

CHAUGULE
v.
BHAGWAT
(Civil Appeal No. 3373 of 2012)

APRIL 4, 2012

[ALTAMAS KABIR & SURINDER SINGH NIJJAR, JJ.]

Representation of the People Act, 1951 – s.110(3)(c) – Withdrawal of election petition – Right to be substituted in place of the original election petitioner – Election petition filed by ‘Y’ had been allowed to be withdrawn on an application filed by ‘Y’ – Substitution application filed by respondent in the said Election petition after it had already been allowed to be withdrawn – Allowed by High Court – Justification of – Held: Not justified – Clause (c) of s.110(3) permits “a person, who might himself have been a Petitioner”, to apply for substitution as Petitioner in place of the party withdrawing – However the said expression has to fit in the facts of each case – The expression “a person who might himself have been a Petitioner”, would not apply in a case like the present one, in which the right to be exercised did not concern the actions of the person elected on the grounds, as contemplated in ss.100(1) and 101 of the Act, which provide for grounds for declaring the elections to be void – In the instant case, the complaint in the Election Petition was that the nomination paper of the Election Petitioner ‘Y’ had been wrongly rejected by the Returning Officer – Respondent, who had been substituted in place of ‘Y’, did not have the same interest as ‘Y’ – The election Petition filed by ‘Y’ was an action in personam and, was, therefore, confined to his own situation – Had it been an action in rem, the High Court may have been justified in substituting the Respondent in place of the original Election Petitioner – Grievance of the original Election Petitioner ‘Y’ was not against the elected candidate, but

A *against the action of Returning Officer in rejecting his nomination paper – Once the Election Petitioner ‘Y’ decided not to pursue the matter, the Election Petition could not have been continued by the Respondent.*

B **The appellant was elected to the Maharashtra Legislative Assembly. ‘Y’, an independent candidate, filed Election Petition contending that his nomination paper was wrongly rejected by the Returning Officer. While the Election Petition was pending hearing, ‘Y’ filed application for withdrawal of the Election Petition. The High Court**

C **allowed the application, particularly since no corrupt practice had been alleged in the election petition and the election petition was, therefore, disposed of as withdrawn. Within 14 days of the said order, Respondent filed application under Section 110(3)(c) of the**

D **Representation of the People Act, 1951, in the said Election Petition, which had been disposed of as withdrawn, for substituting his name as Election Petitioner in place of ‘Y’. Respondent had neither filed any nomination paper, nor contested the election and did not**

E **even allege any corrupt practice against the Appellant. He filed the said application, only on the ground that he was entitled to continue with the Election Petition under Section 116 of the Act. The High Court held that on a**

F **conjoint reading of Section 78(b), Section 81(1) and Section 110(3)(c) of the Act, the respondent was entitled to be substituted in place of ‘Y’ for continuing the Election Petition, notwithstanding that the same had already been allowed to be withdrawn on the application filed by ‘Y’. Hence the present appeal.**

G **Allowing the appeal, the Court**

HELD: 1.1. Section 81 of the of the Representation of the People Act, 1951 disqualifies the Respondent from maintaining an election petition, since he was not entitled

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to invoke any of the grounds set out in Sections 100(1) and 101 of the Act. [Para 13] [1039-B]

1.2. Section 110 of the Act refers to the procedure for withdrawal of the Election Petition. Clause (c) of Section 110(3) permits a person, who might himself have been a Petitioner, to apply for substitution as Petitioner in place of the party withdrawing. However the said expression cannot be held to apply across the board in all cases, but has to fit in the facts of each case. In the instant case, the Election Petition filed by 'Y' was an action *in personam* and, was, therefore, confined to his own situation. Had it been an action *in rem*, the High Court may have been justified in substituting the Respondent in place of the original Election Petitioner. The complaint in the Election Petition was that the nomination paper of the Election Petitioner had been wrongly rejected by the Returning Officer. The Respondent, who had been substituted in place of 'Y', did not have the same interest as 'Y' and, accordingly, the High Court misconstrued the provisions of Section 110(3)(c) of the Act in applying the conditions literally, without even satisfying itself that the order fit in the facts of the case. [Paras 14, 15] [1039-C; 1040-B-E]

1.3. The expression "a person who might himself have been a Petitioner", would not apply in a case like the present one, in which the right to be exercised does not concern the actions of the person elected on the grounds, as contemplated in Sections 100(1) and 101 of the Act, which provide for the grounds for declaring the elections to be void. The grievance of the original Election Petitioner was not against the elected candidate, but against the action of Returning Officer in rejecting his nomination paper. Once the Election Petitioner decided not to pursue the matter, the Election Petition could not have been continued by a person, as contemplated in Section 110(3)(c) of the aforesaid Act. [Para 16] [1040-F-H]

A *Nandiesha Reddy v. Kavitha Mahesh* (2011) 7 SCC 721
– cited.

Case Law Reference:

(2011) 7 SCC 721 cited Para 11

B CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3373 of 2012.

C From the Judgment & Order dated 28.11.2011 of the High
Court of Judicature at Bombay Bench at Aurangabad in Civil
Application No. 35 of 2010 in Election Petition No. 5 of 2009.

Anant Bhushan Kanade, K.V. Sreekumar for the Appellant.

Sudhanshu S. Choudhari for the Respondent.

D The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

E 2. The Appellant herein was elected to the Maharashtra
Legislative Assembly from the 240-Omerga Legislative
Assembly Constituency, which was reserved for a Scheduled
Caste candidate. His election was challenged by one Shri
Yadavrao, son of Bhimrao Suryawanshi, who was also a
Scheduled Caste candidate. In order to contest the elections,
F the said Shri Yadavrao had filed three nomination forms which
were all rejected by the Returning Officer on the ground that the
proposer's name was not included in the voters' list.
Accordingly, the Returning Officer found Shri Yadavrao to be
ineligible to contest the said elections as a candidate.

G 3. On 26th September, 2009, Shri Yadavrao filed Writ
Petition No.6474 of 2009, challenging the rejection of his
nomination form which had been submitted by him as an
independent candidate. On 1st October, 2009, the High Court
allowed the Writ Petition and quashed the order of the
H Returning Officer. The order of the High Court was challenged

by the Election Commissioner before this Hon'ble Court, in which notice was issued and the impugned judgment was stayed. Consequently, Shri Yadavrao's name was not included in the ballot paper and he was unable to contest the elections. A

4. The elections were conducted on 22nd October, 2009, and the Appellant herein was declared elected from the said Constituency. Shri Yadavrao challenged the Appellant's election by way of Election Petition No.5 of 2009 filed before the Aurangabad Bench of the Bombay High Court on 1st December, 2009. While the Election Petition was pending hearing, on 25th November, 2010, Shri Yadavrao filed an application for withdrawal of the Election Petition filed by him. After hearing Shri Yadavrao in person, the High Court recorded the fact that the Election Petitioner was no longer interested in the Election Petition and wanted to withdraw the same. On the said materials, the High Court allowed the application filed by Shri Yadavrao, particularly when no corrupt practice had been alleged in the Election Petition. The Election Petition was, therefore, disposed of as withdrawn. At that point of time, there was no pending application from any person wanting to be substituted in place of the Election Petitioner, Shri Yadavrao son of Bhimrao Suryawanshi. B
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5. Within 14 days of the said order having been passed, on 8th December, 2010, the present Respondent, Bhagwat, son of Maruti Danane, filed Civil Application No.35 of 2010 under Section 110(3)(c) of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act", in Election Petition No.5 of 2009, which had been disposed of as withdrawn, for substituting his name as Election Petitioner in place of Shri Yadavrao. Such application was filed by Shri Bhagwat for substituting his name as the Election Petitioner in place of Shri Yadavrao, despite the fact that he had neither filed any nomination paper, nor contested the election. Furthermore, he did not even allege any corrupt practice against the Appellant, but filed the said Application No.35 of 2010, only on F
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A the ground that he was entitled to continue with the Election
Petition under Section 116 of the 1951 Act.

6. After considering the submissions made on behalf of
the respective parties regarding the right of the Respondent to
be substituted in the Election Petition filed by Shri Yadavrao,
the High Court held that on a conjoint reading of Section 78(b),
Section 81(1) and Section 110(3)(c) of the 1951 Act, the
Applicant, Shri Bhagwat, was entitled to be substituted in place
of Shri Yadavrao for continuing the Election Petition,
notwithstanding that the same had already been allowed to be
withdrawn on the application filed by Shri Yadavrao under
Section 110(3)(c) of the aforesaid Act. The present appeal is
directed against the said order of the High Court allowing the
application for substitution filed by Shri Bhagwat in the Election
Petition which had been filed by Shri Yadavrao and had also
been allowed to be withdrawn.

7. Appearing in support of the Appeal, Mr. Anant Bhushan
Kanade, learned Senior Advocate, drew our attention to
Section 81 of the 1951 Act, which deals with presentation of
petitions. Section 81 provides that an Election Petition calling
in question any election may be presented by any candidate
at such election or any elector within the period specified. Mr.
Kanade also drew our attention to Section 110 of the above
Act, which indicates the procedure for withdrawal of Election
Petitions which under Section 109 could be done only with the
leave of the High Court. Placing reliance on clause (c) of Sub-
Section (3) of Section 110, Mr. Kanade urged that it has been
specifically indicated therein that a person who might himself
have been a Petitioner, may within 14 days of the publication
of the results, apply to be substituted as Petitioner in place of
the party withdrawing, and upon compliance with the conditions,
if any, as to security, would be entitled to be so substituted and
to continue the proceedings upon such terms as the High Court
might deem fit.

H 8. Attempting to draw a distinction between the provisions

of Section 110 and Section 116, which deals with abatement or substitution on death of the Respondent, Mr. Kanade pointed out that under Section 116 in the event of the death of the sole respondent, or giving notice that he did not intend to oppose the Petition or any of the Respondent dying or giving such notice that there is no Respondent who is opposing the Petition, the High Court is required to cause notice of such event to be published in the Official Gazette and thereupon any person who might have been a Petitioner (emphasis supplied) may, within 14 days of such publication, apply to be substituted in place of such respondent to oppose the Petition and would be entitled to continue the proceedings upon such terms as the High Court thought fit.

9. Mr. Kanade submitted that in the present case the provisions of Section 110 stood attracted and not 116, since this case involved withdrawal of the Election Petition by the Election Petitioner and is not a case of abatement or substitution on death of the Respondent. While in Section 110(3)(c) the expression "a person" has been used, in Section 116 the expression "any person" has been used. He urged that only a person who could have a similar interest as that of the Election Petitioner could, therefore, be permitted to be substituted in place of the Election Petitioner to continue the proceedings initiated by the Election Petitioner.

10. Mr. Kanade, therefore, urged that the Respondent herein, who had been allowed to be substituted in place of the Election Petitioner, had not filed any nomination paper in the election in question and the High Court had misconstrued the expression "who might himself have been a petitioner" (emphasis supplied) in its application to him. Mr. Kanade contended that the expression was not meant to apply to anybody or everybody. By allowing the substitution of the Respondent to enable him to continue with the proceedings, which had been withdrawn by the Election Petitioner, would be over-reaching the provisions of Section 110(3)(c) of the 1951

A Act. Mr. Kanade submitted that the aforesaid expression would have to be logically interpreted to apply to a given situation and that the present situation was not one such situation where such substitution should have been allowed.

B 11. On behalf of the Respondent it was submitted by Mr. K.V. Viswanathan, learned Senior Advocate, that the language of Section 110(3)(c) was very clear and that the expression "a person" (emphasis supplied) used therein meant that any person who was eligible to be a Petitioner in an Election
 C Election Petitioner, was entitled to be substituted in place of the original Election Petitioner to enable him to continue with the proceedings. Mr. Viswanathan contended that the aforesaid expression being general in nature, could not exclude the Respondent who was a registered voter and, therefore, was "an elector" within the meaning of Section 2(1)(e) the 1951 Act. Mr.
 D Viswanathan submitted that the High Court had rightly interpreted the aforesaid expression and, since, the Respondent had an interest in the elections in which the Appellant had been elected, he had every right to be substituted in place of the original Election Petitioner in terms of Section
 E 110(3)(c) of the 1951 Act. Reference was made to the decision of this Court in Nandiesha Reddy Vs. Kavitha Mahesh [(2011) 7 SCC 721], wherein it had been held that the nomination paper, even if defective, could not be rejected by the Returning Officer at the inception and that the Returning Officer was
 F required to accept the petition and, thereafter, to give an opportunity to the candidate to remove the defects and upon removal of the defects, to accept the same. Mr. Viswanathan contended that in the instant case the same not having been done, the rejection of the nomination paper of the original
 G Election Petitioner, Shri Yadavrao, was erroneous and the election, therefore, stood vitiated and the election of the Appellant was, therefore, liable to be set aside.

H 12. Having considered the submissions made on behalf of the respective parties, we are unable to sustain the judgment

of the High Court or to accept the submissions made by Mr. Viswanathan on behalf of the Respondent. A

13. In the very beginning it may be stated that Section 81 of the 1951 Act disqualifies the Respondent from maintaining an election petition, since he was not entitled to invoke any of the grounds set out in Sections 100(1) and 101 of the 1951 Act. B

14. As indicated hereinbefore, Section 110 refers to the procedure for withdrawal of the Election Petition and is extracted hereinbelow : C

"110. Procedure for withdrawal of election petitions.-

(1) If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners. D

(2) No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed. E

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents therefore incurred or such portion thereof as the High Court may think fit; F

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly; G

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to H

A be so substituted and to continue the proceedings
upon such terms as the High Court may deem fit."

15. As may be noticed, Clause (c) of Section 110(3) permits *a person, who might himself have been a Petitioner*, (emphasis supplied) to apply for substitution as Petitioner in place of the party withdrawing. However, as has been pointed out by Mr. Kanade, the said expression cannot be held to apply across the board in all cases, but has to fit in the facts of each case. In the instant case, the Election Petition filed by Shri Yadavrao was an action in personam and, was, therefore, confined to his own situation. Had it been an action in rem, the High Court may have been justified in substituting the Respondent in place of the original Election Petitioner. In the instant case, the complaint in the Election Petition was that the nomination paper of the Election Petitioner had been wrongly rejected by the Returning Officer. The Respondent herein, who had been substituted in place of Shri Yadavrao, did not have the same interest as Shri Yadavrao and, accordingly, the High Court, in our view, misconstrued the provisions of Section 110(3)(c) of the 1951 Act in applying the conditions literally, without even satisfying itself that the order fit in the facts of the case.

16. We are satisfied that the expression "*a person who might himself have been a Petitioner*", (emphasis supplied) would not apply in a case like the present one, in which the right to be exercised does not concern the actions of the person elected on the grounds, as contemplated in Sections 100(1) and 101 of the 1951 Act, which provide for the grounds for declaring the elections to be void. The grievance of the original Election Petitioner was not against the elected candidate, but against the action of Returning Officer in rejecting his nomination paper. Once the Election Petitioner decided not to pursue the matter, the Election Petition could not have been continued by a person, as contemplated in Section 110(3)(c) of the aforesaid Act.

17. We, therefore, have no hesitation in setting aside the judgment and order dated 28th November, 2011, passed by the Aurangabad Bench of the Bombay High Court in Election Petition No.5 of 2009 and Civil Application No.35 of 2010. A

18. The appeal is, accordingly, allowed, but, there will be no order as to costs. B

B.B.B.

Appeal allowed.