Supreme Court of India
Om Prakash vs Santosh And Others on 2 February, 1990
Equivalent citations: AIR 1990 SC 895, JT 1990 (1) SC 337, 1990 (1) SCALE 282, (1990) 2 SCC 252, 1990 (1) UJ 370 SC
Author: M Kania
Bench: M Kania, R Sahai
ORDER M.H. Kania, J.

1. This is an appeal directed against the judgment of a learned Single Judge of Allahabad High Court in Election Petition No. 12 of 1985. The dispute relates to the elections held in 1985 fbr election of members to the Legislative Assembly of the State of Uttar Pradesh. The term of the U.P. Legislative Assembly elected at that time has already expired, fresh elections have already been held and results declared. In these circumstances and taking into account the other circumstances which shall presently point out, in our view, the appeal does not require much deliberation.

2. The dispute relates to the election in respect of Constituency No. 310, namely, (Chibramou Constituency) in the district Farukhabad in Uttar Pradesh. The last date for filing of nomination papers was February 6, 1985. On that day the appellant, respondent No. 1 and several other candidates filed their nominations. The day of scrutiny was filed as February 7, 1985. On the day of the scrutiny the appellant filed an objection against the nomination of all other candidates including respondent No. 1 on the ground that, as they had sworn the affidavit making oath or affirmation and filed the same prior to the filing of their respective nomination papers, their nomination papers were liable to be rejected under Sub-rule (c) of Rule 10 in Chapter IV of the Hand Book for Candidates published by the Chief Election Commissioner and as held by this Court in Sheikh Abdul Rehman v. Jagat Ram Aryan . This objection was rejected by the Returning Officer taking the view that there was no time gap between the making of the oath and the filing of the nomination papers. Thereafter several of the candidates withdrew their nominations and those of them who did not withdraw their nominations have been joined as respondents to the petition. The respondents other than respondent No. 1 are absent although served by substituted service. It is common ground that at the election the appellant secured only a few hundred votes whereas respondent No. 1 who was the successful candidate obtained votes exceeding fifteen thousand. Respondent No. 1 was duly declared elected at the said election. In the election petition the appellant has challenged the election of respondent No. 1 on the ground that his nomination paper was wrongly accepted, that the objection filed by the appellant against the nomination papers of respondent No. 1 and the other candidates should have been upheld by the Returning Officer and the said nominations declared invalid. This contention was negatived by the High Court because on the scrutiny of the evidence, the learned Judge took the view that there was no time gap between making of the oath or affirmation and filing the same on the one hand and the filing of the nomination papers of respondent No. 1 as well as other candidates. We may at this stage clarify that the High Court has not scrutinised the evidence relating to the filing of nomination papers and the making and filing of oath as far as the candidates other than respondent No. 1 are concerned out proceeded on the footing that the factual position in their cases was the same as in the case of respondent No. 1 and this has not been disputed by any of the counsel present before us It is this decision of the High Court which is assailed before us in this appeal.

3. Learned counsel for the appellant has submitted that the aforesaid decision of the Supreme Court clearly lays down that the election law in our country requires that the oath or the affirmation must be made and filed after filing of the nomination papers and this is supported by the language of the form of the oath itself. He submitted that the finding of the learned Judge in the impugned judgment that this requirement was complied with is erroneous.

4. As we have already pointed out, the Legislative Assembly elected for the State of Uttar Pradesh in the 1985 elections has already been dissolved and the new Legislative Assembly has already been elected for that State. Moreover, the appellant only secured a few hundred votes whereas respondent No. 1 has secured several times the number of votes secured by the appellant. Although it is urged by learned counsel for the appellant that in case the appellant succeeds in showing that the nomination papers of respondent No. 1 as well as the other respondents were invalid and were wrongly accepted the appellant would be entitled to be declared as having been duly elected as a member of the said Legislative Assembly, although dissolved and hence to pensionary rights. We find it difficult to accept that submission. Apart from any other consideration the fact remains that there were a number of other candidates who also stood for the said election in the said constituency some of whom must have secured more votes than the appellant. Although the Returning Officer and the learned Single Judge have both proceeded on the footing that they are in the same position as respondent No. 1 regarding the time when they made the oath and filed the same and the time when they filed their nomination papers there seems to be no adequate basis for this assumption and hence that question would have again been considered on evidence by the High Court. We do not think that we would be justified in directing the High Court to waste its time on examining this question merely with a view to support the possible claim of the appellant to pension on the footing urged by him. The learned Judge of the High Court after examining of the evidence has recorded a finding that the evidence of respondent that he made and subscribed his oath and filed the same after he filed his nomination papers is acceptable and we see no reason to take a different view.

5. In the result we find that the appeal must fail and is dismissed. In the circumstances of the case, however, we make no order as to costs throughout.