

Mohd. Akbar vs Ashok Sahu & Ors on 27 February, 2015

Equivalent citations: 2015 AIR SCW 4093, 2015 (14) SCC 519, 2015 (3) AJR 845, AIR 2015 SC (SUPP) 2134, (2015) 2 RECCIVR 222, (2015) 2 WLC(SC)CVL 179, (2015) 3 SCALE 107, (2015) 149 ALLINDCAS 137 (SC), (2015) 110 ALL LR 220, (2015) 3 ALL WC 2671, (2015) 5 ANDHLD 44, (2015) 119 CUT LT 844, (2015) 2 KER LT 46

Bench: Rohinton Fali Nariman, J. Chelameswar

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2538-40 OF 2015
(Arising out of SLP (Civil) Nos. 2487-2489 of 2015)

Mohd. Akbar

...Appellant

Versus

Ashok Sahu & Ors.

...Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted.

2. The General Election to Chhattisgarh Legislative Assembly took place in 2013. The appellant herein is one of the contesting candidates for 72- Kawardha Legislative Assembly Constituency.

3. Polling took place on 19.11.2013. The result was declared on 8.12.2013. First respondent was declared elected. The appellant secured the second highest number of votes in the said election. On 20.1.2014, the appellant filed Election Petition No. 4 of 2014 challenging the election of the first respondent on various grounds including the commission of certain corrupt practices. On 29.1.2014, the High Court issued summons to the respondents.

4. It appears that matter was listed on 25.3.2014. It is not very clear from the records whether all the respondents were served or not. But from copy of the order dated 25.3.2014, it appears that only respondent Nos. 1, 5, 9 and 10 were represented by counsel and other respondents were not represented. The High Court recorded an order as follows:-

"There is an oral prayer made for extension of time for filing written statement but there is no application is writing in that regard.

In the interest of justice, three days time is granted to learned counsel for the respondent to file application if any."

5. On 26.3.2014, the first respondent herein filed two applications - one invoking Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "CPC") and another raising certain preliminary objections to the maintainability of the election petition.

6. On 2.4.2014, two more interlocutory applications came to be filed, one each at the instance of respondent No. 1 and 10 seeking extension of time for filing the written statement. The said applications were allowed and the High Court granted another 30 days' time for filing the written statement.

7. Thereafter the matter underwent number of adjournments, the details of which may not be necessary for the purpose of this order. Eventually, arguments on Order VII Rule 11 CPC were heard in part on 27.6.2014. After two more adjournments, on 1.7.2014 arguments on the said applications were concluded and the matter was fixed for orders on 21.7.2014. However, the order was not pronounced and the matter was again adjourned for 30.7.2014 on which date the interlocutory applications filed by the respondents were dismissed.

8. On 14.8.2014, appearance was entered on behalf of respondent No. 8 by one Shri Ashish Shrivastav, who is none other than the brother of Justice Manindra M. Srivastava who was the Judge hearing the Election Petition. Justice Manindra Srivastava promptly recused from the election petition and in our opinion rightly. On such recusal, the election petition was allotted to another learned Judge.

9. In the meanwhile on 26.8.2014, a complaint regarding the appearance by the above-mentioned Ashish Srivastav was made to the Hon'ble Chief Justice. The election petition was further adjourned.

10. It appears that respondent No. 8 filed another application under Order VII Rule 11 of CPC. But, the counsel for respondent No. 8, Shri Ashish Srivastava filed an application seeking permission to withdraw his Vakalatnama. The said application was allowed by the High Court. On 28.11.2014, a Vakalatnama came to be filed by Shri B.P. Gupta on behalf of the respondent No. 1 though there is another counsel on record already. It appears that at the instance of Shri B.P. Gupta, the matter was once again adjourned ostensibly to enable Shri B.P. Gupta to get ready with the case. On 4.12.2014, the application filed by the respondent No. 8 under Order VII Rule 11 came to be dismissed.

11. Broadly, it is in the above-mentioned background the instant SLP came to be filed complaining that notwithstanding the mandate of Section 86, sub- Section (7) of the Representation of the People Act, 1951, the High Court has not disposed of the election petition so far. Section 86, sub- Section (7) reads as follows:-

Section 86 (7) - Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

12. It was the pious hope of the Parliament that election disputes under the Representation of the People Act, 1951 should be resolved expeditiously. The purpose is obvious. The tenure of the members of the Parliament as well as the Legislature of the State is relatively short. It is five years in the case of Lok Sabha and Legislative Assembly, and six years in the case of Rajya Sabha and Legislative Council. Therefore, if there is a dispute regarding the election of any member of any one of the said bodies, it is desirable that the dispute is resolved as early as possible for various reasons.

(i) Membership of the Legislative bodies under the scheme of our constitution is a sacred responsibility. The continuance of any member in such bodies who secured his election to such a body by legally impermissible means even for a day is most undesirable. Such continuance affords an opportunity to such a member to take part in the law making process affecting the destinies of the people.

(ii) Even from the point of view of the contesting candidates, unless the rights and the obligations are decided within a reasonable time, the adjudication and the consequences of the adjudication may eventually remain on paper without any tangible effect insofar as the participation of such parties in the legislative process.

13. However, we are sad to state that invariably the resolution of election disputes in this country takes unacceptably long periods in most of the cases. Very rarely an election dispute gets resolved during the tenure of the declared candidate reducing the adjudicatory process into a mockery of justice. Such delay coupled with a right of appeal to this Court makes the whole process of adjudication a task in a good number of cases. The reasons are many, we will only mention few; The stakes are very high for the parties. Nothing short of the membership of a constitutional body for a limited period. The power and glory that go with such membership is too high and valuable and the returned candidates naturally leave no stone unturned for protracting the litigation as long as possible.

The law of elections and election disputes is highly technical. Therefore, there is always scope for lot of objections and cross-objections regarding every step in the conduct of the election petition.

The absence of dedicated Benches in the High Court for resolution of the election disputes is another factor which contributes enormously to the delay in the adjudicatory process.

14. We therefore deem it desirable that in each High Court dedicated Benches are created by the Chief Justice to deal with the election petitions exclusively. In other words, those judges assigned with the adjudication of election petitions preferably may not be burdened with any other work until the adjudication of the election petitions is completed. An exercise which may not be difficult especially the class of litigation occurs only once in 5 or 6 years and the number of cases would be very limited. We are conscious of the fact that it is not possible for laying down any absolute rules in

this regard. Essentially it is for a Chief Justice of the High Court to run the administration and devise ways and means for expeditiously disposing of the cases brought before the High Court. We only gently remind that the kind of delay in the adjudication of election disputes exposes the High Court's unpleasant criticism damaging the credibility of the institution. A situation which is certainly required to be avoided at any cost.

15. The facts of the present case are telling. Some 15 months after the election, the trial of the election petition has not yet commenced. In the circumstances, we deem it appropriate to request the Chief Justice to take necessary steps for disposal of the Election Petition No. 4 of 2014 expeditiously, by devising such appropriate measures as the Hon'ble Chief Justice may deem fit and proper in the circumstances.

16. We also place on record our disapproval of the tactics adopted by the respondents in engaging counsel whose appearance is bound to embarrass the presiding Judge and we feel sad for the noble profession, some of whose members are willing to take part in such unwholesome practices.

17. Appeals are accordingly disposed of.

.....J. (J. Chelameswar)J. (Rohinton Fali Nariman) New
Delhi;

February 27, 2015
