62(4) provides the time limit for filing of election petition. Any defect can be cured within the time limit prescribed under the said provision and no alteration can be made once the time prescribed therein expires.

20. The court below had wrongly allowed the amendment application and rejected the recall application filed by returned candidate which is against the provisions of Section 63(3) read with Section 62(4) of the Act of 1959.

21. In view of above, the order dated 17.09.2024 passed on the amendment application and order dated 29.01.2025 passed on the recall application are hereby set aside.

22. The writ petition stands allowed.

23. The question as framed above stands answered that is in favour of petitioner and against respondent no. 4/election petitioner.

Order Date :- 15.4.2025 V.S.Singh