 # Law Today Live Doc. Id. 15662

SUPREME COURT OF INDIA

Before: S. A. Bobde, CJI., A. S. Bopanna & V. Ramasubramanian, JJ.

Civil Appeal No.2100 of 2020 Decided on: 24.11.2020

Tej Bahadur Appellant

Versus

Shri Narendra Modi Respondent

For Appellant(s):

Mr. Pradeep Kumar Yadav, Adv., Mr. Vishal Thakre, Adv., Mr. Abhay Singh Yadav, Adv., Mr. Rudra Pratap Yadav, Adv., Mr. V.K. Mumwalia, Adv., Mr. Sanjeev Malhotra, AOR

For Respondent(s):

Mr. Rajat Nair, AOR, Mr. kanu Agarwal, Adv., Ms. Aastha Mehta, Adv.

Representation of the People Act, 1951 (43 of 1951), Section 33, 79(b) 4, 81, 83, 86(1) – Code of Civil Procedure, 1908 (V of 1908), Order 6, Rule 16, Order 7 Rule 11 – Election petition – Cause of action – Locus Standi -- Rejection of plaint -- Election petition for declaring the election of the respondent to be void on the ground that the appellant's nomination was improperly rejected and further that the nomination of the respondent was wrongly accepted for want of disclosure of certain facts -- High Court dismissed the Election Petition on the ground that the appellant had no locus to challenge the election of the respondent since the appellant was neither an elector for such constituency nor was he a candidate.

-- Averments in the petition do not disclose that the appellant has a cause of action which invest him with right to sue. It is settled that where a person has no interest at all, or no sufficient interest to support a legal claim or action he will have no locus standi to sue. Entitlement to sue or locus standi is an integral part of cause of action.

-- Section 83 of the Act allows only an elector or candidate to maintain an Election Petition.

-- Impliedly, it bars any other person from filing an Election Petition -- In this sense the Election Petition can also be set to be barred by Section 81 read with Section 86(1) of the Act.

Election Petition has been rightly nipped in the bud -- Civil Appeal dismissed.

(Para 1-4, 25-27)

Cases referred:

1. Kuldeep Singh Pathania v. Bikram Singh Jaryal, Law Today Live Doc. Id. 10637 = 2017 (1) L.A.R. 118.

2. Charan Lal Sahu vs. Giani Zail Singh & Anr., (1984) 1 SCC 390.

3. Charan Lal Sahu v. Neelam Sanjeeva Reddy, (1978) 2 SCC 500.

4. Mithilesh Kumar Sinha v. Returning Officer for Presidential Election & Ors.

(1993) SUPP 4 SCC 386.

5. Charan Lal Sahu & Anr. v. K.R. Narayanan & Anr. (1998) 1 SCC 56.

6. Charan Lal Sahu v. Dr. A.P.J. Abdul Kalam & Ors., (2003) 1 SCC 609.

7. Bolin Chetia v. Jogadish Bhuyan & Ors., (2005) 6 SCC 81

8. T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467.

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S.A. BOBDE, CJI. –

1. This appeal arises out of the order passed by the Allahabad High Court in Election Petition No. 17 of 2019 allowing the respondent's application under Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') read with Section 86(1) of the Representation of the People Act, 1951 (hereinafter referred to as 'Act') and thereby dismissing the Election Petition filed against him. The said application was filed in the Election Petition questioning the election of the respondent Shri Narendra Modi to the 17th Lok Sabha from 77th Parliamentary Constituency (Varanasi), held in April – May 2019.

2. In the Election petition the appellant had prayed for declaring the election of the respondent to be void on the ground that the appellant's nomination was improperly rejected and further that the nomination of the respondent was wrongly accepted for want of disclosure of certain facts. Further, that the election was vitiated on account of misuse of official power by the Returning Officer and the Election Observer.

3. After due service, the respondent Shri Narendra Modi filed the application for dismissal of the petition contending that the petition does not disclose any cause of action and the appellant had no locus to file the petition in the absence of a certificate. The Allahabad High Court after hearing parties, by a detailed order dismissed the Election Petition on the ground that the appellant had no locus to challenge the election of the respondent from the Varanasi Parliamentary Constituency since the appellant was neither an elector for such constituency nor was he a candidate.

4. The instant appeal accordingly arises from an order passed by the Election Tribunal while considering and disposing the application filed under Order VII Rule 11 CPC seeking rejection of the Election Petition.

5. This matter must therefore necessarily be decided on the basis of the averments in the Election Petition and not on the basis of the reply of any of the respondents. (Vide: **Kuldeep Singh Pathania v. Bikram Singh Jaryal, (2017) 5 SCC 345 = Law Today Live Doc. Id. 10637 = 2017 (1) L.A.R. 118).**

6. For the Varanasi Constituency, the last date of filing the nominations was 29.04.2019. Scrutiny of the nomination forms was to be held on 30.4.2019. We are here mainly concerned with the question of the validity of the appellant's nomination since that has a direct bearing on the question whether he is candidate and has a right to question the election.

7. The appellant was an employee of the Border Security Force and as such held office under the Government of India. The appellant was dismissed from service on 19.4.2017. He filed two nominations, one on 24.4.2019 and another on 29.4.2019. The nominations have been found to be invalid by the

returning officer because they were not accompanied by a certificate to the effect that the appellant has not been dismissed for corruption or disloyalty to the State as required by Section 9(2)[1] read with Section 33 (3)[2] of the Act.

> *[[1]**S. 9(2)** :For the purpose of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact;*
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> *Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.]*
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> *[[2]**S. 33(3)** :Where the candidate is a person who, having held any office referred to in (section 9) has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.]*

8. Clause (6) of Part IIIA of Form 2A of the nomination paper contains a query whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or Government of any State. In the first nomination form filed by the appellant on 24.4.2019, the appellant stated 'Yes' against this query and disclosed the date of his dismissal as 19.4.2017. In the reply to the same query in the second nomination form filed by him on 29.4.2019, he stated 'No'. The Returning Officer issued two notices on 30.4.2019 referring to the different answers in the two nominations. The notices further pointed out that the appellant had placed on record evidence that he was dismissed from the service of Government of India within five years before the date of the nomination. But that his nomination form was not accompanied by the requisite certificate. He was required to submit a certificate of the Election Commission to prove that he was not dismissed from service on the ground of corruption or disloyalty to the State as required under Section 9 (2) and Section 33 (3) of the Act. He was given time up to 11:00 am on the next day i.e. 01.05.2019 by both notices to furnish such a certificate from the Election Commission. This time was given in accordance with the provision of Sub-section (5) of Section 36[3] which allows a candidate to rebut any objection not later than the next day but one.

> *[[3]**S.36(5) :** The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control;*
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> *Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.]*

9. The appellant replied to the first notice stating that he had not been dismissed from service on the ground of corruption or disloyalty to the State without however, making any attempt to provide a certificate from the Election Commission to that effect. After receiving the second notice on the same date he sent a letter and also wrote an email in the evening of 30.5.2019 to the Election Commission asking for a certificate when the time to produce it was to expire on 01.05.2019 at 11:00 am i.e. the next day. Obviously, the appellant did not have any such certificate in his possession.

10. The Returning Officer rejected the appellant's nomination papers on

01.05.2019 on the ground that it was not accompanied by a certificate from the Election Commission that his dismissal from service was not on the ground of corruption or disloyalty to the State.

11. This rejection of the appellant's nomination form on the ground that it was not accompanied by the requisite certificate constitutes the major challenge in the Election Petition. There are other grounds which are not relevant at this stage.

12. Mr. Pradeep Kumar Yadav, learned counsel appearing on behalf of the appellant placed reliance on the proviso of sub-section (5) to Section 36 of the Act. It is his contention that where an objection is raised by the Returning Officer on the nomination paper, the candidate concerned should be allowed time till next day but one to rectify the same. Such time was not permitted and as such the rejection of the nomination is contrary to law. In spite of repeated query, learned counsel failed to point out any evidence on record to show that the appellant had demanded time to produce the certificate not later than the next day but one following the date fixed for scrutiny. Appellant in his Memorandum of Appeal has raised the following ground: -

> "…that the appellant was not provided with sufficient time/opportunity to receive and submit the record, in the notice dated 30.04.2019 by the District Election Office, from the Election Commission of India…"

13. Mr. Harish N. Salve, learned senior counsel appearing for the respondent contended that the phrase employed in the proviso is "may be allowed time" and as such the time to be provided is at the discretion of the Returning Officer and the appellant cannot claim any manner of right. It is clear that there could be no occasion for a person to be allowed time where he has not demanded any such time. This contention on behalf of the appellant must be rejected.

14. Having noted the above contention, we feel that it would be futile to advert to further details relating to the right claimed by the appellant with reference to the proviso while contending that such right available has been denied to him. This is for the reason that as on the date of filing the nomination the appellant did not possess the required certificate which was not produced along with the nomination paper. In the oath letter dated 30.04.2019 relied upon by the learned counsel for the appellant, he merely justifies the absence of requisite certificate on the ground that he was not notified earlier and that he has never been dismissed on the basis of corruption or disloyalty to the State. Even the decision of the Returning Officer dated 01.05.2019 records that in appellant's reply he has stated that Section 9 and 33 (3) are not applicable to his case and he has submitted a representation to the Election Commission.

15. The averment contained in the Appeal Memo refers to the sequence wherein the appellant is stated to have made an attempt through his authorised representative to secure the certificate from the Office of the Election Commission of India but there is no averment to the effect that such certificate had been secured. If that be the position, it is clear that the appellant neither possessed the required certificate on the date of the filing the nomination, at the time of scrutiny, on the next day but one following the date fixed for scrutiny or even at the time of the filing the Election Petition.

16. Section 81 of the Act provides that an Election Petition may be

presented by (a) any elector or (b) any candidate at such election. The Explanation to Section 81 provides that an "elector" means a person who was entitled to vote at the election to which the election petition relates. In this case the election is to the Varanasi Parliamentary seat. Obviously, the appellant is not an elector registered in the Varanasi constituency since he is admittedly enrolled as an elector of Bhiwani, Mahendragarh Parliamentary Constituency, Haryana. His locus thus depends entirely on the question whether he is a candidate or can claim to be a duly nominated candidate.

17. The term 'candidate' is defined in Section 79 (b)4 of the Act. The first part of definition is intended to cover a person who has been duly nominated as a candidate. Inter-alia the second part covers a person who considers himself entitled to have been duly nominated as a candidate.

> *[[4]**S.79(b)** 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election;]*

18. According to the appellant, he is a person who has claimed to have been duly nominated as a candidate at the Varanasi Election and, therefore, the High Court ought to have considered his Election Petition as maintainable.

19. The question that arises is whether the appellant can claim to have been a duly nominated candidate at the said election. The answer must be in the negative. It is a condition for a valid nomination of a person who has been dismissed from service, that the nomination paper must be accompanied by a certificate to the effect that the person seeking nomination has not been dismissed for corruption or disloyalty to the State. Section 33(3) of the Act itself provides the consequence of the absence of such certificate and that is that such a person "shall not be deemed to be duly nominated as a candidate". The law itself deems that such a person cannot be duly nominated.

20. The requirement of Section 33(3) that a nomination of a dismissed officer must be accompanied by a certificate that he was not dismissed on the ground of corruption or disloyalty to the State must be read as obligatory. It is couched in a language which is imperative and provides for a certain consequence viz. that such a person shall not be deemed to be a duly nominated candidate. The word 'deemed' in this provision does not create a legal fiction. It clarifies any doubt anyone might entertain as to the legal character of a person who has not and states with definiteness that such a person shall not be deemed to be duly nominated. It would, therefore, be absurd to construe the legislative scheme as permitting a person who has not filed his nomination in accordance with Section 33 (3), as enabling him to claim that he is a duly nominated candidate even though the provision mandates that such a person shall not be deemed to be a duly nominated candidate.

21. We are of the view that the mandate of the law that such a person shall not be deemed to be duly nominated must be given full effect and no person must be considered as entitled to claim that he has been duly nominated even though he does not comply with the requirement of law. Though these observations were made in the context of different requirements as to nominations, the law laid down by this Court in several decisions including **Charan Lal Sahu vs. Giani Zail Singh & Anr., (1984) 1 SCC 390** must clearly govern the present case. This Court in that case considered the question: when a person can claim to have been duly nominated as a candidate under Section 13(a) of the Presidential and Vice-Presidential

Elections Act, 1952. The Court observed: -

> "11. ……But, the claim to have been duly nominated cannot be made by a person whose nomination paper does not comply with the mandatory requirements of Section 5-B (1) (a) of the Act. That is to say, a person whose nomination paper, admittedly, was not subscribed by the requisite number of electors as proposers and seconders cannot claim that he was duly nominated. Such a claim can only be made by a person who can show that his nomination paper conformed to the provisions of Section 5-B and yet it was rejected, that is, wrongly rejected by the Returning Officer. To illustrate, if the Returning Officer rejects a nomination paper on the ground that one of the ten subscribers who had proposed the nomination is not an elector, the petitioner can claim to have been duly nominated if he proves that the said proposer was in fact an 'elector'.
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> 12. Thus, the occasion for a person to make a claim that he was duly nominated can arise only if his nomination paper complies with the statutory requirements which govern the filing of nomination papers and not otherwise. The claim that he was 'duly' nominated necessarily implies and involves the claim that his nomination paper conformed to the requirements of the statute. Therefore, a contestant whose nomination paper is not subscribed by at least ten electors as proposers and ten electors as seconders, as required by Section 5-B (1)(a) of the Act, cannot claim to have been duly nominated, any more than a contestant who had not subscribed his assent to his own nomination can. The claim of a contestant that he was duly nominated must arise out of his compliance with the provisions of the Act. It cannot arise out of the violation of the Act. Otherwise, a person who had not filed any nomination paper at all but who had only informed the Returning Officer orally that he desired to contest the election could also content that he 'claims to have been duly nominated as a candidate'."

Applying the above decision to the present case it was necessary for the appellant to show that his nomination paper conformed to the provisions of Section 33(3) of the Act.

22. Admittedly appellant's nomination paper was not accompanied by a certificate to the effect that he had not been dismissed for corruption or disloyalty to the State. Any other construction of the scheme of the law in this regard would be startling as it would enable a person who was not an elector and not even entitled to be nominated as a candidate for an election to question the election of a returned candidate.

23. At this stage we would like to record that the material facts are not in dispute. It is not in dispute that the appellant's nomination paper was not accompanied by a certificate from the Election Commission, further, he was served a notice to cure the defect. He did not do so. It is settled that for a person to make claim that he was duly nominated, his nomination paper must comply with statutory requirements which govern the filing of nomination papers and not otherwise. [Vide **Charan Lal Sahu v. Neelam Sanjeeva Reddy, (1978) 2 SCC 500;** Charan Lal Sahu v. Giani Zail Singh (Supra);

Mithilesh Kumar Sinha v. Returning Officer for Presidential Election & Ors. (1993) SUPP 4 SCC 386; Charan Lal Sahu & Anr. v. K.R. Narayanan & Anr. (1998) 1 SCC 56; Charan Lal Sahu v. Dr. A.P.J. Abdul Kalam & Ors., (2003) 1 SCC 609].

24. We, therefore, see no merit in the appeal and do not consider it necessary to issue notice to the respondent. The appeal does not raise any arguable question of fact or law and admitting the appeal would amount to an exercise in futility for the court to do so. In **Bolin Chetia v. Jogadish Bhuyan & Ors., (2005) 6 SCC 81,** R.C. Lahoti C.J., speaking for the court observed as follows: -

> "It is thus clear that the appellate courts including the High Court do have power to dismiss an appeal summarily. Such power is inherent in appellate jurisdiction. The power to dismiss summarily is available to be exercised in regard to first appeals subject to the caution that such power will be exercised by way of exception and if only the first appellate court is convinced that the appeal is so worthless, raising no arguable question of fact or of law, as it would be a sheer wastage of time and money for the respondent being called upon to appear, and would also be an exercise in futility for the court. The first appellate court exercising power to dismiss the appeals summarily ought to pass a speaking order making it precise that it did go into the pleas – of fact and/or law – sought to be urged before it and upon deliberating upon them found them to be devoid of any merit or substance and giving brief reasons. This is necessary to satisfy any superior jurisdiction whom the aggrieved appellant may approach, that the power to summarily dismiss the appeal was exercised judicially and consciously by way of an exception."

25. We find that the averments in the petition do not disclose that the appellant has a cause of action which invest him with right to sue. It is settled that where a person has no interest at all, or no sufficient interest to support a legal claim or action he will have no locus standi to sue. The entitlement to sue or locus standi is an integral part of cause of action. In **T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467,** V.R. Krishna Iyer J., speaking for this Court held that if on a meaningful-not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should be nipped in the bud at the first hearing.

26. Section 83 of the Act allows only an elector or candidate to maintain an Election Petition. Impliedly, it bars any other person from filing an Election Petition. In this sense the Election Petition can also be set to be barred by Section 81 read with Section 86(1) of the Act.

27. We are, therefore, of the view that the present Election Petition has been rightly nipped in the bud. The Civil Appeal is, therefore, dismissed.

Appeal dismissed.

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