

HIGH COURT OF CHHATTISGARH, BILASPURElection Petition No.7 of 2014Order reserved on: 26-7-2021Order delivered on: 2-8-2021

Bhuneshwar Prasad Yadav, S/o Pyarelal Yadav, Aged about 58 years, R/o Village Sendri, Tahsil & Distt. Bilaspur (C.G.)

---- Petitioner

Versus

Badridhar Diwan, Aged about 84 years, S/o Late Shri Ishwardhar Diwan, R/o Kilawad, Juna Bilaspur, Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Harsh Wardhan, Advocate.

For Respondent: The respondent had already died. However, Mr. Abhishek Sinha, Senior Advocate with Mr. D.L. Dewangan, Advocate, who earlier has appeared on behalf of the respondent, has appeared to assist the Court.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter have been taken-up through video conferencing.
2. This order will govern the issue of abatement of the election petition, as the sole respondent died on 4-5-2021 pursuant to which notice has been issued and published in the Official Gazette on 18-6-2021 as per Section 116 of the Representation of the People Act, 1951, but within the period of limitation, no one has filed application for substitution within the period of 14 days from the date of publication of notice in the Official Gazette.
3. Mr. Harsh Wardhan, learned counsel appearing for the election petitioner, would submit that despite death of the respondent, the election petition will not abate and proceeding would continue, despite

that, no one has been substituted in place of the sole respondent. He relied upon the decisions of the Supreme Court in the matters of Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa and others¹, Sheodan Singh v. Mohan Lal Gautam², Dhoom Singh v. Prakash Chandra Sethi and others³ and that of the Karnataka High Court in the matter of Siddaiah v. Returning Officer, Bangalore and others⁴ to buttress his submission.

4. However, Mr. Abhishek Sinha, learned Senior Counsel ably assisted by Mr. D.L. Dewangan, learned counsel, would submit that the election petition would abate after death of the respondent, as no one has applied for substitution within 14 days from the date of publication of notice of the death of the respondent. He would rely upon the decision of the M.P. High Court in the matter of Rashmi Parihar v. Gangaram Bandil and others⁵ to buttress his submission.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.
6. Reverting to the facts of the case and particularly taking into account the decision rendered by the M.P. High Court in Rashmi Parihar (supra) in which it has clearly been held that the election petition will abate on the death of the deceased respondent if there is no surviving respondent who is opposing the petition and no substitution in place of the deceased respondent has taken place as contemplated under Section 116 of the Representation of the People Act, 1951, the election petition would abate as per the provisions contained in

1 AIR 1958 SC 698

2 AIR 1969 SC 1024

3 AIR 1975 SC 1012

4 AIR 1988 Karnataka 135

5 1988 JLJ 427

Section 116 of the said Act. In Rashmi Parihar (supra), it was held by the M.P. High Court as under in paragraph 21: -

“21. For all the foregoing reasons, I have no hesitation to hold that the election petition has abated on the death of the deceased respondent as there is no surviving respondent who is “opposing the petition” and no substitution in place of the deceased respondent could be, or has been, made as contemplated under Section 116 of the Act. I have also no hesitation to hold that in the facts and circumstances of the case, the case being fully covered by the provisions of Section 116 of the Act, resort to any provisions of C.P.C. is not permissible. That apart, the trial of the charge of corrupt practice of the deceased respondent, in the instant case, in the facts and circumstances of the case, cannot even be proceeded in accordance with the provisions of Order 17, Rule 2 read with Order 9, Rule 6(1)(a), C.P.C., for reasons earlier alluded.”

7. In Inamati Mallappa Basappa (supra), the Supreme Court considered Section 116 of the Representation of the People Act, 1951 and held as under: -

“16. The above provisions go to show that an election petition once filed does not mean a contest only between the parties thereto but creates a situation which the whole constituency is entitled to avail itself of. Any person who might himself have been a petitioner is entitled to be substituted, on the fulfilment of the requisite conditions and upon such terms as the Tribunal may think fit, in place of the party withdrawing and even the death of the sole petitioner or of the survivor of several petitioners does not put an end to the proceedings, but they can be continued by any person who might himself have been a petitioner. Even if the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, a similar situation arises and the opposition to the petition can be continued by any person who might have been a petitioner, of course on the fulfilment of the conditions prescribed in S. 116. These provisions therefore show that the election petition once presented continues for the benefit of the whole constituency and cannot come to an end merely by the withdrawal thereof by the petitioner or even by his death or by the death or withdrawal of opposition by the respondent

but is liable to be continued by any person who might have been a petitioner.”

In view of the above-stated declaration of law, this judgment is not helpful to the petitioner.

8. In Sheodan Singh (supra), the Supreme Court has held that election petition alleging corrupt practice against the respondent does not abate or become infructuous on the dissolution of assembly and further held that the Representation of the People Act, 1951 does not provide for abatement of an election petition, either when the returned candidate whose election is challenged resigns or when the assembly is dissolved. As such, this judgment is also in no way helpful to the petitioner.
9. The judgment of the Supreme Court in Dhoom Singh (supra) is not at all applicable to the facts of the present case. Similarly, the decision of the Karnataka High Court in Siddaiah (supra) is not at all attracted to the facts of the present case, as in the Karnataka Municipal Corporation Act, there is no pari materia provision like Section 116 of the Representation of the People Act, 1951.
10. In the instant case also, following Section 116 of the Representation of the People Act, 1951 and the judgment of the M.P. High Court in Rashmi Parihar (supra), it is held that since no one has applied for substitution in place of the deceased respondent within 14 days from the date of publication of notice in the Official Gazette, the election petition would abate under Section 116 of the said Act of 1951 and consequently, the election petition fails and is dismissed on abatement with a cost of ₹ 10,000/-. Pending application(s) if any are also disposed off.
11. Substance of this order be communicated forthwith to the Election

Commission of India and the Speaker of the Chhattisgarh Vidhan Sabha in accordance with the provisions contained in Section 103 of the Representation of the People Act, 1951.

Sd/-
(Sanjay K. Agrawal)
Election Judge

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