

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

ORIGINAL SIDE

IA NO.GA/1/2020

with

EP/2/2019

in

APO/118/2020

THE DISTRICT ELECTION OFFICER AND ORS.

VERSUS

SHANTI RANJAN DAS AND ORS.

BEFORE:

The Hon'ble CHIEF JUSTICE THOTTATHIL B. RADHAKRISHNAN

And

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 19th March, 2021.

Appearance:

*Mr. Indranil Roy, Adv.
Mr. Dipayan Choudhury, Adv.
Mr. Suvradal Choudhury, Adv.
Mr. Souma Bhattacharya, Adv.
Mrs. Priyanka Chowdhury, Adv.
..for appellants*

*Mr. Shanti Ranjan Das, in person
(respondent no.1)*

1. The Court : This appeal is instituted by District Election Officer and Others. They challenged an interlocutory order issued by a Judge trying an election case in terms of the provisions of the Representation of the People Act, 1951; for short, "the Act".

2. The election petitioner, appearing in person, pointed out at the first instance that an intra court appeal will not lie under the Letters Patent or otherwise since there is no enabling provision for such order to be challenged before the Division Bench. He brought our notice to the decision of the Hon'ble Supreme Court of India in the case of **Upadhaya Hargovind Devshanker vs. Dhirendrasinh Virbhadrasinghji Solanki and others**, reported as AIR 1988 SC 915 wherein it has been held that any interlocutory order, passed by a learned Judge in the course of the trial of an election petition, is not amenable to the Letters Patent Appellate Jurisdiction.
3. The learned counsel for the Election Commission, in response to the above preliminary objection, points out the decision of the Hon'ble Supreme Court in the case of **Mairembam Prithviraj vs. Pukhrem Sharatchandra Singh**, reported as **(2017) 2 SCC 487** and argues that the proceedings of an election petition where the election of a returning candidate is subjected to challenge, it is tried by the High Court and it is not, as if, it is by an authority who can be treated as a *persona designata*. He accordingly submits that in terms of what is stated in paragraph 32 of the aforesaid judgment in **Mairembam Prithviraj (supra)** it needs to be noticed that it is well-settled that the High Court hearing an election petition remains the High Court while trying the election petition under that Act. Support for this proposition was drawn by Their Lordships from **T. Deen Dayal vs.**

High Court of A.P., reported as (1997) 7 SCC 535 and to the decision of the High Court in the case of **Hari Shanker Jain vs. Sonia Gandhi, reported as (2001) 8 SCC 233** upholding the decision of the Full Bench of the Rajasthan High Court in the case of Ramdhan vs. Bhanwar Lal, reported in 1983 RLW 507.

4. Certain aspects of the jurisdiction of the High Court in terms of Section 80A of the Act have been dilated upon by Their Lordships through paragraph 32 of the Judgement in **Mairembam Prithviraj (supra)**. However, we see that Their Lordships' decision in **Upadhaya (supra)** is to the point that an intra court appeal does not lie under the Letters Patent against the interlocutory order passed during the course of the election petition. It cannot be doubted that the order impugned in this appeal is an interlocutory order. We say so because the persons, who are officers and were impleaded in the election petition as respondents, applied before the Judge trying election petition to delete them from the array of the parties. The learned Judge rejected such request and dismissed the application of the officers in that regard. This is the order sought to be challenged in this appeal.
5. The Letters Patent which fell for consideration before Their Lordships in **Upadhaya (supra)** is not different in content from the Letters Patent of this Court in content.

6. The aforesaid apart, we think that the time frame fixed under the Act for trial of Election Petitions and the legislative direction to hold trial of the election case in such a manner and with such precedence, as is delineated therein, clearly indicate that it will not be in the larger interest of timely, speedy and qualitative conclusion of the election petition to have repeated scouting to the Appellate Bench even if there is one. Though this is an appeal filed by the officers and supported by the Election Commission of India, we visualize that if such appeals come from the parties to an Election Petition, who are actually contesting or trying to sustain the result of election, it may, at least in many cases, lead to delay, which is not contemplated by the wholesome scheme of the Act, which is primarily treated to be a code in itself. The provisions of the Code of Civil Procedure, 1908 apply subject to the provisions of the Act and are always treated to supplement and in no manner violate the true and complete run of the procedure prescribed by the Act. Delay in trial of Election Petitions will be anathema to the statutory dictate for expeditious trial in the endeavour to conclude the trial within 6 months from the date on which the Election Petition is presented.
7. **Upadhaya** (*supra*), is law laid specifically in relation to the issue in hand. We, therefore, follow it and hold that this appeal is not maintainable.

8. Without making any comments on the contents of the order impugned in this appeal, we grant leave to the appellants to withdraw this appeal. Resultantly, this appeal is dismissed as withdrawn with liberty to take back the certified copy of the impugned order on production of the photocopy thereof to facilitate the appellants to seek remedy from other jurisdiction, if any, in accordance with law. Accordingly, the department is directed to return the certified copy of the impugned order on production of a photocopy thereof to the learned advocate-on-record for the appellants.

(THOTTATHIL B. RADHAKRISHNAN, CJ.)

(ANIRUDDHA ROY, J.)