Sri Niwas vs Election Tribunal At Lucknow And Ors. on 24 November, 1954

Equivalent citations: AIR1955ALL251, AIR 1955 ALLAHABAD 251

JUDGMENT

Randhir Singh, J.

1. This petition for a writ of certiorari, prohibition or any of her appropriate writ is directed against the Election Tribunal of Lucknow and the members thereof and also some other persons.

2. It appears that in the bye-election to the U. P. Legislative Assembly, Budaun. North Constituency, the petitioner was elected a member of the U. P. Legislative Assembly. An election petition was thereafter instituted before the Election Tribunal for the setting aside of the election on various grounds mentioned in the application made before the Tribunal. After the application came up for hearing, the petitioner made an application for the amendment of the lists and paragraph 4(a) of the election petition. The main ground on which amendment was asked for was that some matters had been left vague and some particulars had not been given. The Election Tribunal ordered the petitioner to furnish better particulars and to make his allegations definite in certain matters and the petition for amendment which followed was allowed. The effect of the amendment was that paragraph 4(a) of the election petition was ordered to be amended by the addition of the words "by respondent No. 1 and his agents and workers mentioned in list A", after the words "to vote" in the second line of para. 4 and before the words "on the ground of". There were certain other amendments which were ordered to be made in the lists appended to the election petition.

3. The application for amendment was opposed on behalf of Pandit Sri Niwas, the successful candidate, on the ground that the amendment could not be made under the provisions of the Representation of the People Act but this contention of Sri Niwas was not allowed and the amendment was ordered on 16-2-1954. On 26-4-1954, Sri Niwas then presented this petition asking for the issue of a writ of certiorari and certain other reliefs mentioned in the petition for writ.

4. The first point which has been raised on behalf of the petitioner is that, there was no provision in the Representation of the People Act under which a person could be allowed to amend his petition for setting aside an election and the Tribunal was not competent to allow an amendment of the petition. With regard to the amendment of the lists, it is conceded that it was open to the Tribunal to make, an order for the amendment of the lists or to call for further and better particulars under Section 83, Sub-clause (3) of the Representation of the People Act.

The only point, therefore, for consideration is whether the order of the Tribunal allowing the amendment of paragraph 4(a) of the petition before the Election Tribunal was an order passed

without jurisdiction or in excess of its jurisdiction. A number of cases have been cited for and against the contention that such a power of amendment does not vest in the Tribunal but we feel that the question which is before us can be decided on a comparatively simple point. It is always inherent in a Court or Tribunal which has the power to decide a case, to order rectification of clerical or accidental errors and omissions.

In the present case the ground on which paragraph 4(a) of the application before the Tribunal was allowed to be amended was that it was a clerical, mistake. The Tribunal has remarked that a perusal of the petition shows that the words now sought to be incorporated in paragraph 4 (a) were only left out by mistake and that it was the intention of Sri Asrar Ahmad to plead all that he had mentioned in paragraph 4 (a) with reference to the respondent. Under these circumstances the Tribunal thought that the words which were sought to be incorporated by the amendment were only left out by mistake. If a Court or Tribunal has the right to amend such mistakes, the merits of the application for amendment cannot be gone into in a petition for Writ.

A Court or Tribunal which is entitled to pass a correct order may also pass an incorrect order but that would not be a ground for invoking the jurisdiction of this Court by a petition for writ. It cannot be disputed that a Court or a Tribunal has an inherent right to order amendments of a clerical nature to be made and if the Tribunal has thought fit to treat this case also as one of a clerical mistake, there appears to be no good ground for interfering with the discretion exercised by the Tribunal. Even on merits we find no justification for coming to the conclusion that the order of amendment made by the Tribunal was not a correct order.

5. Another point taken up on behalf of the applicant in this writ petition, is that the Tribunal did not exercise a proper jurisdiction in granting the application of Sri Asrar Ahmad for the summoning and production of certain documents in the possession of the petitioner. Section 92(c), Representation of the People Act, expressly provides for compelling the production of documents. It has been argued that Order 11, Rule 14, C. P. C., under which the order for production of documents was made by the Tribunal could not come into play unless an application for discovery had been made under Order 11, Rule 12. A plain reading of Order 11, Rule 14 clearly shows that IB, 14 is not subject in all cases to Rule 12. Learned counsel has relied on a ruling of the Patna High Court in -- 'Baidyanath v. Bholanath Roy', AIR 1923 Pat 337 (A).

The facts of this reported case were different. In it it appears that an application had been made praying that the opposite party in that suit be directed to produce his account books relating to a particular colliery and it was held that such an application could only follow an earlier application made under Order 11, Rule 12, Evidently the application referred to in this reported case which was made under Order 11, Rule 14 was in the nature of an application for discovery and for production both combined in the same application and it was held that such an application could only be made after a discovery had been made. This ruling has, therefore, no application to the facts of the present case. If a party knows that another party has in his possession specified documents which are material or relevant, an application can always be made under Order 11, Rule 14 for the production of such documents. There is, therefore, no merit in the contention that the order passed by the Tribunal was not in exercise of powers vested in it. No other point has been pressed in arguments.

6. Learned counsel for the opposite party has also pointed out that this petition for writ was made after considerable delay inasmuch as the order challenged was passed on 16-2-1954 and the petition for writ was made on 26-4-1954. Ordinarily perhaps delay of two months may not have been held to be unwarranted but in this particular case we find that 158 witnesses had been examined before the Election Tribunal after the order dated 16-2-1954 had been passed but the petition for writ was not presented till 26-4-1954. We, therefore, feel that the petition was also made with undue delay. There is thus no merit in this petition for writ and it is dismissed with costs to the opposite parties. We assess the costs at Rs. 150/-. Since the petition has been dismissed, no orders are called for in Civil Miscellaneous Applications Nos. 867 and 984 of 1954.