

Devi Prasad vs Chairman Of The Court Of Election ... on 19 November, 1954

Equivalent citations: AIR1956ALL19, AIR 1956 ALLAHABAD 19

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution praying for the quashing of the order passed by an Election Tribunal on 13-1-1953 dismissing the election petition filed by the petitioner.

2. The petitioner was a candidate for membership of the Uttar Pradesh Legislative Assembly and he was nominated as a candidate from the Tanda Constituency of Faizabad district. The elections were held in January 1952 and this Constituency was a double member constituency one of the seats being reserved for the scheduled caste. As a result of the counting of the votes Ram Sumer respondent was declared as elected in the seat reserved for the scheduled caste and respondent 2 Sri Mohammad Nasir was declared as elected to the general seat.

The result of the election was published in the Official Gazette on 26-2-1952 and the return of expenses by the elected members was published on 3-5-1952. The election petition was presented by the petitioner personally in the office of the Election Commission on 16-5-1952, and it was within time on that date.

It was, however, discovered subsequently at the office of the Election Commission that the three lists attached to the application were not duly verified as required by Sub-section (2) of Section 83, Representation of the People Act (Act 43 of 1951), and on 21-6-1952 an Assistant Secretary wrote to the petitioner that the lists attached to the petition had not been duly verified and further that no list was submitted with respect to sub-paras (a) and (b) of para 3 of the petition.

The petitioner was granted 15 days time to remove the defects failing which the application was to be dismissed under Section 85 of the Act. The Assistant Secretary, however, added. "This letter is to be read as without prejudice to the provisions of law applicable to the case."

On 26-6-1952 the petitioner sent copies of the three lists filed along with the election petition after duly verifying them; he also sent to them a duly verified list with respect to the corrupt and illegal practices mentioned in sub-paras (a) and (b), of para 3 of the election petition-. These lists were received in the office of the Election Commission on 2-7-1952.

The Election Commission subsequently passed an order under Section 86 of the Act appointing an Election Tribunal for the trial of this petition. Before the Tribunal a number of pleas of facts and law were taken by the returned candidate Sri Mohammad Nasir and 18 issues were settled in the case.

The Tribunal decided issues Nos. 1, 3, 4, 5 and 6 which raised legal questions as to, whether the election petition was duly presented and was in proper form and duly verified, whether it was maintainable, whether it was barred by time, whether the lists of members were duly verified in time and whether the petition was liable to be dismissed on these grounds.

The main points urged before the Tribunal were that the three lists filed along with the election petition were not verified at all when the petition was filed, and the petition was thus defective, and the verified lists that the petitioner subsequently sent were filed after the period of limitation had expired. It also appears from the order of the Election Tribunal that a request was made to the Tribunal to permit the petitioner to verify the original lists filed with the election petition.

The Tribunal considered these matters in some detail and came to the conclusion that the election petition was defective inasmuch as the lists filed along with it had not been verified, that the lists subsequently sent were sent after the expiry of period of limitation, and that the Tribunal should not permit the petitioner to verify the original lists now. On these findings the petition was dismissed on 13-1-1953. The present writ petition was filed on 16-2-1953 with the prayer already mentioned.

3. In support of the petition the learned counsel for the petitioner has urged four points. He has urged that only the list giving particulars of corrupt and illegal practices need be filed and verified, but the election petition contained many oilier grounds as well and there could be no question of filing any lists with respect to these grounds.

He says that the petition so far as it challenged election on the grounds of corrupt and illegal practices may not have been considered, but there was no reason for not considering the other legal grounds mentioned in the election petition and the petition should not have been dismissed in its entirety. I have considered the argument with care but I find myself unable to accept it.

There was one joint petition taking both types of objections and if the petition was defective with respect to one type of grounds the Election Tribunal had the jurisdiction to dismiss the whole petition. The election petition is not a type of a document which can be said to be a composite document consisting of two or more separate documents.

The prayer that is contained is one, though it may be claimed on several grounds and the document is, therefore, to be considered as a whole and not in parts. If the document is defective in one particular, I think the Election Tribunal has the jurisdiction to dismiss the whole of it. It was up to the petitioner to apply to the Election Tribunal to delete the grounds concerning corrupt and illegal practices and confine itself wholly to the other grounds.

If such an application had been made the Election Tribunal might possibly have ordered the deletion of the grounds concerning corrupt and illegal practices and proceeded to determine the rest of the petition. But no such application appears to have been made before the Tribunal, and the Tribunal in my opinion was justified in rejecting the entire petition when it found that it did not comply with the requirements of Sub-section (2) of Section 83 of the Act.

The Representation of the People Act does not anywhere contemplate the rejection of part of a petition and the validity of the petition is to be considered as a whole, though there is no prohibition against the deletion of portions of the application. But such a prayer never appears to have been made before the Tribunal, and as such the dismissal of the entire petition cannot be said to be unjustified.

4. The next point argued by the learned counsel was that on the proved facts of the case it must be held that the Election Commission itself had extended the limitation for filing duly verified lists under Section 85 of the Act and the Tribunal could not dismiss the election petition on the ground that the verified lists were filed beyond time.

By the letter dated 20-8-1952 the Election Commission gave 15 days' time to the petitioner to remove the defects and the petitioner did supply within this period duly verified copies of the previous lists as also a fourth list as required and the Election Commission after this constituted the Tribunal to hear and dispose of the petition. But in the letter dated 20-6-1952 it was made clear that the letter was to be read as without prejudice to the provisions of law applicable to the case.

This reservation shows that the Election Commission themselves had not decided the question of law as to whether the election petition filed by the petitioner should be deemed within time or not. It just put the application in proper order and sent it to the Tribunal for disposal. It is not suggested that the Election Commission passed any order condoning the delay made in filing the verified lists. In the absence of any such decision by the Commission itself there can be no doubt that it was open to the Election Tribunal to dismiss the petition on account of the petitioner's failure to comply with the provisions of Sections 81 and 83 of the Act.

Section 81 says that the election petition shall be in such form and filed within such time as may be prescribed. The time for filing election petition is prescribed by Rule 119 which provides 'that the petition should not be filed later than 14 days from the date of publication of the notice in the Official Gazette under Rule 113, saying that the return of election expenses and the declaration made in respect thereof had been lodged with the Returning Officer.

This notification was made on 3-5-1952 and the petition could be filed till the 17th of May. It was actually filed on the 16th, but the verified lists were received by the Commission on the 2nd of July. Section 83 Sub-section (1) of the Act says that an election petition shall contain a concise statement of the material facts and it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings.

Sub-section (2) says 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; In the present case the lists which accompanied the petition were not verified at all though the petition was duly verified. A consideration of the provisions of law mentioned above goes to show that it was open to the Election Tribunal to dismiss the petition if it found that it was filed beyond time or was not duly verified.

The position might have been different if the Election Commission had passed any order condoning the delay in filing the duly verified lists, because Section 80, Sub-section (4) does not say that the Election Tribunal can disregard an order of the Election Commission though it does say that notwithstanding anything contained in Section 85 the Tribunal may dismiss an election petition which does not comply with the requirements of Sections 81, 83 or 117.

There being no order passed by the Election Commission under Section 85 it cannot be said that the Commission had extended time or condoned the delay and, as such, the Election Tribunal, could dismiss the petition on account of the defects mentioned above.

5. The third argument of the learned counsel was that the lists originally filed should be taken to have been duly verified because the paragraphs of the election petition which referred to those lists were themselves duly verified. He says that the lists should be taken to have formed part of those paragraphs, and the paragraphs having been verified, the lists should also be taken to have been duly verified. I find myself unable to accept this argument either.

When lists are attached to a plaint or a petition a mention of these lists has to be made in the body of the petition or plaint and there would rarely be a plaint or petition having lists attached to it in the body of which no mention is made of the lists at all. In spite of this the Legislature has considered it necessary to lay down specifically in Sub-section (2) of Section 83 that the lists should also be signed and verified in like manner as the petition itself.

This provision of law would be rendered nugatory if the lists mentioned in the paragraphs of the petition are to be taken to be duly verified because the paragraphs of the petition themselves have been verified. The object of directing the verification of the contents of plaints or petitions is that the person should be aware of the fact that he is undertaking a particular responsibility in mentioning the facts in the plaint or, the petition and the object for having the lists verified is also the same.

By a mere mention of these lists in the relevant portions of the election petition the petitioner did not undertake the responsibility of saying on oath that every fact mentioned in the lists was true to his knowledge or to his belief. He merely said that the full details were set forth in the relevant lists. For the above reasons I think it was necessary that the lists also should have been duly verified.

6. The last argument of the learned counsel was that the election petition, when it came before the Election Tribunal was in proper form, the petitioner having already submitted the duly verified lists; and the Tribunal, therefore, could not dismiss this petition. I have already discussed this matter under point No. 2 and my opinion is that the Election Commission itself having failed to pass any order condoning the delay in filing the verified lists it was open to the Election Tribunal to dismiss the petition on the ground that the lists were not duly verified and the verified lists were supplied after the expiry of limitation.

The main argument that appears to have been addressed to the Election Tribunal was that the Tribunal could and should permit the petitioner to verify the original lists filed along with the petition, and the order of the Tribunal does not consider in any detail the question that the delay

made in submitting the verified lists had been condoned by the Election Commission.

The reason for this may be that Sub-section (2} of Section 83 says that the election petition shall be accompanied' by a list duly signed and verified, and the verified lists sent subsequently could not be said to have accompanied the petition. Be that as it may, when the papers came before the Election Tribunal the petition itself was accompanied by the original lists though the verified ones must also have been sent along with it.

The Tribunal had the petition published in the Official Gazette and here again the unverified lists were published and no attempt appears to have been made by the petitioner to have the verified lists also published. Looking to the facts as a whole it cannot be said that the petition, when it came before the Tribunal, was not exactly as it had been filed before the Election Commission with the addition of the verified lists sent subsequently.

The Commission itself not having decided any point, it was open to the Tribunal to consider whether the election petition complied with the requirements of Sections 81 and 83 of the Act or not. A similar point came up for consideration before their Lordships of the Supreme Court in the case of - 'Dinabandhu Sahu v. Jadumoni Mangaraj', AIR 1954 SC 411 (A), and their Lordships observed:

"There is no provision corresponding to the proviso to Section 85 conferring express power on the Election Commission to permit amendment of the verification. Whether it has inherent power to permit such amendment, it is not necessary to decide, because when it did not, in fact, dismiss the petition under Section 85 for not complying with S, 83 and passed an order under Section 86 appointing an Election Tribunal for the hearing of the petition, the matter is thereafter governed by Section 80(4) of the Act, and it is a matter of discretion with the Election Tribunal either to dismiss the petition for defective verification or not."

The difference in the instant case and the case before the Supreme Court is that in the case before the Supreme Court the Election Tribunal had permitted amendment of the verification whereas in the instant case it has been refused and that in the Supreme Court case there was an express order passed by the Election Commission condoning the delay made in filing the petition, whereas there is no such order in the instant case condoning the delay made in filing the verified lists.

But I think that the principle laid down by their Lordships supports the contention of the learned counsel for the respondent.

7. It is true that the petitioner's election petition has been dismissed on merely technical grounds and it may have been a better exercise of the discretion to have permitted the petitioner to verify the original lists, but the Election Tribunal having exercised their discretion against the petitioner it is not a matter, I think, in which I can quash the order of the Election Tribunal. This petition is accordingly dismissed but I direct the parties to bear their own costs of this petition.