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KAPIL MUNI KARWAFIYA

v.

CHANDRA NARAIN TRIPATHI  
(Civil Appeal No. 2122 of 2012)

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FEBRUARY 15, 2012

**[ALTAMAS KABIR AND SURINDER SINGH NIJJAR, JJ.]**

*Representation of the People Act, 1951: ss.81, 86 - Election petition - Maintainability of - Election petition challenging the election of returning candidate on the ground that nomination papers of respondent were wrongly rejected by the returning officer - The ground of rejection of nomination papers was that the name of the second proposer was deleted from the electoral roll and, therefore, nomination was not subscribed by ten proposers as required u/s.33 - Returning candidate filed applications for dismissing election petition for non-compliance of s.81(1) and for non-disclosure of cause of action - Election Tribunal dismissed the applications - On appeal, held: The view taken by the Election Tribunal was correct that the Election Petition filed by the Respondent was required to be considered on evidence on account of the allegations made therein - The question regarding the right of the second proposer to be a subscriber to nomination paper filed by the respondent was the fundamental question which could only be decided on evidence - No interference called for with the order of the Election Tribunal.*

**The District Allahabad consists of two Parliamentary Constituencies, namely, 51-Phulpur Parliamentary Constituency and 52-Allahabad Parliamentary Constituency. The appellant filed his nomination paper as a candidate of the Bahujan Samaj Party. The Respondent filed his nomination paper for contesting the election to the said 51-Phulpur Parliamentary Constituency as a**

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candidate of Krantikari Jai Hind Sena. The nomination of the respondent for contesting election was rejected on the ground that the nomination was not subscribed by 10 proposers as per the requirement of Section 33 of the Representation of the People Act, 1951 since the name of the second proposer, 'PK' was found to have been deleted from the electoral roll. The appellant was declared elected.

The Respondent filed election petition for a declaration that the election of the appellant as a Member of Parliament from 51-Phulpur Parliamentary Constituency of District Allahabad be set aside and be declared null and void on the ground that his nomination paper which he had filed to contest the election were wrongly rejected.

The appellant filed an application under Section 86(1) of the 1951 Act, in election petition praying for dismissal of the election petition on the ground of non-compliance of the provisions of Section 81(1) of the 1951 Act. The appellant also filed another application under Order VII Rule 11, CPC in the said Election Petition 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, 'PK' 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. These applications were dismissed by the Election Tribunal. 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. The instant appeal was filed challenging the said interim order of the Election Tribunal.

## A Dismissing the appeal, the Court

HELD: Having considered the fact that the Election Petition is yet to be disposed of by the Election Tribunal, making any observations in this proceedings would certainly have an effect on the pending proceedings before the Election Tribunal. The view taken by the Election Tribunal was correct that the Election Petition filed by the Respondent was required to be considered on evidence on account of the allegations made therein. The question regarding the right of 'PK' to be a subscriber to the nomination paper filed by the Respondent is the fundamental question which is required to be considered in this case. Being the central question involved in the pending Election Petition, the allegations contained therein have to be decided before a decision can be rendered regarding the validity of the Respondent's Election Petition. Whether 'PK' was eligible to subscribe to the nomination paper of the Respondent is a question which can only be decided on evidence. The Election Tribunal did not commit any error in dismissing the applications filed by the Appellant for rejection of the Election Petition filed by the Respondent herein. 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. [Paras 16, 17] [965-B-E]

*Charan Lal Sahu v. K.R. Narayanan* (1998) 1 SCC 56; 1997 (5) Suppl. SCR 317; *Charan Lal Sahu v. Giani Zail Singh* (1984) 1 SCC 390; 1984 (2) SCR 6; *J.H. Patel v. Subhan Khan* (1996) 5 SCC 312; 1996 (3) Suppl. SCR 864; *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil* (2009) 13 SCC 131; 2009 (9) SCR 538 - referred to.

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**Case Law Reference:**

1997 (5) Suppl. SCR 317 referred to Para 14

1984 (2) SCR 6 referred to Para 14

1996 (3) Suppl. SCR 864 referred to Para 14

2009 (9) SCR 538 referred to Para 14

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2122 of 2012.

From the Judgment & Order dated 5.5.2011 of the High Court of Judicature at Allahabad in Election Petition No. 1 of 2009.

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Ranjit Kumar, Prashant Kumar, Anurag Sharma, K.R. Singh (for AP & J Chambers) for the Appellant.

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Caveator-In-Person.

The Judgment of the Court was delivered by

**ALTAMAS KABIR, J.** 1. Leave granted.

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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).

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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

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A 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.

B 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  
C 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  
D 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  
E 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  
F 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  
G 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  
H 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

A 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-  
 B 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.  
 C 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,  
 D 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  
 E 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  
 F 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  
 G 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  
 H nomination in the electoral roll relating to 261 Allahabad West

Assembly Constituency. Accordingly, since he was not an A  
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 B  
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 C  
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, D  
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 E  
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 F  
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 G  
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 H

A 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  
 B 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  
 C 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  
 D 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  
 E 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  
 F 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  
 G 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,  
 H 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. A

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

D.G.

Appeal dismissed. G