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

Date of decision: 16.11.2023

+ CM(M) 849/2023, CM APPL. 26715/2023 & CM APPL. 51287/2023

SMT PRATIMA ANAND

..... Petitioner

Through: Mr. O.P. Jatav, Mr. Adarsh Anand
and Dr. M.K. Gahlaut, Advocates

versus

URMILA GANGWAL & ORS.

..... Respondents

Through: Mr. Mohit Siwach and Mr. Francis,
Advocates for R-2

Mr. Amit Sharma, Mr. Dipesh Sinha
and Ms. Aparna Singh, Advocates for
R-3 & 4, through VC.

Mr. Sidhant Kumar, Ms. Manyaa
Chandok and Ms. Ishita Deswal,
Advocates for R-6 Chief Electoral
Officers.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 05.04.2023 passed by ADJ-01, West District, Tis Hazari Court, Delhi ('Trial Court') in Election Petition No. 01/2022 directing the Petitioner herein to amend the Election Petition for want of maintainability of the said petition.



1.1 The Petitioner herein has instituted the Election Petition for seeking a declaration that the election of the ward no.94, Raghubir Nagar, Delhi (SC-Women) held on 04.12.2022 be declared null and void and further declare the Petitioner as winning candidate from the said ward.

1.2 The notice in the said Election Petition has not been issued by the Trial Court to the Respondents and the impugned order has been passed by the Trial Court at an ex-parte stage.

2. The learned counsel for the Petitioner states that the Election Petition has been filed under Sections 15 to 21 of Delhi Municipal Corporation Act, 1957 ('the Act of 1957').

2.1 He states that the grounds of challenge raised in the said petition fall within the grounds contemplated under Section 17 of the Act of 1957. He also relies upon Sections 17, 18 and 19 of the Act of 1957 to contend that the grounds raised in the said petition are within the jurisdiction of the Trial Court not excluded by the operation of Section 7-I of the Act of 1957. He further relies upon the Registration of Electors Rules, 1960 and contends that the same have been violated.

2.2 He states that the Trial Court fell in error in directing the Petitioner at this initial stage to amend its petition and exclude the grounds of challenge in the summary manner.

3. The learned counsel for Respondent No.5 states that Chief Electoral Officer has also been impleaded as defendant no.5 in the said petition before the Trial Court.

3.1 He states that the said defendant is not a proper party and is liable to be deleted from the array of parties of the suit. In this regard, he relies upon the judgment of a learned Single Judge of this Court in **Pratap Chandra v.**



Mr. Manish Sisodia & Ors., (EL. Pet. 01/2020, 24.03.2021) and the judgment of Supreme Court in ***B. Sundara Rami Reddy v. Election Commission of India & Ors., 1991 Supp (2) SCC 624.***

4. No arguments have been addressed on behalf of Respondent Nos. 3 and 4.

5. This Court has considered the submissions of the counsels and perused the record.

6. The Election Petition is at the initial stage and summons have not been issued to the Respondents. The Trial Court passed the impugned order at the ex-parte stage. In the impugned order, in the operative portion the Trial Court has issued a general direction to the Petitioner to amend the Election Petition for deleting grounds, without specifying the portions of the Election Petition which are directed to be deleted.

7. The Trial Court in its impugned order has referred to paragraph no. 10, 13, 19, 38 and 42 of the petitions and thereafter, proceeded to observe that the jurisdiction of the civil court is barred under Section 7-I of the Act of 1957. The said provision reads as under:

“7I. Jurisdiction of civil courts barred:

No civil court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a ward; or

(b) to question the legality of any action taken by or under the authority of an electoral registration officer or of any decision given by the Election Commission.”

8. However, after referring to the said paragraphs of the Election Petition, the Trial Court has not returned a specific finding that the averments made in paragraphs 10, 13, 19, 38 and 42 are indeed barred under Section 7-I of the Act of 1957. Though, there are no reasons recorded by the



Trial Court in the impugned order, therefore, this Court can only presume that the Trial Court was of the opinion that the said paragraphs (and may be some other paragraphs of the Election Petition) are barred by Section 7-I of the Act of 1957.

9. This Court has perused the averments at paragraph 13 of the Election Petition, which is one of the paragraphs referred to in the impugned order. In the said paragraph, the Petitioner has challenged the acceptance of the nomination of Respondent No.2.

10. As per Section 17(1)(d)(i) of the Act of 1957 improper acceptance of any nomination is a specific ground available to the Petitioner for seeking a declaration that the election is void.

11. Similarly, Section 17(1)(d)(iv) of the Act of 1957 empowers the Civil Court to declare the election of the returned candidate void if it comes to the conclusion that there is non-compliance with the provisions of the Act of 1957 or of any rules or orders made thereunder and the same has materially affected the result of the election.

12. In this regard, it would also be appropriate to refer to a pari-materia section in the Representation of the People Act, 1951 and more specifically, Section 100 (1)(d) (i) & (iv) which reads as under:

“100. Grounds for declaring election to be void. — [(1) Subject to the provisions of sub-section (2) if [the High Court] is of opinion—

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(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or



(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

(Emphasis supplied)

The Supreme Court in the case of *Vashist Narain Sharma v. Dev Chandra & Ors.*, (1995) 1 SCR 509, while interpreting the said Section had opined as under:

“5. Before an election can be declared to be wholly void under Section 100(1)(c), the Tribunal must find that “the result of the election has been materially affected”. These words have been the subject of much controversy before the Election Tribunals and it is agreed that the opinions expressed have not always been uniform or consistent. These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. The next question that arises is whether the burden of proving this lies upon the petitioner who objects to the validity of the election. It appears to us that the volume of opinion preponderates in favour of the view that the burden lies upon the objector.

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The language of Section 100(1)(c), however, clearly places a burden upon the objector to substantiate the objection that the result of the election has been materially affected.....

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II. We are of opinion that the language of Section 100(1)(c) is too clear for any speculation about possibilities. The section clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected. The number of wasted votes was 111. It is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. **The question is one of fact and has to be proved by positive evidence.** If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand. Such result may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but



neither the Tribunal, nor this Court is concerned with the inconvenience resulting from the operation of the law. How this state of things can be remedied is a matter entirely for the legislature to consider. The English Act to which we have referred presents no such conundrum and lays down a perfectly sensible criterion upon which the Tribunal can proceed to declare its opinion. It directs the Tribunal not to set aside the election if it is of opinion that the irregularity has not materially affected the result.”

(Emphasis supplied)

13. The grounds raised in the election petition including the paragraphs referred to by the Trial Court in its order, would require examination by the said Court to conclude whether the said grounds fall within the purview of Section 17 of the Act of 1957; as the issue whether or not the election result has been materially affected will be a question of fact to be determined by the Trial Court on the basis of facts and material placed on record. For the said determination, the ground raised in the Election Petition would be tested.

14. This Court is of the considered opinion that the impugned order cannot be sustained on account of the generality of the direction of amendment as it is ambiguous and there is no determination by the Trial Court on the non-maintainability of the grounds raised in the said paragraphs.

15. The impugned order passed by the Trial Court has been passed presumably in exercise of its jurisdiction under Order 7 Rule 11(d) of CPC. It is trite law that a plaint cannot be rejected in a piecemeal manner by the Courts in exercise of their power under Order 7 Rule 11 CPC, however, the impugned order has the effect of a piecemeal rejection. In this regard reliance is placed on the judgment of the Supreme Court in the case of **Madhav Prasad Aggarwal v. Axis Bank Ltd., (2019) 7 SCC 158**, wherein the Supreme Court held as under:



“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). **In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC.** Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780: (2018) 5 SCC (Civ) 256]* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. **The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint** including against some of the defendant(s) and continue the same against the others. **In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.**

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (1) of Rule 11 of Order 7 CPC. **In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part**”

(Emphasis supplied)

16. This Court is, therefore, of the opinion that there cannot be a piecemeal rejection of the petition by the Trial Court in the manner directed in the impugned order.

17. The Election Petition is still at the stage of issuance of notice. The rejection of the grounds in the said petition on the anvil of bar of Section 7-I of the Act of 1957 can be determined by the Trial Court after parties have led evidence; and at the stage of final disposal. This is all the more necessary



in view of the fact that the Election Petition is to be decided expeditiously. Further, the Trial Court would have to consider the submission of the Petitioner whether the grounds raised stand covered by Section 17 of the Act of 1957.

18. Accordingly, the impugned order dated 05.04.2023 is set aside keeping open the issue of the bar of Section 7-I of the Act of 1957 to be decided at the stage of final disposal.

19. The Respondent No.5 i.e., defendant no.5 will be at liberty to move an appropriate application for its deletion before the Trial Court, which application needless to state will be decided by the said Court in accordance with law after giving an opportunity to the Petitioner herein.

20. The petition is accordingly allowed in the aforesaid terms. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 16, 2023/msh/sk

Click here to check corrigendum, if any