

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2122 OF 2012
(Arising out of SLP(C)No.16734 of 2011)

KAPIL MUNI KARWARIYA

...

APPELLANT

Vs.

CHANDRA NARAIN TRIPATHI

...

RESPONDENT

J U D G M E N T

JUDGMENT

ALTAMAS KABIR, J.

1. Leave granted.

2. On 2nd March, 2009, a Notification under Section 14 of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act", was issued by the Election Commission of India to constitute the 15th Lok Sabha by calling upon Parliamentary Constituencies of India to elect Members of the House of the People (Lok Sabha).

3. District Allahabad consists of two Parliamentary Constituencies, namely, 51-Phulpur Parliamentary Constituency and 52-Allahabad Parliamentary Constituency. The District Magistrate, Allahabad, was appointed by the Election Commission of India as the Returning Officer for 51-Phulpur Parliamentary Constituency. The Returning Officer notified the date of filing of nomination papers from 28th March, 2009, to 4th April, 2009, from 11.00 a.m. to 3.00 p.m. Separate dates were given for the other stages of the election. The date of polling was fixed on 16th

April, 2009 and the date of counting was fixed on 16th May, 2009, a month later, when the results were to be declared.

4. The Special Leave Petition is directed against the judgment and order dated 5th May, 2011, passed by the Allahabad High Court (Election Tribunal) in Election Petition No.1 of 2009, filed by the Respondent herein, Shri Chandra Narayan Tripathi @ Chandu Tripathi, in connection with the said election, under Sections 80, 80A/81 of the Representation of the People Act, 1951, for a declaration that the election of Shri Kapil Muni Karwaria as a Member of Parliament from 51-Phulpur Parliamentary Constituency of District Allahabad be set aside and be declared null and void. The said prayer was made in the background of the rejection of his nomination paper for election to the said Constituency by the Returning Officer. The said Chandra Narain Tripathi, who is the Respondent

herein, filed his nomination paper for election to the said Lok Sabha constituency as a candidate of Krantikari Jai Hind Sena. He challenged the Appellant's election on the ground that the nomination papers which he had filed to contest the election had been wrongly rejected.

5. There is no dispute that the Appellant filed his nomination paper as a candidate of the Bahujan Samaj Party and the Respondent filed his nomination paper for contesting the election to the aforesaid 51-Phulpur Parliamentary Constituency as a candidate of Krantikari Jai Hind Sena, which is an unrecognized political party. Accordingly, under Section 33 of the Representation of the People Act, 1951, his nomination paper was required to be subscribed by ten (10) proposers. His nomination paper was found to be defective, inasmuch as, the name of the second proposer, Pramod Kumar was found to have been deleted from the electoral roll.

According to the Appellant herein, Pramod Kumar, who was not a voter from 1st January, 2009, and had been declared "Vilopit", had subscribed to the nomination paper of the Respondent, though he was not a voter from the aforesaid constituency. According to the Appellant, the name of the said proposer No.2 was deleted from the electoral roll and, hence, the Respondent's nomination fell short of the reasonable number of proposers in terms of the first proviso to Section 33 of the 1951 Act.

6. After scrutinizing the nomination papers, the Returning Officer found that the nomination paper filed by the Election Petitioner, the Respondent herein, was invalid and defective and he, accordingly, rejected the said nomination paper. After the votes were counted, on 16th May, 2009, the Returning Officer declared the Appellant elected from the 51-Phulpur Parliamentary Constituency, as having secured the highest number of votes polled

for the said Lok Sabha seat. It is the said order of the Returning Officer which was challenged before the Election Tribunal by the Respondent herein by way of an Election Petition, being No.1 of 2009, on the ground that his nomination paper had been improperly rejected.

7. On 5th October, 2009, the Appellant filed an application under Section 86(1) of the 1951 Act, in Election Petition No.1 of 2009, praying for dismissal of the Election Petition on the ground of non-compliance of the provisions of Section 81(1) of the 1951 Act. One of the grounds taken by the Appellant in the application was that the Respondent was not an elector of 51-Phulpur Parliamentary Constituency within the meaning of Section 2(e) of the 1951 Act. It was urged that since the Respondent was not a duly elected candidate and did not also claim to be so, he was

not entitled to file the Election Petition under Section 81(1) of the 1951 Act.

8. The Appellant also filed another application under Order VII Rule 11 of the Code of Civil Procedure in the said Election Petition before the Election Tribunal on 5th November, 2009, for dismissal of the Election Petition for non-disclosure of the cause of action. In this application it was categorically indicated that the name of the proposer No.2, Mr. Pramod Kumar, had been struck off from the electoral roll and he was no more an elector from the said place and was not, therefore, entitled to propose the name of the Respondent for election to the 51-Phulpur Parliamentary Constituency.

9. The applications filed by the Appellant, the one under Section 86(1) of the 1951 Act and the other under Order VII Rule 11 of the Code of Civil Procedure, were heard together and were dismissed

by the Election Tribunal on 5th May, 2011. The Election Petition was, thereafter, directed to be listed for disposal of the amendment applications moved on behalf of the Appellant and also for settlement of issues.

10. It is the said interim order of the Election Tribunal, based on the two applications filed by the Appellant herein, against which this Special Leave Petition has been filed.

11. Appearing for the Appellant herein, Mr. Ranjit Kumar, learned Senior Advocate, submitted that the Respondent had filed his nomination for contesting the election as an independent candidate. His nomination paper was, however, rejected by the Returning Officer on the ground that the nomination paper had not been subscribed by 10 proposers. The Respondent, thereafter, filed an Election Petition in the Election Tribunal challenging the election

of the Appellant herein on the ground that his nomination paper had been wrongly rejected and that he had been prevented from contesting the polls. In the said Election Petition, the Appellant herein filed two separate applications, one for setting aside the order passed by the Returning Officer holding that the Election Petition filed by the Respondent was not maintainable and the other for dismissal of the Election Petition under Order VII Rule 11 of the Code of Civil Procedure since the name of one of the proposers, Pramod Kumar, had been deleted from the voters' list and he was, therefore, not an elector on the date of nomination in the electoral roll relating to 261 Allahabad West Assembly Constituency. Accordingly, since he was not an elector of the said Constituency on the date of filing of the nomination papers, he was not eligible to subscribe the nomination paper of the Election Petitioner.

12. Both the objections taken by the Appellant herein were rejected by the Election Tribunal and the Election Petition filed by the Respondent herein, was held to be maintainable.

13. It was further submitted that Pramod Kumar's name having been deleted from the electoral roll, it would be clear from the electoral roll, which had been made an integral part of the Election Petition, that on the date of filing of nomination papers Pramod Kumar could not have been one of the 10 proposers of the Election Petitioner. Mr. Ranjit Kumar submitted that in the absence of the required number of proposers for the nomination paper of the Election Petitioner, as required under Section 33 of the 1951 Act, the Election Petitioner was not a duly nominated candidate and his nomination had been rightly rejected by the Returning Officer.

14. In support of his submissions, learned counsel referred to and relied upon the judgment of this Court in Charan Lal Sahu Vs. K.R. Narayanan [(1998) 1 SCC 56] and the decision in the case of Charan Lal Sahu Vs. Giani Zail Singh [(1984) 1 SCC 390] and a couple of other cases which do not say anything different from the other decisions. Mr. Ranjit Kumar urged that since the Election Petitions were original proceedings and not appealable, the Election Tribunal's jurisdiction cannot be confined to the grounds on which the Returning Officer rejected the nomination paper. In fact, it is not precluded from considering any other ground or fresh material having any relevance to the rejection of the Respondent's nomination paper. In this regard, reference was also made to the decision of this Court in J.H. Patel Vs. Subhan Khan [(1996) 5 SCC 312] and in the case of Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite

Patil [(2009) 13 SCC 131]. Urging that his interlocutory applications had been wrongly rejected, the Appellant prayed for setting aside the order passed by the Election Tribunal and to hold that the Election Petition was not maintainable.

15. The Respondent herein, whose nomination paper had been rejected, appeared and with the permission of the Court, was allowed to advance submissions in support of his case that the applications filed by the Appellant (the returned candidate) had been rightly rejected by the Election Tribunal. The Respondent urged that it has been wrongly held by the Returning Officer that the Respondent's nomination paper was not in order, since the name of Pramod Kumar was very much there in the voters' list, but may have been removed therefrom at a later stage. It was submitted that the said question is yet to be decided by the Election

Tribunal in the pending Election Petition and, accordingly, no order is called for in the present Appeal. As far as the decisions cited by Mr. Ranjit Kumar are concerned, it was submitted that the same did not help the Appellant's case, inasmuch as, the same related to the question that as Election Petitions were original proceedings, the Court's jurisdiction to consider the matter could not be confined only to the grounds on which the Returning Officer had rejected the nomination paper. In the said decisions it was also held that the Returning Officer was not precluded from considering any other ground or fresh material having bearing on the question of rejection of the nomination paper. It was further held that it is not only the decision making process but the merit of the decision of the Returning Officer which has to be seen while trying an Election Petition.

16. Having carefully considered the submissions made on behalf of the respective parties and having considered the fact that the Election Petition is yet to be disposed of by the Election Tribunal, we are of the view that making any observations in this proceedings would certainly have an effect on the pending proceedings before the Election Tribunal. We are, however, inclined to agree with the view taken by the Election Tribunal that the Election Petition filed by the Respondent herein was required to be considered on evidence on account of the allegations made therein.

17. The question regarding the right of Pramod Kumar to be a subscriber to the nomination paper filed by the Respondent herein is the fundamental question which is required to be considered in this case. Being the central question involved in the pending Election Petition, in our view, the allegations contained therein have to be decided

before a decision can be rendered regarding the validity of the Respondent's Election Petition. Whether the above-mentioned Pramod Kumar was eligible to subscribe to the nomination paper of the Respondent is a question which can only be decided on evidence. The Election Tribunal, in our view, did not commit any error in dismissing the applications filed by the Appellant herein for rejection of the Election Petition filed by the Respondent herein. In our view, no interference is called for with the order of the Election Tribunal and the Appeal is, therefore, liable to be dismissed. It is for the Election Tribunal to take up the matter and decide the same at an early date.

18. The Appeal is, therefore, dismissed in view of the observations made hereinabove. We, however, make it clear that the views expressed in this judgment are only confined to the disposal of the two objections which have been filed by the

Appellant herein before the Election Tribunal and the same should not influence the outcome of the pending Election Petition filed by the Respondent herein.

19. There shall, however, be no order as to costs.

.....J.
(ALTAMAS KABIR)

New Delhi
Dated:15.02.2012

.....J.
(SURINDER SINGH NIJJAR)