

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 11th September, 2017**

+ **CM(M) 896/2017**

PINKY TYAGI

..... Petitioner

Through: Mr. Vivek Sood, Sr. Adv. with
Mr. Kumar Ranjan, Ms. Prachi
Gupta, Mr. Siddharth Gupta &
Mr. Vivek Vardhan, Advs.

Versus

STATE ELECTION COMMISSION & ORS..... Respondents

Through: Mr. Sumeet Pushkarna, Adv.
for R-1&2.
Mr. Sunil Goel & Ms. Supreet
Bimbora, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order (dated 19th July, 2017 of the District Judge, District South, Saket Courts, New Delhi in CIS-EP-2-2017) dismissing the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) of the petitioner for amendment of the Election Petition filed by the petitioner impugning the election, held on 23rd April, 2017 and result whereof was declared on 26th April, 2017, of the respondent no.4 Smt. Anita Tanwar as Municipal Councilor of Ward No.70-S, Chhattarpur, New Delhi of the South Delhi Municipal Corporation (SDMC).

2. The petition came up first before this Court on 22nd August, 2017 when the counsel for the respondents no.1&2 viz. State Election

Commission, NCT of Delhi and Returning Officer, Ward No.70-S, Chhattarpur, SDMC appearing on advance notice stated that all the parties to the Election Petition from which this petition arises have not been impleaded in this petition; however due to non-availability of the counsel for the petitioner, the petition was adjourned to 7th September, 2017 when the counsels were heard and on their request for time to show some judgments, the matter was adjourned to today.

3. Today, the counsel for the respondent no.3 State, NCT of Delhi has also appeared and the senior counsel for the petitioner and the counsels appearing for the respondents have been heard further.

4. The learned District Judge, in the impugned order, has *inter alia* held / reasoned that:

- i) the provisions of Order VI Rule 17 are applicable to an Election Petition but apart from the general law relating to amendment of plaint, the special nature of the Election Petition must not be lost sight of;
- ii) the question of permitting amendment would have to be seen in the backdrop of the provisions of the Delhi Municipal Corporation Act, 1957 (DMC Act) and Rules thereunder relating to filing of an Election Petition;
- iii) reliance was placed on ***Jyoti Basu Vs. Debi Ghosal*** (1982) 1 SCC 691 holding that right to elect is a pure and

simple statutory right and outside the statute, there is no right to be elected and no right to dispute an election;

- iv) an election petition under Section 15 of the DMC Act can be filed challenging the election of a candidate within fifteen days from the date of publication of the result of the election and only on the grounds specified therein;
- v) the grounds on which an election can be declared void relate to qualifications, corrupt practices, improper rejection of election nomination papers, result of election being materially affected by improper acceptance of nomination or corrupt practice or improper acceptance or refusal of any vote, or non compliance with the provisions of the DMC Act;
- vi) these are all grounds in the alternative connected by the word 'or', indicating that they are independent of each other;
- vii) it is therefore clear that all the grounds that a person wants to raise while challenging the election of a successful candidate would have to be pleaded in the Election Petition, as provided in Section 15(4) of the DMC Act;

- viii) under the guise of furnishing additional particulars, the petitioner cannot be permitted to substitute one corrupt practice for another, by means of an amendment;
- ix) reliance was placed on *Banarsi Das Vs. Sumer Chand* 9 (1974) DLT 73 and on *Jai Gopal Vs Raj Kumar Sharma* 210 (2014) DLT 541;
- x) though the application for amendment filed by the petitioner did not list out the amendments but a perusal of the proposed amended Election Petition filed, showed that while in the Election Petition as originally filed election was sought to be questioned on the ground that the result of the election had been materially affected by the improper acceptance or refusal of any vote or refusal of any vote which was void by pleading that the number of votes registered were at variance in two records and that postal ballots had not been permitted, but by way of amendment, election was being questioned on the grounds:
- (a) that the nomination form of respondent no.4 herein was accepted after the time fixed for the same by the Election Commission and without affidavit;
- (b) that the respondent no.4 had tried to influence the election by helping few voters in Ward No.72-S to become voters of Ward No.70-S;

(c) that the affidavit of respondent no.4 did not disclose her correct particulars regarding age and her bank accounts;

(xi) that all the aforesaid particulars sought to be added by way of amendment were not in support of the ground on which election was challenged in the Election Petition as originally filed but amounted to adding new grounds; and,

(xii) that in terms of the judgments aforesaid, no new grounds could be added after the expiry of the period provided for preferring the Election Petition.

5. The senior counsel for the petitioner has argued that provisions of Order VI Rule 17 have been held to be invocable even at the stage of appeal and that since in the election petition as originally filed, relief of setting aside of the election has been claimed, the grounds on which election is sought to be set aside can be added. Attention was invited to Section 18 of the DMC Act prescribing the procedure provided in the CPC to suits to be followed at the trial and disposal of an Election Petition. Attention was invited to Section 86(5) and 87 of the Representation of People Act, 1951 (RP Act). The senior counsel for the petitioner also referred to ***Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe*** 1995 (5) SCC 347 and to my judgment in ***Ved Prakash Vs. Sunil Kumar Jha*** 2016 (228) DLT 110.

6. Per contra, the counsel for the respondents no.1&2, in support of his contention that the time of 15 days for challenging the election is sacrosanct, relied on i) *Hukumdev Narain Yadav Vs. Lalit Narain Mishra* (1974) 2 SCC 133, ii) *Parkasho Vs. Bholi Devi*, 2012 SCC OnLine P&H 10582 iii) *Pratik Prakashbapu Patil Vs. Maruti Mura Vagare* 2012 SCC OnLine Bom 479, iv) *Ved Prakash* supra, v) *K.D. Deshmukh Vs. Amritlal Jayaswal* 1993 Supp (1) SCC 50, vi) *Shaikh Fateh Mohammed Mohd. Raza Vs. Kamlesh Somnath Yadav* MANU/MH/0839/2010, and, vii) *Saeed Ahmad Vs. Murli Dhar* AIR 1971 All 331.

7. I have considered the controversy.

8. The reasons which prevailed with the learned District Judge in the impugned order are two-fold. Firstly, that the pleas sought to be taken by way of amendment amounted to new grounds for challenging the election and secondly that an Election Petition cannot be amended after the expiry of time for filing thereof, to add new grounds of challenge to the election other than those made in the petition as originally filed.

9. Supreme Court as far back as in *Harish Chandra Bajpai Vs. Triloki Singh* AIR 1957 SC 444, held that the principle well established with reference to amendments under Order VI Rule 17 is that the fact that a suit on a claim sought to be raised would be barred on the date of the application would be a material element in deciding whether it should be allowed or not but would not affect the

jurisdiction of the Court to grant it in exceptional circumstances; the procedure of the Court under the CPC in which Order VI, Rule 17 is comprised has to be applied to Election Petition under the RP Act subject to the provisions of the RP Act and the Rules thereunder; there is no power conferred thereunder to extend the period of limitation prescribed; that an order of amendment permitting a new ground to be raised beyond the time limited for filing an Election Petition under the RP Act and the Rules thereunder would contravene those provisions. Again, in ***Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*** (1987) (Supp.) SCC 93, it was held that the petitioner in an Election Petition cannot raise any ground of challenge after the expiry of limitation and though Order VI Rule 17 permits amendment of the Election Petition but the same is subject to the provisions of the RP Act and since the same prescribes a period of 45 days from the date of election for presenting an Election Petition, after the expiry of that period, no new ground can be permitted to be raised.

10. ***K.D. Deshmukh*** supra cited by the counsel for the respondents no.1&2 also holds that no amendment which added a ground which was not taken in the Election Petition as earlier filed could be permitted to be taken by amendment and the High Court erred in allowing the amendment and in taking the view that the objection regarding limitation shall be decided while disposing the Election Petition on merits finally. Similarly, in ***Shaikh Fateh Mohammed Mohd. Raza*** supra, a Division Bench of the High Court of Bombay held in the context of Bombay Municipal Corporation Act, 1888 that

in an Election Petition thereunder, no new ground could be taken by way of amendment after the time prescribed for challenging the election was over. To the same effect is the dicta of the High Court of Allahabad in *Saeed Ahmad* supra.

11. The judgments cited by the senior counsel for the petitioner do not hold to the contrary. In *Gajanan Krishnaji Bapat* supra, it was held that the High Court ought not to have allowed evidence beyond pleadings to be led by the election petitioner and should not have allowed the election petitioner to amend the Election Petition to get over the same and that statutory requirements of the law of election must be strictly observed. The senior counsel for the petitioner however drew attention to para 83 of the said judgment where it has been held that while the first part of Section 86(5) of the RP Act is an enabling provision, the second part of Section 86(5) of the RP Act creates a positive bar and thus the general power of amendment drawn from the CPC must be construed in the light of provisions of election law and applied with such restraints as are inherent in an Election Petition. It was in this context that attention was also invited to Section 18 of the MCD Act to show that the same is *pari materia*.

12. All the judgments referred by me hereinabove also do not hold that there is no power to amend an Election Petition. Certainly, an Election Petition can be permitted to be amended if the amendments are only for adjudication of the matter in controversy as raised in the Election Petition originally filed. However, if the amendments sought are such, which amount to raising new grounds, for challenging /

impugning the election and the period for which has expired, such amendments have been consistently held to be not permissible.

13. The learned District Judge, in the impugned order has given cogent reasons for holding that the amendment sought by the petitioner amount to raising new grounds of challenge. The senior counsel for the petitioner has not raised any argument with respect to the said reasoning of the learned District Judge. A perusal of the memorandum of this petition also does not show the petitioner to have challenged the said finding or to be pleading that the amendments are for adjudication of the grounds already taken. So much so, that the petitioner along with this petition under Article 227 of the Constitution of India has not even bothered to file the proposed amended Election Petition on perusal of which the learned District Judge has held the amendment sought to be amounting to raising new grounds of challenge / impugning the election. The petitioner, as Annexure-P18 to this petition, has merely filed a copy of the application filed for amendment and which application, as also held by the District Judge, does not even list the amendment sought. The only inference therefrom is that the petitioner did not intend to challenge the part of the impugned order based on the perusal of the proposed amended Election Petition. I may however notice that after the first hearing on 22nd August, 2017, on this Court wanting to know the amendment sought, the petitioner filed a copy of the proposed amended Election Petition, a perusal of para 14A to 14G whereof, sought to be inserted in the petition as originally filed does indeed

show the petitioner to be adding grounds of election other than those on which election in the petition originally filed was challenged.

14. The contention of the senior counsel for the petitioner, that once the relief of setting aside of election is claimed, new grounds for setting aside of election can be added by way of amendment, is contrary to well established law discussed above.

15. Having found no merit in the petition, the need to go into the question of the petitioner having not impleaded all the parties to the original petition for setting aside election, does not arise.

16. The petition is dismissed.

No costs.

SEPTEMBER 11, 2017
'gsr'

RAJIV SAHAI ENDLAW, J.

Post Script: The senior counsel for the petitioner and the counsels for the respondents, both had on closure of hearing sought time to handover further judgments in the course of the day; the judgments continued to be handed over till 13th September, 2017 and resulting in order being not dictated in Chamber on 11th September, 2017. Thereafter, the matter went on the backburner and this judgment is being released on 22nd January, 2018.