K.Venkataramiah vs A. Seetharama Reddy & Ors on 12 February, 1963

Equivalent citations: 1963 AIR 1526, 1964 SCR (2) 35, AIR 1963 SUPREME COURT 1526, 1963 ALL. L. J. 903, 1964 (1) SCJ 37, 1964 2 SCR 35, 1964 (1) ANDHLT 64

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Bench: K.C. Das Gupta, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J.C. Shah

PETITIONER:
K.VENKATARAMIAH

Vs.

RESPONDENT:
A. SEETHARAMA REDDY & ORS.

DATE OF JUDGMENT:
12/02/1963

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1963 AIR 1526 1964 SCR (2) 35

ACT:
Election Petition--Age of Candidate on date of nomination or election-Admission of additional evidence in High Court--When can be allowed--Additional evidence taken with consent of parties--Effect--Constitution of India, Art. 173 (b)--Code of Civil Procedure, 1908 (Act 5 of 1908), O. 41, R. 27.

HEADNOTE:
The appellant challenged the validity of election of respondent on the grounds that he was below 30 years on the

relevant date, that his election was vitiated by undue influence exercised on the voters by some Ministers of the State, that the secrecy of ballot was not maintained and that the election was void on account of improper deletion of names of voters from the final list. All the objections were rejected by the Election Tribunal which dismissed the election petition. On appeal, the High Court confirmed the findings of the Election Tribunal and dismissed the appeal. The appellant came to this Court by special leave.

The appellant challenged the decision of the High Court mainly on the ground that in reaching its conclusion on the question of age of the respondent on the date of election, the High Court took into consideration evidence which was not legally available for consideration and that the additional evidence was admitted without complying with the provisions of law.

Held, that the High Court allowed additional evidence to be admitted as it required that evidence either to enable it to pronounce judgment or for any other substantial cause within the meaning of R. 2 7 (1) (b) of 0. 41 of the Code of Civil Procedure. It could not be said that the High Court made the order for admission of additional evidence without applying its mind.

The appellate court has power to allow additional evidence not only if it requires such evidence "to enable it to
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pronounce judgment" but also for "any other substantial cause." There may be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is and so it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause."

Held, also, that the omission of the High Court to record the reasons for allowing additional evidence does not vitiate such admission. The provision is not mandatory although where a further appeal lies from the decision of the appellate Court, the recording of the reasons may be necessary and useful to the Court of further appeal for deciding whether the discretion had been judicially exercised by the Court below or not and the omission to record the reasons must be treated as a serious defect.

When additional evidence was taken with the assent of both sides or without objection at the time it was taken, it is not open to a party to complain of it later on. As the appellant did not press his application against the admission of additional evidence, the objection must be over-ruled.

Arjan Singh v. Kartar Singh. [1951) S. C. R. 258, Sreemanchunder v. Gopalchunder, (1866) 11 M. 1. A. 28

Manmohan Dag v. Musammat Ramdie (1931) 35 C. W. N. 925 Gopal Singh v. Jhakri Rai, (1885) 1. L. R. 12 Cal. 37, Parsotim v. Lal Mohar, (1931) L. R. 58 I.A. 254 and Jagamath Prasad v. Hanuman Pershad (1909) L. R. 36 I.A. 221, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 676 of 1962. Appeal by special leave from the judgment and decree dated September 5, 1961, of the Andhra Pradesh High Court at Hyderabad in Special Appeal No. 3 of 1961.

K. Bhimsankaram, A. Ranganadham Chetty,A. Vadavalli, E. Udayarathnam and A. V. Rangam, for the appellant.

A. V. Viswanatha Sastri and P. Thiagarajan, for respondent No. 1.

K. R. Chaudhri, V. C. Prashar and Amarsingh Chaturvedi for respondent No. 2.

1963. February 12. The judgment of the Court was delivered by DAS GUPTA. J.-This is an appeal against a judgment and order of the High Court of Andhra Pradesh confirming. an order of the Election Tribunal, Hyderabad by which the Tribunal dismissed an election petition filed by the present appellant. By that petition this appellant sought a declaration that the election of three persons, the present respondent, Seetharam Reddy, one Anandam and M. Ataur Rahman be declared void and that he, the petitioner, be declared as duly elected to the Legislative Council of the Andhra Pradesh from Telangana Graduates Constituency. In this appeal we are no longer concerned with the question of validity of elections of Mr. Anandam or Mr. M. Ataur Rahman but only with that of the respondent Seetharam Reddy. The appellant challenges the decision of the High Court mainly on the ground that in reaching its conclusion on 'the vital question of the age of Seetharam Reddy on the date of election the High Court took into consideration evidence which was not legally available for such consideration. Though a large number of objections were raised in the petition to contest the validity of Seetharam Reddy's election, only four of them were ultimately pressed before the Election Tribunal, viz., (1) That Seetharam Reddy was disqualified to be chosen to fill a seat in the Legislative Council under Art. 173 (b) of the Constitution his age being below 30 years on the relevant date; (2) That the election was vitiated by undue influence exercised on the voters by some Ministers of the State of Andhra Pradesh ; (3) That the secrecy of the ballot was not maintained, and (4) That the election was void on account of improper deletion of names of voters in the final list.

All these objections were rejected by the Election Tribunal which accordingly dismissed the petition. On appeal, the High Court confirmed the findings of the Election Tribunal on all these points and dismissed the appeal. Faced with the position that the correctness of these findings which are all findings of facts is not open to challenge before this Court in this appeal by special leave, the appellant has raised the contention that the High Court's decision on the question of age of Seetharam Reddy was vitiated by the error of law in that additional evidence was admitted and considered by the High Court without complying with the provisions of law.

It appears that a considerable amount of oral and documentary evidence was adduced before the Tribunal on this question of Seetharam Reddy's age. While the petitioner tried to establish that Seetharam Reddy was born. in October 1931, Seetharam Reddy tried to establish that he was born sometime in 1928. The Tribunal rejected as unworthy of credit the oral testimony adduced by either side. It also rejected most of the documentary evidence, including R-5 and R-6, R-11 and R-12. R-5 is a birth register; R-6 is an entry therein, R-11 is a certificate purporting to be issued by the Head Master of the Muslim High School, Kurnool, in respect of the age of the respondent Seetharam Reddy while R-12 is an application said to have been made at the time of his admission to this school. The Tribunal's finding was that Seetharam Reddy did not study in the Kurnool Muslim High School. The Tribunal also rejected the documentary evidence produced on behalf of the petitioner seeking to show that the respondent Seetharam Reddy was born on October 10, 1931. Ultimately, however, the Tribunal decided the issue as regards the age against the petitioner on the basis of certain documents in con- nection with the proceedings before the judicial Committee of the Privy Council which showed that the respondent Seetharam Reddy was a major by the year 1356 Fasli. It appears that in that year an appeal was pending in the judicial Committee of the Privy Council which had arisen out of a suit regarding the adoption of Seetharam Reddy by one Tuisamma, and the party who contested the alleged adoption filed a petition to declare him (Seetbaram Reddy) as a major. Exhibit R-10 is that petition. After notice was served a power (wakalatnama) was filed by Seetharam Reddy as a major in the appeal. In this wakalatnama (Ex. R-3) Seetharam Reddy's age was given as 19 years. Exhibit R- 13 was the notice issued to Seetharam Reddy in those proceed- ings.

The Tribunal was of opinion that the genuineness of these documents, Exhibits R-3, R-10 and R-13, could not be q questioned and it was clear that the respondent was treated as a major in the proceedings before the judicial Committee from and after 1356 Fasli. That showed, according to the Tribunal, that he was not less than 30 years of age on the date of election or nomination.

The High Court also came to the same conclusion on this issue as regards Seetharam Reddy's age. In coming to this conclusion it has relied not only on the wakalatnama Ex. R- 3 mentioned above but also on four other documents, viz., Exs. R-5 and R-6, which the Tribunal rejected as unreliable and Exs. R-19 and R-20 which were not tendered in evidence before the Tribunal but came before the High Court as additional evidence. The appellant contends that the High Court acted without jurisdiction in admitting additional evidence.

We are clearly of opinion that even if it was found that the High Court erred in taking the additional evidence that would not be a case of lack of jurisdiction but would be an error in the exercise of jurisdiction. As was pointed out however by this Court in Arjan Singh v. Kartar Singh (1).

> "The discretion to receive and admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in Order XLI, rule 27, of the Code of Civil procedure." The question whether in the present case the High Court exercised the discretion judicially has therefore to be examined by us.
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> Section 107 of the Code of Civil Procedure' empowers the appellate court "to take additional evidence or to require such evidence to be taken," "subject to such

conditions and limitations as may be prescribed." Rule 27 of Or. 41 of the Code of Civil Procedure prescribes the conditions and limitations in the matter. The Rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced. One class is where the Court appealed from has refused to admit evidence which ought to have been admitted. The other class is where the appellate court requires such additional evidence for itself-either to enable it to pronounce judgment or for any other substantial cause. The second class of the rule requires that when additional evidence is allowed to be produced by an appellate court the Court shall record the reason for its admission.

(1) [1951] S.C.R, 258.

The additional evidence that was produced in this case had not been tendered in evidence before the Election Tribunal and so this case does not fall within the first class mentioned above. Obviously, therefore, the High Court allowed the. production of this evidence on its own requirement.

It is contended before us on behalf of the appellant that the learned judges made the order mechanically without applying their minds to the requirements of Or. 41 r. 27 of the Code of Civil Procedure. Support for this contention is sought from the fact that the High Court did not record its reasons for the admission of the additional evidence as required by the second clause of the rule. The importance of this provision for recording of the reasons for admission of additional evidence has been emphasized in several cases (Vide., Sreemanchunder v. Gopalchunder (1) Manmohan Das v. Mutsammat Ramdei (2)) .

It is very much to be desired that the courts of appeal should not overlook the provisions of cl. (2) of the Rule and should record their reasons for admitting additional evidence. We are not prepared, however, to accept the contention of the appellant that the omission to record the reason vitiates the admission of the evidence. Clearly, the object of the provision is to keep a clear record of what weighed with the appellate court in allowing the additional evidence to be produced-whether this was done on the ground

(i) that the court appealed from had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the appeal or (iii) it allowed this for any other substantial cause. Where a further appeal lies from the decision of the appellate court such recording of the reasons is necessary and useful also to the court of further appeal for deciding whether the discretion under the (1) [1866] 11 M.1.A. 28 (2) (1931) 35 C.W.N, 925.

rule has been judicially exercised by the court below. The omission to record the reason must therefore be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory. For, it does not seem reasonable to think that the legislature intended that even though in the circumstances of a particular case it could be definitely ascertained from the

record why the appellate court allowed additional evidence and it is clear that the power was properly exercised within the limitation imposed by the first clause of the Rule all that should be set at naught merely because the provision in the second clause was not complied with. It may be mentioned that as early as 1885 when considering a similar provision in the corresponding section of the Code of 1882, viz., s. 586, the High Court of Calcutta held that this provision for recording reasons is merely directory and not imperative vide Gopal Singh v. Jhakri Rai(1). We are aware of no case in which the correctness of this view has been doubted. It is worth noticing that when the 1908 Code was framed and Or. 41 r. 27 took the. place of the old section 568, the legislature was content to leave the provision as it was and did not think it necessary to say anything to make the requirement of recording reasons imperative. It is true that the word "'shall" is used in R. 27 (2); but that by itself does not make it mandatory. We are therefore of opinion that the omission of the High Court to record reasons for allowing additional evidence does not vitiate such admission.

Nor are we prepared to agree with the learned Counsel that this omission justifies the conclusion that the High Court acted mechanically in the matter, without applying its mind to the requirements of the Rule. The record before us shows that the hearing of the appeal before the High Court commenced on July 18, 1961 and after the (1) (1885) I.L.R. 12 Cal. 37.

appellant's Counsel had concluded his arguments the respondent's Counsel started addressing the Court. He continued his arguments on the next date, i.e., July 19. On the next date, i.e., July 20, 1961 an application was made on behalf of the respondent, Seetharam Reddy, praying that two registers of admission and withdrawals of the Government Muslim High School, Kurnool, be received and admitted as additional evidence in the appeal. (It may be stated that the petition itself bears the date, July 18, but the supporting affidavit bears the date 20 July). It was stated on affidavit that both these registers had been summoned along with the other documents by the appellant, Venkataramiah, and were actually produced before the Election Tribunal by the Head Master and further that these had been transmitted to the High Court along with the records of the case. It was stated that these documents had "an important bearing" upon the case and were "required to be looked into" to arrive at a just and correct conclusion in regard to Issue No. 1. On the following date i. e., of July 21, the appellant Venkataramiah put in his counter- affidavit objecting to the respondent's prayer and in para, 6 of this counter affidavit we find the following statement :-

> "In the circumstances it is submitted that the provisions of Or. 41 Rule 27 C. P. C., are not complied with. It was not offered as evidence before the Tribunal. Admittedly it was available at the time of the trial and it is not the case of the petitioner that notwithstanding exercise of due diligence., was not within his knowledge or could not be produced by him at the time when the decision was pronounced by the Tribunal. It is not in the interest ofjustice nor it is necessary to enable this Court to pronounce judgment to admit them as additional evidence. On the other hand, the admission of the registers as evidence would enable the party to go behind his case stated by him in his counter affidavit before the Election Tribunal and set up altogether an inconsistent case. Hence the said Admission Registers are neither relevant nor material."

The High Court passed the order for the taking of additional evidence on the same date. How the High Court considered the matter is best shown by a passage from the judgment pronounced by the Court in the appeal. After pointing out that the Tribunal "was not prepared to place any reliance on Exhibits R-11 and R-12 and was of the opinion that the 1st respondent did not study in Government Mohammadan High School, Kurnool, and that Exhibit R-12 was concocted, if it was to be argued that it relates to the present 1st respondent," the judgment proceeds thus : -

> "During the course of the arguments before us, it was noticed that two admission registers relating to the High School for the relevant period were in fact summoned for by the learned Counsel for the petitioner and were produced be- fore the Tribunal. For some reason, which is not clear to us, these registers were not proved and marked as exhibits. These registers were sent to the High Court for hearing of the above appeal and they were placed before us. We are told that the 1st respondent also applied that these registers may be summoned for from the High School. But when he has realised that the petitioner himself has summoned for them, it was not necessary for the 1st respondent to summon for them again. Whatever it be, these registers were before the Tribunal and are before us. But as neither party could rely upon them without their being proved and exhibited, the 1st respondent filed C.M.P. No. 7115/61 under Or. 41 r.27 and section 151 C.P.C. to receive them as evidence and mark the registers, as exhibits. By our order dated 21-7-1961 we permitted the 1st respondent in the appeal to prove these documents before the Election Tribunal. We also directed that the appellant is at liberty to cross-examine the persons, who might be summoned to prove these documents. We also directed the Tribunal to record the evidence adduced in proof of these two registers and submit the same to the High Court for consideration in the above appeal. The Tribunal accordingly re. called R.W.8, the Head Master, Government Muslim High School, Kurnool, and also examined R.W.10, the Head Master of the same school for the years 1936 to 1945. The Register of Admissions and Withdrawals relating to the School from 7-7-1919 to 15-1- 1938 is marked as exhibit R-19 and the register from 30-6- 1926 to 14-2-1949 is marked as Exhibit R-20. The entries in the two registers relating to the 1st respondent are Exhibits R-21 and R-24."

In view of what the High Court has stated in this passage it is not possible to say that the High Court made the order for admission of additional evidence without applying its mind. It seems clear that the High Court thought, on a consideration of the evidence, in the light of the arguments that had been addressed already before it that it would assist them to arrive at the truth on the question of Seetharam Reddy's age if the entries in the admission registers of the School were made available. It was vehemently urged by the learned Counsel for the appellant that there was such a volume of evidence before the High Court that it could not be seriously suggested that the Court required any additional evidence "to enable it to pronounce judgment". The requirement, it has to be remembered, was the requirement of the High Court, and it will not be right for us to examine the evidence to find out whether we would have required such additional evidence to enable ""us" to pronounce judgment. Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce

judgment" but also for "'any other substantial cause." There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "'to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under R-27(1) (b) of the Code.

It is easy to see that such requirement of the 'Court to enable it to pronounce judgement or for any other substantial cause is not likely to arise ordinarily unless some inherent lacuna or defect become apparent on an examination of the evidence. That is why in Parsotim's case (1), the Privy Council while discussing whether additional evidence can be admitted observed:-

> "It may be required to enable the Court to pronounce judgment, or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but "when on examining the evidence as it stands,. some inherent lacuna or defect becomes apparent."

As the Privy Council proceeded to point out:-

> "It may well be that the defect may be pointed out by a party, or that a party, may (1) (1931) L.R. 58 I.A. 254.

move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands."

We are satisfied that in the present case the High Court allowed additional evidence to be admitted as it required such evidence either to enable it to pronounce judgment or for any other substantial cause within the meaning of Rule 27(1)(b) of Or. 41 of the Code. The contention that the decision of the High Court on the question of the respondent's age was vitiated by reason of it being based on inadmissible evidence, must therefore fail. Another difficulty in the appellant's way may also be mentioned. As has been said above, the appellant did file before the High Court a petition objecting to the reception of additional evidence. We find it stated however in the High Court's order refusing the application for a certificate under Art . 133 (1)(c) of the Constitution that no objection that the requirements of Or. 41 r. 27. C.P.C., were not satisfied, was raised either at the time when the court directed the Tribunal to record the statements or at the time of the hearing of the appeal. This order was passed by the learned Chief justice and Mr. justice Chandrasekhara Sastry, who had made the order allowing admission of additional evidence and also heard the appeal. We are bound to hold therefore that though the appellant did make an application objecting to the admission of additional evidence he did-not press that application. On the principle laid down in Jagarnath Pershad v. Hanumam Pershad (1), that when additional evidence was taken with the assent of both sides or without objection at the time it was taken, it is not open to a party to complain of it later on, the appellant cannot now be heard to say that the (1) (1909) L.R. 36 I.A. 221.

additional evidence was taken in this case in breach of the provisions of law.

There is nothing therefore that would justify us in interfering with the findings of facts on which the High Court based its decision.

The appeal is accordingly dismissed with costs. Appeal dismissed.