

Audesh Pratap Singh vs Brij Narain And Ors. on 17 November, 1953

Equivalent citations: AIR1954ALL245, AIR 1954 ALLAHABAD 245

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution. The petitioner, Sri Audesh Pratap Singh, and respondents Nos. 4 to 11 were candidates for election to the Uttar Pradesh Legislative Assembly from the Bikapur East General Constituency in the district of Faizabad at the last general election, and on the 3rd February, 1952, the petitioner was declared by the Returning Officer to be duly elected. On the 14th May the respondent No. 4, Sri Mahadeo, filed an election petition challenging the election of the petitioner on a number of grounds including the exercise of undue influence on the electors in a large number of villages in the constituency.

2. The election petition was referred to an Election Tribunal sitting at Gorakhpur of which the first respondent is the Chairman and the second and third respondents are members. Objection is taken in the petition now before us to two orders passed by the Election Tribunal. In his petition before the latter body Sri Mahadeo claimed two main reliefs, namely,

(a) that the election of Sri Audesh Pratap Singh be declared void and that he, Sri Mahadeo, be declared duly elected, and

(b) that in case he be not declared duly elected the entire election be declared to be void and a re-election be ordered.

3. It was contended before the Tribunal that as under Section 84 of the Representation of the People Act, 1951 Sri Mahadeo could claim only one relief the petition was defective and should be dismissed. After hearing argument, the Tribunal rejected the submission by an order dated the 6th January, 1953. That is the first order to which objection is taken.

4. The petition was accompanied by a list as is required under Section 83(2) of the Act, the list being in three sections described as List I, List II and List III, In List II, Kurwa, a hamlet of village Jaising Mau, was specified as the place at which interference with the free exercise of their electoral rights by voters took place. On the 20th November, 1952, Sri Audesh Pratap Singh filed his written statement. Issues were framed and thereafter evidence was recorded. On the 27th January, 1953, objection was taken on behalf of Sri Audesh Pratap Singh to evidence being led by Sri Mahadeo with regard to corrupt practices particulars of which were not included in the List accompanying the

petition.

After hearing counsel the Tribunal, on the 28th January, 1953, passed the following order :

"We have heard the learned counsel of the parties at length. Section 83(2) lays down that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges included as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practices and the date of commission of each of such practices. The List II filed with the petition does not comply with this provision. The effect of non-compliance can be against the petitioner involving even rejection of the petition. So we think it proper to give an opportunity to the petitioner to give further and better particulars."

On the following day the fourth respondent appears to have filed an application for leave to amend the consolidated list accompanying his petition in a number of particulars, and on the 30th January the Tribunal, having again heard counsel for the parties at length, made the second order to which objection is taken.

"Section 83(3) of the Act lays down that the List can be amended as well as further and better particulars can be given. The petitioner seeks to amend the List and he gives further and better particulars of the instances mentioned in Schedule 2 of the List. We think the prayer of the petitioner as contained in the statement he has given today reasonable and so we allow the amendment so far as Items Nos. 3, 10 and 11 of this application are concerned, but the petitioner will have to pay Rs. 30/- as costs to the opposite party."

By virtue of this order Sri Mahadeo was allowed to amend List II accompanying his petition by the addition of the names of two further villages, Jabhopur and Karpapur, as places at which the voters were subjected to undue influence at the instance of Sri Audesh Pratap Singh. The reliefs which the latter now seeks are, first, the issue of a writ in the nature of 'certiorari' to quash the orders of the Election Tribunal dated the 6th and the 30th January, 1953, and secondly, a writ in the nature of prohibition prohibiting the respondents Nos. 1 to 4 from proceeding with the hearing of the election petition.

5. We consider first the order made by the Tribunal on the 6th January. Section 90(4) of the Act provides that an Election Tribunal may -- not must -- dismiss an election petition which does not comply with the provisions of any of the Sections 81, 83 or 117 of the Act. Section 84 which is not included among those sections, declares the relief which may be claimed by a petitioner. Ever if the view be taken that failure on the part of a petitioner to specify the precise declaration which he claims involves a non-compliance with the provisions of Section 83, the question whether the petition should be dismissed remains a matter which lies within the discretion of the Tribunal. In our opinion the Tribunal's order of the 6th January was an order which it had jurisdiction to make and is one with which we cannot interfere.

6. With regard to the order of the Tribunal made on the 30th January the principal contention urged on behalf of the petitioners is that the Election Tribunal had no jurisdiction under Section 83 of the Representation of the People Act, 1951, to allow the particular amendment of List II which it permitted to be made. A second contention is that the Election Tribunal in allowing the amendment did not act in good faith.

7. The second of these contentions can be disposed of shortly. The evidence of the alleged bad faith is to be found in paragraphs 17 to 20 of the affidavit of Harbhan butt, the mukhtar-i-am of the petitioner, filed on the 13th March, 1953. In these paragraphs extracts are given from orders made by the same Tribunal in two other cases in which it dismissed election petitions on the ground that the petitions did not fully satisfy the statutory requirements for which provision is made in Chap. II of Part VI of the Act, and to an order made in a third petition dismissing an application made by the petitioner in that case for amendment of the List accompanying his petition on the ground that to do so would be tantamount to allowing him to file a fresh list. The circumstances in which the orders were made by the Election Tribunal in the cases referred to in this affidavit are not before us, and on such wholly inadequate material it is impossible for us to conclude that in allowing the amendment in the present case the Tribunal acted otherwise than in good faith.

8. The more substantial submission on behalf of the petitioner is that the Tribunal exceeded its power in allowing the amendment of List II. Now it is clear that this Court is not a court of appeal from a decision of the Election Tribunal and that it cannot quash or modify an order made by the Tribunal on the ground that it is not an order which this Court itself would have been disposed to make. The Court can, in our opinion, interfere in the present case only if it is satisfied that the Election Tribunal has by allowing the amendment to List II thereby conferred upon itself a jurisdiction to decide a petition which is substantially different from that referred to it by the Election Commission. If it has done that it has, in our opinion, exercised a jurisdiction not vested in it by law.

9. Section 83 of the Representation of the People Act, 1951, reads as follows:

"83. 'Contents of Petition. :

(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal 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 or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

The argument of Sri Gopi Nath Kunzru who appears for the petitioner is that the amendment which the Election Tribunal has allowed has made the petition a new petition so far as the allegation of undue influence is concerned, and as such amendment was made after the expiry of the period within which a petition could be filed the Tribunal had no jurisdiction to allow it. Sri S. C. Khare for the respondents on the other hand contends that no question of jurisdiction arises as the action taken by the Tribunal was fully within the powers conferred upon it by Sub-section (3) of Section 83. Sri Kunzru has relied strongly on the case of -- 'Maude v. Lowley', (1874) LR 9 CP 165 (A).

In that case the petition as originally framed complained of the employment, contrary to the prohibition contained in Section 7 of the Corrupt Practices (Municipal Elections) Act, 1872, as paid canvassers, at an election for the North ward of the borough of Leeds, of persons who were on the register of burgesses for that ward. After the expiry of the period within which an election petition could be filed the petitioner obtained the leave of a Judge to amend his petition by adding after the words "the said ward" that is the North ward--the words "and other wards". The Court of Common Pleas held that the Judge had no power to allow the amendment, upon the ground that its effect was substantially to make the amended petition a fresh petition and as it was made after the expiry of twenty-one days, the period within which a petition could be filed, to allow it would be to confer upon the petitioner a privilege which no other person could possess. Keating, J., was of the view that anything which materially adds to the charge, especially if it introduces an additional charge, would constitute not an amendment but a fresh petition.

10. This is a strong case, but upon consideration we are of opinion that it can be distinguished from that which is before us. In -- '(1874) LR 9 CP 165 (A)', the Court had to consider the effect of an amendment of the petition itself; in the present case, the amendment sought to be made is not an amendment of the petition but in the particulars included in the list which has to accompany the petition. The charge of undue influence is to be found in paragraph (8) of Sri Mahadeo's petition before the election tribunal. It is a long paragraph in which it is alleged that the electors in a large number of villages within the constituency of Bikapur East were subjected to undue influence by or at the instance of Sri Audesh Pratap Singh and his supporters; a general description of the form which the alleged undue influence is said to have taken is stated; and the paragraph concludes with the statement that particulars so far ascertained of the exercise of undue influence and intimidation are given in List II attached to the petition. No amendment of the petition was sought; and the Tribunal would have had no power to allow it if it had been asked for. Sub-section (3) of Section 83 while it does not provide for any amendment of the petition does provide that the Tribunal may "at any time, allow the particulars included in the said list to be amended..... as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

"Amendment" includes not only the correction of minor errors but the addition of new matter. The sub-section, it is to be observed, also specifically empowers the Tribunal to order not only better, but further particulars in regard to any matter referred to in the List to be furnished. The structure of the Act differs from that of the Corrupt Practices (Municipal Elections) Act, 1872, for while not making any provision for the amendment of the petition it gives the Tribunal a very wide discretion as regards the amendment of the list accompanying the petition. The case which a respondent has to meet is to be found in the petition supplemented by the particulars in the list; whether that case has been so radically changed by an amendment of the particulars in the list must depend on the facts, but we are of opinion that this Court would not be justified in interfering with an order of the Tribunal allowing an amendment unless it is quite clear that the Tribunal has overreached itself. An amendment may cause inconvenience to the respondent, but this can be compensated by costs.

11. In the present case the Tribunal has in the exercise of its discretion allowed Sri Mahadeo to add to the number of villages mentioned in List II. It has, we must assume, allowed this to be done because in its opinion such amendment was necessary for the purpose of ensuring a fair and effectual trial of the petition. We are, upon a careful consideration of the circumstances, unable to hold that the Tribunal's order is one which has in effect substantially altered the nature of the original petition, it is one which in our opinion the Tribunal had jurisdiction to make and is therefore one with which we cannot interfere.

12. This petition fails and is dismissed with costs which we assess at two hundred rupees.