

AFR

Neutral Citation No. - 2023:AHC:176763

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 48

ELECTION PETITION No. - 6 of 2014

Rajender Kumar

Petitioner

Through : Sri Utkarsh Srivastava, Adv.

Vs.

Kunwar Bhartendra Singh

Respondent

Through : K.R. Singh, Adv.

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. In present election petition this Court has passed following order on 29th August, 2023:

“Order on Restoration Application No. 9 of 2023

1. This is an application for recall of the order dated 04th August, 2023, whereby the election petition were dismissed for want of prosecution.

2. Cause shown for absence of learned counsel for election-petitioner, is sufficient. The order dated 04th August, 2023 is recalled and the election petition is restored to their original number. This application is accordingly allowed.

Order on Memo of Petition

1. Heard Sri Utkarsh Srivastava, learned counsel for election petitioner and Sri K.R. Singh, Advocate for returned candidate.

2. Learned counsel appearing for returned candidate-respondent at the outset submits that since this election petition is pending for last more than nine years and in between relevant period of returned candidate has already been over and even thereafter the term of next Lok Sabha is likely to be over within few months, therefore, there are certain judgments of Supreme Court as well as this Court that at this stage entire exercise

would be academic. He further submits that since petitioner has challenged rejection of his nomination form on ground being improper and illegal, therefore, it would be a futile exercise to hear the election petition on merit. Learned counsel has placed reliance on Supreme Court's judgments in *Loknath Padhan vs. Birendra Kumar Sahu*, AIR 1974 SC 505; *Kashi Nath Mishra vs. Vikramadiya Pandey and others* (1998) 9 SCC 735 as well as this Court's judgment in *Chandra Mohan Shukla vs. Anil Dhirubhai Ambani and others*, 2010(10) ADJ 63 (LB) and *Prempal Singh vs. Satya Pal Singh Baghel and others*, (2020) 0 Supreme (All) 658.

3. Learned counsel for election petitioner submits that there are specific averments in election petition that nomination form submitted by returned candidate was a forged document, which contains false declaration also, therefore, it would be an offence under Section 125-A of Representation of People Act, 1951 and in case contention of election petitioner found true, the legal consequence would fall which shall include adverse effect on benefit granted to returned candidate so far as pension etc. are concerned and punitive consequence under Article 104 of the Constitution would also fall. He submits that judgments cited by learned counsel for returned candidate are distinguishable on facts of the case. Learned counsel for petitioner has read out the averments made in election petition specifically para 15 as well as reasons given by Returning Officer while accepting nomination form of returned candidate.

4. Put up on 12th September, 2023 for orders on above issue.”

2. The issue raised before this Court is, whether due to efflux of time this election petition, which is arising out of a dispute of General Election-2014, when not only tenure of that Lok Sabha was already over in 2019 but tenure of present Lok Sabha is about to be over in 2024, i.e. within few months, has become infructuous or if survives, it would only for an academic purpose?

3. In order to appreciate the rival submissions on above referred issue, few facts which are not in dispute are necessary to refer hereinafter.
4. The Election Petitioner-Rajender Kumar, an active member of a National Political Party (Bhartiya Janta Party) for last few decades, was set up as a candidate from 04-Bijnor Parliamentary Constituency of District Bijnor, Uttar Pradesh for Parliamentary Election of year 2014. He accordingly submitted his Nomination Form alongwith party symbol accompanied by Form A and Form B in accordance with provisions of Election Symbols (Reservation and Allotment) Order, 1968.
5. It appears that Returned Candidate was later on set up as a candidate for above referred Parliamentary Constituency and he also submitted Nomination Form alongwith all requisite documents.
6. The Election-Petitioner filed objections to Nomination Form submitted by Returned Candidate being set up by same National Political Party. However, the Returning Officer vide order dated 24th March, 2014 rejected objections of Election-Petitioner and Nomination Form of Returned Candidate was accepted.
7. Rest is history, since Respondent-Kunwar Bhartendra Singh, was declared a Returned Candidate by defeating his nearest rival by more than 2.5 lacs votes and he in capacity of Member of Parliament from 04-Bijnor Parliamentary Constituency, has participated in proceedings of Parliament as well as undertaken other responsibilities as and when entrusted upon him.
8. Tenure of 16th Lok Sabha came to an end in 2019 and thereafter fresh election was conducted and respondent has again participated as a candidate of said National Political Party, however, this time he lost. It is also not in dispute that tenure of current Lok Sabha (17th Lok Sabha) is likely to conclude within few months.
9. During arguments the Court has interacted with Election-Petitioner and Returned Candidate and found that there are no personal grudges between them, rather they have supported each other during their political career. The Election-Petitioner or his family members were also supported as

and when they were set up for any other election by same National Political Party and they are still good political friends.

10. As referred above the Election-Petitioner is mainly aggrieved that his Nomination Form submitted being a duly set up candidate by said National Political Party was erroneously rejected by the Returning Officer as well as there was no reason for National Political Party to set up respondent/Returned Candidate as it's candidate when he was already set up as candidate and this act has dented his public image, not only in his political constituency but otherwise also.

11. Sri Utkarsh Srivastava, learned counsel for Election-Petitioner, has urged that cause still survives and even today legal consequence of this Election-Petition would fall. He also submitted that the judgments relied upon by Returned Candidate are distinguishable on facts. An application under Order VII Rule 11 C.P.C. filed by Returned Candidate was dismissed on 08.04.2022 and an Special Leave Petition against the order was filed before Supreme Court as well as this Court has framed following three issues on 13.04.2022:

“(i) Whether the nomination paper of the election petitioner was improperly rejected by the Returning Officer in view of Section 100(1)(c) of the Representation of People Act, 1951 ?

(ii) Whether the Returning Officer had committed illegality in accepting the nomination paper of the Returned candidate and by improper acceptance of the nomination paper of the Returned candidate, the result of the election, in so far as it concerns the Returned candidate has been materially affected ?

(iii) To what relief, if any, is the election petitioner entitled to ?”

12. Per contra, Sri K.R. Singh, learned counsel appearing for Returned Candidate/ sole respondent, on the strength of judgments cited, has submitted that it would be only a futile exercise to proceed to decide the present election petition, which may be curtailed at this stage.

13. In order to consider the above referred submissions, the Court proceed to consider the judgments cited before this Court.

14. Supreme Court in **Kashi Nath Mishra vs. Vikramaditya Pandey and others (1998) 8 SCC 735** by a short order dismissed an election petition on the ground that term of assembly has expired by efflux of time and thereafter another election was also held and another assembly was constituted. For reference the said order is reproduced hereinafter:

*“1. This appeal arises from Election Petition No. 4 of 1991 filed under Section 81 of the Representation of the People Act, 1951. The appellant had challenged the election of the second respondent to the U.P. Legislative Assembly from the 227 Ballia Assembly Constituency in District Ballia. The election petition was dismissed. **The term of the Assembly has expired by efflux of time; thereafter, another election has been held and another Assembly constituted.***

*2. Under these circumstances, the appeal having become **infructuous is dismissed. No costs.**” (Emphasis supplied)*

15. Next judgment is in **Loknath Padhan vs. Birendra Kumar Sahu, AIR 1974 SC 505** wherein Supreme Court has held as under:

“6. We are, therefore, of the view that, the Orissa Legislative Assembly being dissolved during the pendency of this appeal, it is now wholly academic to consider whether the respondent was disqualified under Section 9A at the date of nomination and since that is the only ground on which election of the respondent is challenged, we think it would be futile to hear this appeal on merits. We accordingly dismiss the appeal with no orders as to costs all throughout.” (Emphasis supplied)

16. A Coordinate Bench of this Court in **Chandra Mohan Shukla vs. Anil Dhirubhai Ambani and others**, 2010(10) ADJ 63 (LB) has held that:

*“22. Keeping in view the submission made by learned counsel for the parties it appears that whenever in a petition, which includes election petition, the relief claimed with regard to main issue involved becomes redundant or infructuous then for other relief courts may exercise its discretion and may not proceed further in case right of the plaintiff or dependent satisfied or no grievance remained pending against defendant or respondents because of the change circumstances. Court may use its discretion to drop the proceeding and may not proceed further in a matter even if, some relief of academic nature stand survive. In the present case, admittedly the term of respondent no. 1 to 4 expired and vacancy has been filled up by fresh election accordingly even if the impugned provision is struck down or the case of **Kuldip Nayar (supra)** is distinguished because of larger bench neither the petitioner will have any gain nor respondent no. 1 to 4 will suffer from any loss like loss of office as the member of **Rajya Sabha**. The things remain for adjudication would be the validity of impugned provision after taking into account the judgement of **Kuldip Nayar(supra)**. Observation made by Hon'ble Supreme Court in the case of **Rajeev Gandhi** that time of the court is precious one and academic exercise is not warranted unless still some relief may be granted to petitioner or the appellant may be followed.*

23. In view of above, there appears to be no good ground to proceed further in the matter to make academic exercise with regard to impugned provision. I leave the question under Relief no. 1 open for adjudication in case warranted in some other case if raised by a person.

24. The election petition does not survive. Dismissed keeping the issue open for adjudication in some other case.”

(Emphasis supplied)

17. Another Coordinate Bench of this Court in **Prempal Singh vs. Satya Pal Singh Baghel (2020) 0 Supreme (All) 658** has held that:

“23. In P.H. Pandian vs. P. Veldurai and another ((2013) 14 SCC 685), an appeal under Section 116-A of the Representation of the People Act, 1951 was filed questioning the judgment and order made in the election petition in ELP.No.1 of 1996 on 29.12.1999. In this case, the Apex Court has observed that though fresh elections have since been held to Tamil Nadu Legislative Assembly and to an extent this appeal has been rendered infructuous, the manner in which the election petition was dealt with by the High Court causes us concern and that necessitates our making reference to some salient facts. Ultimately, the Apex Court has observed that it is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence. Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest.

24. Whenever in a petition, which includes election petition, the relief claimed with regard to main issue involved becomes redundant or infructuous then for other relief courts may exercise its discretion and may not proceed further in case right of the plaintiff or dependent satisfied or no grievance remained pending against defendant or respondents because of the change of circumstances. The court may use its discretion to drop the

proceeding and may not proceed further in a matter even if, some relief of academic nature stand survive.

25. In the present case, admittedly the respondent no.1 submitted his resignation on 4.6.2019 from the Tundla Constituency and the same has been accepted by the competent authority on the same date. The notification was issued on 4.6.2019 to give effect to the said resignation since 4.6.2019 and thus the vacancy of Member of Legislative Assembly for Tundla Constituency has arisen. The Secretariat of Legislative Assembly, U.P has also notified the said vacancy to the Election Commission of India for conducting the bye-election for filling up the said post and therefore, the relief no.1, as claimed by the petitioner, has become infructuous. It is consistent view of Hon'ble Supreme Court that time of the court is precious one and academic exercise is not warranted unless still some relief may be granted to petitioner or the appellant may be followed. No allegations are levelled in the election petitions on corrupt practice and therefore, this Court finds that there is no impediment or obstacle in dismissing this petition as the prayer itself has become infructuous.

26. In view of the aforesaid discussion and in the light of the aforesaid decisions of Apex Court, I am of the considered view that nothing further survives in this matter. The aforesaid applications preferred by the respondent no.1 for dismissing the Election Petition Nos.12 of 2017 and 13 of 2017 as infructuous, are allowed.” (Emphasis supplied)

18. In the present election petition the relief sought by Election-Petitioner was to declare the result of Returned Candidate to be null and void and set aside the order dated 24.03.2014 whereby objections filed by petitioner were rejected and Nomination Form of Returned Candidate was accepted. No consequential relief was sought, i.e., for fresh election.

19. I have carefully perused the reasons given by Returning Officer while rejecting Nomination Form of Election-Petitioner and for reference, relevant part of it is extracted as below:

“A revised notice in Form B, in favour of Kunwar Bhartendra Singh has been given by Bhartiya Janata Party.

Kunwar Bhartendra Singh has already made a declaration in his nomination paper that he has been set up by the Bhartiya Janta Party.

Undersigned is satisfied about the genuineness of the Revised Form B. Hence, the nomination paper filed by the present candidate declaring himself to be a candidate set up by the Bhartiya Janta Party stands rejected.”

20. Aforesaid reasons given by Returning Officer were only based on subsequent Form B submitted by Returned Candidate. Similarly the objections filed on behalf of Election-Petitioner which was rejected by Returning Officer on the same day, i.e., 24.03.2014 though referred that Returning Officer is barred from accepting any other form of communication regarding rescinding of notice as valid, except from notice in Form B submitted by prescribed time and for that he has placed reliance on Compendium of Instructions and as such affidavit sworn by authorised person of the party in favour of revised candidate has limited legal standing from the point of nominations. Returning Officer further held that it cannot be denied that still it holds evidentiary value to support the contents of revised Form B submitted by Returned Candidate, i.e., the respondent herein, on the day of nomination, particularly in the face of doubts being expressed by the objectors on the genuineness of the revised Form B. Returning Officer further held that he cannot ignore the evidentiary value of the said affidavit, in summary inquiry, particularly, to prima facie prove the genuineness of revised Form B submitted by Returned Candidate and thus he accepted the Nomination Form of revised candidate.

21. The above referred reasoning does not contain any element of fraud or forgery in submitting Nomination Form by the Election-Petitioner being set up a candidate by said National Political Party. Returning Officer has rather given more evidentiary value to the affidavit as well as revised Form B submitted by the Returned Candidate that his form was also genuine. The issue, whether a political party has power or not to set up another candidate and procedure thereof would be an academic question.

22. Learned counsel for Election-Petitioner has argued that legal consequence would fall if this election petition is allowed but in my considered opinion this argument has no legal basis and for that I have carefully perused Section 125A of Representation of People Act, 1951 (*hereinafter referred to as "Act, 1951"*) which prescribes penalty for filing false affidavit. In this regard a brief reference of paragraphs no. 56, 57, 58 and 59 of election petition would be relevant to the extent that the contents thereof do not effectively alleged that it was a case of false affidavit rather a case was set up that to issue a subsequent Form B was beyond power, therefore, according to my considered view no legal consequence would fall on Returned Candidate under Section 125A of Act, 1951 if this election petition is allowed.

23. I have also carefully perused Article 104 of the Constitution, which provides penalty for sitting and voting before making oath or affirmation under Article 99 or when not qualified or when disqualified. However, according to my considered opinion the facts of present case do not fall under the said provision since Returned Candidate has subscribed an oath or affirmation to set up or set out under third schedule after duly elected in election and there was no allegation that election was not conducted properly. The only dispute was that whether Nomination Form of Election-Petitioner was rejected wrongly or not and Nomination Form of Returned Candidate was rightly accepted or not as evident from issues framed in this election petition on 13.04.2022. Subsequent proceedings or process of election have not been disputed. Therefore, no legal consequence would fall on the ground also even this election petition is allowed.

24. In view of above discussion, the above referred judgments become relevant wherein a consistent view has been taken that due to efflux of time especially when subsequent election of Lok Sabha was also held, to adjudicate election petition at this stage would be a futile exercise and it would only for academic purpose.

25. At this stage para 4 of the judgment passed by Supreme Court in **Dhartipakar Madanlal Agarwal vs. Rajiv Gandhi: (1987) Supp. SCC 93**, would be relevant to extract hereinafter:

*“4. The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, there- after another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in Azhar Hussain v. Rajiv Gandhi, AIR 1986 SC 1253 and Bhagwati Prasad v. Rajiv Gandhi, (1986) 4 SCC 78. Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. **Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have***

no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Company of Canada v. Jervis, (1944) AC 111 observed:

"I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

These observations are relevant in exercising the appellate jurisdiction of this Court." (Emphasis supplied)

26. The outcome of above discussion is that this election petition does not survive since it would be a futile exercise to adjudicate the same at this stage after not only term of Lok Sabha 2014-2019 was over but term of subsequent Lok Sabha 2019-2024 is likely to be over within few months.

27. Before parting with judgment, it would be necessary to observe that delay in deciding election petition would result sometimes in loss of a legal battle of an Election-Petitioner. However, for that Election-Petitioner as well as the Court has to be more careful and has to take endeavor to decide election petition at the earliest so that it may not render infructuous due to efflux of time. However, in present case, even Election-Petitioner appears to be slow in pursuing the election petition, as evident from order sheet.

28. As referred above, I have opportunity to have conversation with Election-Petitioner and Returned Candidate and as referred earlier the relations between both parties are cordial so much as that they still visit each other's house and also support each other as and when required in elections or otherwise. It also appears that said National Political Party has still confidence on both the parties.

29. The Court finds that Election-Petitioner is more conscious of his public image which is not an incorrect approach since a socially and politically active person who engaged with people of his area always wants to carry a good public image and good fan following. A political person is normally image conscious since it always carry with him. It appears that Election-Petitioner is carrying an impression that since his Nomination Form was rejected by Returning Officer, it amounts to be a dent on his public image that he has undertaken something illegal or there was something fishy in his Nomination Form. However, as referred above, from bare perusal of order passed by the Returning Officer, the impression does not appear to be true. Therefore, the impression of Election-Petitioner is baseless which is also supported and evident by subsequent events, when both parties have admitted that said National Political Party has still confidence on Election-Petitioner and his family members and party has set up his family members in other elections as its candidate.

30. It is an old saying that in a political life, there are no permanent enemies or friends. Both Election-Petitioner and Returned Candidate have declared themselves to be a dedicated workers of the said National Political Party and it also appears that this election petition was filed only to clear a cloud of doubt which might have created by rejection of Nomination Form of Election-Petitioner. As referred above, this was only a misconception of the Election-Petitioner.

31. In the end this order is concluded by reproducing a saying of an unknown author, “*Great rivalries don't have to be built on hatred. They are built on respect, on a respect for excellence*”.

32. इस स्तर पर निम्न संस्कृत सुभाषितानि का उल्लेख करना भी उचित रहेगा:

“चन्दनं शीतलं लोके, चन्दनादपि चन्द्रमाः।

चन्द्रचन्दनयोर्मध्ये शीतला साधु संगतिः॥”

(इस दुनिया में चन्दन को सबसे अधिक शीतल माना जाता है, पर चन्द्रमा चन्दन से भी शीतल होता है, लेकिन एक अच्छा मित्र चन्द्रमा और चन्दन दोनों से शीतल होता है)

33. With aforesaid observations, this election petition stands dismissed.

Order Date :-12.09.2023

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