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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 362]

भोपाल, सोमवार, दिनांक 25 जुलाई 2011—श्रावण 3, शक 1933

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 25 जुलाई 2011

क्र. 22-विधि.निर्वा.-4-2011-142.—भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82-म. प्र. -वि. स. (14-2009), 2011, दिनांक 6 जुलाई, 2011 को सर्वसाधारण की जानकारी के लिये प्रकाशित की जाती है.

प्रेमचन्द मीना, प्रमुख सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110001

नई दिल्ली, तारीख 6 जुलाई 2011—15 आषाढ 1933 (शक)

अधिसूचना

सं. 82-म. प्र.-वि.स. (14-2009)-2011.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 183-महेश्वर विधान सभा निर्वाचन क्षेत्र से मध्यप्रदेश विधान सभा के लिये डॉ. विजय लक्ष्मी के निर्वाचन को चुनौती देने वाले श्री राजकुमार मेव द्वारा दाखिल 2009 की अर्जी सं. 14 में मध्यप्रदेश उच्च न्यायालय के इन्दौर बेंच के तारीख 17 मार्च 2011 का निर्णय एतद्द्वारा प्रकाशित करता है.

आदेश से,
हस्ता./-
(वरिन्दर कुमार)
सचिव,
भारत निर्वाचन आयोग.

**ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI—110001.**

New Delhi, Dated 6th July, 2011—15 Asadha 1933 (Saka)

NOTIFICATION

No. 82-MP-LA (14/2009) 2011.—In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Madhya Pradesh at Indore Bench dated 17th March 2011 in Election Petition No. 14 of 2009 filed by Sh. Raj Kumar Mev Challenging the election of Dr. Vijay Laxmi to the Madhya Pradesh Legislative Assembly from 183-Maheshwar Assembly Constituency.

अनुसूची-स

उच्च न्यायालय, मध्यप्रदेश, जबलपुर

ORDER

Election Petition No. 14/2009

17-3-2011

None for the petitioner.

Shri S. C. Bagdiya, Sr. Advocate alongwith Shri D. K. Chhabda, Advocate for the respondent No.1.

Shri Vinay Gandhi, Adv. for the respondent No. 2.

Shri L. N. Soni, Additional Advocate General along with Shri Pawan Joshi, P. L. for the respondent/State.

Shri Sunil Jain, Advocate for the applicant Shri M. Pathan.

None for remaining respondents.

Shri Sanjay Agrawal, Advocate is present in the Court to assist the court.

Arguments on I. A. No. 1468/2011 and I. A. No. 1182/2011 heard.

2. In I. A. No. 1468/2011, respondent No. 2 has prayed that he was also contesting as a Member of Assembly for the Maheshwar Vidhan Sabha Constituency. His interest is same as that of the petitioner and he also wants to challenge the conduct of the election on the same ground by I. A. No. 1468/2011 as raised in election petition. Since the petitioner had filed this election petition earlier and impleaded respondent No. 2 as party, therefore, he did not file the petition to challenge the conduction of the election. The petitioner subsequently has colluded with respondent No. 1 and is not prosecuting the election petition bonafidely. Therefore, in view of the law laid down by the Apex Court in the matter of R. M. Seshadri Vs. G. Vasantha Pai (AIR 1969 SC 692) the election petitioner could not be allowed to withdraw an election petition which he had once made and that the election petition may be continued by another person. The policy of the election law seems to be that for the establishment of purity of elections, investigation in all allegation of malpractices including corrupt practices at elections should be thoroughly investigated. The instant election petition involves issues of vital importance which equires due adjudication by this Court and will have tremendous impact on the law relating to elections. If the issues or not adjudicated, they will again cope up in future litigation. Therefore, the court be pleased to allow the instant application and the respondent no. 2 be transposed as petitioner and be allowed to continue the election petition.

Reliance has been placed in the law laid down in the case of Jagan Nath Vs. Jaswant Singh and others [AIR 1954, SC 210], Rawat Man Singh Vs. Roop Chand Sogani and others [AIR 1954 Rajasthan 158], Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and others [AIR 1958 SC 698], Dina Nath Kaul Vs. Election Tribunal Jammu and Kashmir and another [AIR 1960 J.K. 25], Shyam Lal Saraf Vs. Mohd. Shafi Quareshi and another [AIR 1968 Jammu & Kashmir 18], Sheodan Singh Vs. Mohan Lal Gautam [AIR 1969 SC 1024], Narayan Yashwant Nene Vs. Rajaram Ramkrishna Raut and another [AIR 1961, Bombay, 21], Mohd. Alauddin Khan Vs. Karam Thamarjit Singh [2010 (7) UJ SC 3604] and Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others [2011 (1) SCC 694] that the respondent no. 2 be allowed to be transposed as election petitioner. The act of the Petitioner amounts to withdrawal of the election petition.

3. In reply, it has been argued by the learned counsel Shri Sanjay Agrawal that the respondent no. 2 cannot be transposed as election petitioner in this election petition. He did not choose to file election petition. He did not file written statement, hence he was having no interest in the election of the respondent no. 1. He had an opportunity to file election petition after declaration of the result of the election, but he did not file any election petition. But now, this application of respondent no. 2 is not bonafide and is not as per law, hence it should be rejected. There are clear provisions about withdrawal and abatement of election petition in the Representation of the People Act. The petitioner is not withdrawing the election petition, but due to his inability to produce the evidence and prosecuting the election petition, the petition is liable to be dismissed. There are distinct provision in the Representation of People Act about withdrawal and abatement of the election petition and the act of the petitioner does not amount to withdrawal of the petition, hence the application of respondent no. 2 is devoid of merit and it should be dismissed.

4. I.A. no. 1182/2011 is filed on behalf of the applicant Mubarak Pathan.

According to the facts of I.A. no. 1182/2011, the applicant Mubarik Pathan is the voter of the constituency i.e. 183, Maheshwar Vidhan Sabha Constituency, The applicant has come to know that for the reasons best known to the petitioner that he is not seriously prosecuting the election petition and wants its dismissal for want of evidence or on some other ground. This act of the petitioner amounts to withdrawal of the petition. There has been a procedure prescribed under the law for withdrawal of the petition Earlier, the applicant had filed I.A. no 501/2011, which has been dismissed by this Court *vide* order dated 18-01-2011 holding the same as premature. The petitioner in his election petition has raised important points, affecting the public a large and has its wide repercussion. Without adjudicating those issues, the election petition cannot be dismissed or disposed of for the casualness of the petitioner. It has been specifically stated in the petition that about 1413 government employees could not exercise their valuable right to vote, which could have materially affected the result, if would have allowed to vote. Apart from this the petitioner has also levelled allegations as to irregularities in counting and charges of corrupt practice are also there. The applicant is the vigilant citizen of the locality and very much interested in the outcome of the petition. Hence, it has been prayed that in the event of withdrawal or dismissal of the petition for whatsoever reason the applicant be substituted in place of the petitioner and allowed to prosecute this petition.

5. In reply, it has been argued by the learned counsel Shri Sanjay Agrawal that the applicant is stranger to the election petition. His earlier application for intervention was dismissed *vide* order dated 18-01-2011. The provisions of withdrawal and abatement of the election petition are distinct. In case of the dismissal of this election petition, the applicant cannot be allowed to prosecute this election petition because separate provisions has been made for withdrawal of the election petition. There is provision that any other person can continue the election petition after the withdrawal, but this is not a case of withdrawal of the election petition, but this is a case of dismissal of the election petition for want of prosecution, hence the applicant could not be allowed to continue this election petition in the place of election petitioner.

6. Considered the arguments on both the application.

So far as the application I.A. no. 1182/2011 filed by Mubarik Pathan is concerned, his earlier application I.A. no. 501/2011 has been dismissed *vide* order dated 18-01-2011 by this Court. In this case, the petitioner has failed to produce evidence and prosecute this election petition, hence as per law, it is liable to be dismissed. This is not a case of withdrawal or abatement of the election petition. The procedure of withdrawal of election petition has been prescribed in section 110 and procedure of abatement in section 112 of the Representation of People Act, 1951. Both the procedures are distinguishable procedures, hence dismissal of the election petition cannot be concluded as the withdrawal of the election petition.

7. In the withdrawal of the election petition under section 110, the notice of withdrawal is to be published in the official gazette and thereafter, within 14 days of such publication, a person who might himself have been a petitioner may apply to be substituted as petitioner in place of the party withdrawal and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.

8. An election petition shall abate under section 112 only on the death of a sole petitioner or of the survivor of several petitioners, Where an election petition abates under sub-section (1), the High Court shall cause the fact to be published in such manner as it may deem fit and any person who might himself have been a petitioner may, within 14 days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as security, shall be entitled to be so substituted and to continue the proceeding upon such terms as the High Court may deem fit.

9. There is no provision in the Representation of People Act about continuation of election petition in case the election petition is dismissed for want of prosecution or for want of evidence.

In case of **Dr. P. Nalla Thampy Thera Vs. B. L. Shanker and others [1984 (supp) SCC 631]**, it has been held that “default of appearance or non-prosecution of an election petition or its abandonment cannot be treated as on par with withdrawal or abatement and therefore, in absence of clear provision in the Representation of People Act, the same principle cannot govern and the obligation to notify as provided in Section 110 or 116 cannot be made applicable. Withdrawal is a positive and voluntary act while non-prosecution or abandonment may not necessarily be an act of volition. It may spring from negligence, indifference, inaction or even incapacity or inability to prosecute. In the case of withdrawal steps are envisaged to be taken before the Court in accordance with the prescribed procedure. In the case of non-prosecution or abandonment, the election petitioner does not appear before the Court and obtain any orders.”

“The Representation of People Act is a self-contained statute strictly laying down its own procedure and nothing can be read in it which is not there nor can its provisions be enlarged or extended by analogy. The terms of Section 87 of the Act clearly prescribe that if there be no provision in the Act to the contrary, the provisions of the Civil Procedure Code would apply and that would include Order 9, Rule 8 of the Code. An election petition is, therefore, liable to be dismissed for default in situations caused by Order IX or Order XVII of the Code and for its restoration, an application under Rule 9 of Order IX of the Code would be maintainable.” Therefore, if the election petitioner does not appear to prosecute the election petition, therefore, this petition is liable to be dismissed in case of non-prosecution of election petition.

10. The applicant Mubarak Pathan is the stranger to this case. He was not a respondent, therefore, in case, this election petition is dismissed for want of prosecution, he cannot be allowed to prosecute this election petition. In case of **Dhoom Singh Vs. Prakash Chandra Sethi [1975 (1) SCC 596]**, similar circumstances were considered. When a person was not a party with the election petition, filed and application to allow them to intervene, it was held that “the legislature in its wisdom has chosen to make special provisions for the continuance of the election petition only in case of its withdrawal or abatement. It has yet not thought it fit to make any provision in the Act permitting intervention of an elector of the constituency in all contingencies of failures of the election petition either due to the collusion or fraud of the original election petitioner or otherwise. It is not necessary for this court to express any opinion as to whether the omission to do so is deliberate or inadvertent. It may be a case of casus omissus. It is a well known rule of construction of statutes that “A statute, even more than a contract, must be construed, at res magis valeat quam perire, so that the intentions of the Legislature may not be treated as vain or left to operate in the air”. A second consequence of this rule is that” a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made.”

11. Therefore, the applicant who is the stranger to the election petition and who was not a party in the election petition cannot be allowed to intervene this election petition, hence his application I. A. No. 1182/2011 is dismissed accordingly.

12. So far as the transposition of the respondent No. 2 as election petitioner is concerned, it cannot be allowed because the provisions of election law in the Representation of People Act are specific in this respect and there no provision has been made in this respect. Withdrawal is a different act and in case of withdrawal under Section 110 of

the Representation of People Act, the applications are invited of all the concerned persons and then may be transposed as the petitioner. In the case of **Dhoom Singh Vs. Prakash Chandra Sethi and others** (supra) all these circumstances have been discussed in detail. The case of **R. M. Seshadri Vs. G. Vasantha Pai** (supra) was decided on different facts.

13. As regard to question of per incurrium decision is considered, the case laws cited by the respondent No. 2 in this respect has been considered in detail in the case of **Dhoom Singh Vs. Prakash Chandra Sethi and others** (supra) and in the case of **Dr. P. Nalla Thampy Thera Vs. B. I. Shanker and others** (supra) and in **Dr. Sushila Balraj Vs. Arhendu Bhushan and others** [1965 M. P. L. J. (SC) 81.]

Therefore, the respondent No. 2 is not entitled for the transposition as the election petitioner.

14. As has been discussed in the above paragraphs that there are distinct provisions in the Representation of People Act about withdrawal and abatement of the election petition. In this case, the petitioner has failed to produce the evidence and he has absented himself and does not want to prosecute this election petition. Hence this action of the petitioner will result in the dismissal of the election petition.

15. Therefore, on the basis of the above discussions, I conclude that I. A. No. 1182/2011 and I. A. No. 1468/2011 are liable to be dismissed. Hence they are dismissed accordingly.

Since the petitioner is not present and has not appeared despite the notice issued by this Court and his Advocate has pleaded no instructions and the petitioner has failed to produce the evidence, hence this election petition is dismissed for want of evidence and for want of prosecution.

16. Under these circumstances, the parties shall bear their own costs. Ordered accordingly.

Sd./-
(I. S. SHRIVASTAVA J.)

By Order,

Sd./-
(VARINDER KUMAR)
Secretary,
Election Commission of India.