

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

EMP No. 3 of 2024
in
Election Petition No. 1 of 2024.

Decided on: August 21, 2024

Dr. Abhishek Manu Singhvi ... Non-applicant/Petitioner

Versus

Sh. Harsh Mahajan ...Applicant/Respondent

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge

¹*Whether approved for reporting?*

For the petitioner/non-applicant: Mr. P. Chidambaram, Senior Advocate (through video conference) & Mr. Neeraj Gupta, Senior Advocate, with Mr. Prashanto Sen, Mr. Vedhant Ranta, Mr. Aman Panwar, Advocates, for the petitioner/non-applicant.

For the respondent/applicant : Mr. Maninder Singh, Senior Advocate (thorough video conference) with Mr. Prabhas Bajaj, Mr. Ramgasaran Mohan, Mr. Vikrant Thakur, Mr. Shriyek Sharad, Mr. Shubham Guleria, Mr. Ankit Dhiman & Mr. Vir Bahadur Verma, Advocates, for the respondent/applicant.

Jyotsna Rewal Dua, Judge

EMP No. 3 of 2024

EMP No. 2 of 2024 was moved by the respondent under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code

¹*Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

read with Sections 81, 83, 86 & 87 of the Representation of the People Act, 1951 (in short the 'R.P. Act 1951') for rejection of the main Election Petition. Vide order passed on 06.08.224, the aforesaid application had been kept for hearing for today. The present application has been moved by the respondent for deferring the hearing of EMP No. 2 of 2024 on the ground that:-

After last date of hearing in the case i.e. 06.08.2024, the respondent acquired knowledge about Election Petitioner having been nominated for contesting the election of Rajya Sabha (Council of States) from the State of Telangana. Such election is scheduled to be held on 03.09.2024. In the event of success in the said election, the main Election Petition would become infructuous. Hence, trial of Election Petition would become futile.

Accordingly, prayer was made for deferring the proceedings in EMP No.2 of 2024 for a date after 03.09.2024 awaiting the result of election where the Election Petitioner is participating as a candidate from the State of Telangana.

2. Learned Senior Counsel for the non-applicant/Election Petitioner did not dispute the foundational facts given in the application. It was however, submitted that Election Petition would not be rendered infructuous even if the Election Petitioner is

eventually declared successful in the election scheduled for 03.09.2024. Reference in this regard was made to: (i) The reliefs prayed for by the petitioner in Election Petition No. 1/2024; (ii) Sections 84 & 70 of the R.P. Act, 1951; (iii) Part IX, Rule 91 of the Conduct of Elections Rules, 1961; and (iv) Reliance was also placed upon a decision rendered by the Hon'ble Apex Court in *Ajay Maken vs. Adesh Kumar Gupta & anr.*²

Learned Senior Counsel for the applicant/respondent countered the above submissions by pressing into service Sections 68 – 70 of the R.P. Act, 1951 and contended that the said provisions will be applicable only in a case where a person is elected and not otherwise. It was submitted that in the instant case the petitioner had not been elected, therefore, provisions of Sections 68 to 70 of the R.P. Act, 1951 will not be attracted. According to learned Senior Counsel for the applicant/respondent, the Election Petition No. 1 of 2024 would become infructuous in the eventuality of the petitioner getting elected to Rajya Sabha (Council of States) from the State of Telangana. Learned Senior Counsel for the applicant/respondent, therefore, prayed that EMP No. 2 of 2024 should be deferred to a date after 03.09.2024

²(2013) 3 SCC 489

3. Heard learned Senior Counsel on both sides and considered their submissions.

4. My **observations** on the instant application seeking deferment of hearing in EMP No. 2 of 2024 are as under:-

4(i) The Election Petitioner has made following two fold prayers in Election Petition No. 1 of 2024:-

- “a. allow the present Election Petition and declare as void the election result dtd. 27.02.2024 of the Respondent, declaring Shri Harsh Mahajan i.e. the Returned Candidate, to the Council of States from Himachal Pradesh under Section 100(1)(d)(iv) of the R.P. Act, 1951; and
- b. declare the Election Petitioner, Sr. Abhishek Manu Singhvi, as duly elected to the Council of States from the State of Himachal Pradesh in terms of Section 84 r/w Section 101(a) of the R.P. Act, 1951;...”

The Election Petitioner has prayed, firstly for declaring the election result dated 27.02.2024 of the Returned Candidate to the Council of States from the State of Himachal Pradesh as void under Section 100(1)(d)(iv) of the R.P. Act, 1951. The second prayer in the petition is for declaring the Election Petitioner as duly elected to the Council of States from the State of Himachal Pradesh in terms of Section 84 read with Section 101 (a) of the R.P. Act, 1951.

4(ii) Section 84 of the R.P. Act, 1951 provides that a petitioner may, in addition to claiming a declaration that the election of all or any of the Returned Candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. The Section reads as under:-

“84. Relief that may be claimed by the petitioner.- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

Prayer ‘a’ made in the Election Petition, therefore, is independent of prayer ‘b’. It would also be in place to refer to the decision rendered in *Ajay Maken*² wherein, after considering Sections 84, 100 & 101 of the R.P. Act, 1951, Hon’ble Apex Court held that it is for the petitioner to decide whether he would be satisfied with a declaration of nullity of the election of the Returned Candidate or for further declaration such as the one contemplated under Section 101 is to be sought. The relevant observations of the Hon’ble Apex Court are as under:-

“... ‘84. Relief that may be claimed by the petitioner:- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.’

It can be seen from the above that in an election petition the petitioner can claim declaration that: (1) the election of a returned candidate is void; and (2) a further declaration that either the petitioner himself or any other candidate has been duly elected.

25. We have already noticed that section 81 stipulates that an election can be challenged only on one or more of the grounds specified under Sections 100 and 101 of the Act. Section 100 stipulates various grounds on which election of a returned candidate can be declared to be void, while Section 101 stipulates circumstances under which a further declaration contemplated under Section 84, can be given by the High Court (after declaring the election of a returned candidate to be void) that some candidate other than the returned candidate is duly elected in the said election. What should be the prayer in an election petition is a matter of the petitioner's choice. It is for the petitioner to decide whether he would be satisfied with a declaration of nullity of the election of the returned candidate or a further declaration such as one contemplated under section 101 is to be sought."

4(iii) Section 70 of the R.P. Act, 1951 contemplates a situation where a person is elected to more than one seat in either House of Parliament or in the House or either House of Legislature of State and provides that unless within the prescribed time such person resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to

such other authority or officer as may be prescribed, all the seats shall become vacant. The Section reads as under: -

“70. Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.- If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed, all the seats shall become vacant.”

Rule 91 falling in Part IX of the Conduct of Elections Rules, 1961 provides for resignation of seats in case of election to more seats than one in a House and reads as under: -

“91. Resignation of seats in case of election to more seats than one in a House. –

(1) The time within which a person may resign all but one of the seats in either House of Parliament or in the House or either House of the Legislature of a State, to which he has been elected shall be –

(a) fourteen days from the date of his election under Section 67-A; or

(b) where the dates of his election are different in respect of different seats, fourteen days from the last of those dates.

- (2) Such resignation shall be addressed –
- (a) to the Speaker or the Chairman of the House concerned; or
 - (b) where the office of the Speaker or Chairman is for the time being vacant or is, or is deemed to be, in abeyance, to the Deputy Speaker or the Deputy Chairman of the House concerned; or
 - (c) where the post of the Deputy Speaker or Deputy Chairman is also for the time being vacant or is deemed to be, in abeyance, to the Election Commission.
- (3) Where the resignation has been addressed to the Election Commission under sub-rule (2) the Election Commission shall, as soon as may be after the receipt of the resignation, send a copy thereof to the Secretary of the House concerned.”

4(iv) A holistic reading of Sections 84 & 70 of the R.P. Act, 1951 and Rule 91 of the Conduct of Elections Rules, 1961 leads to the following conclusion with reference to the facts in the instant case:-

- (a) Prayer for declaring the election of the Returned Candidate as void is a separate and distinct prayer from the prayer for declaring the Election Petitioner as successful and elected candidate instead of the respondent/Returned Candidate.
- (b) It is for the Election Petitioner to opt for the prayers he wishes to press for at an appropriate stage.

(c) Assuming that the Election Petitioner is declared successful in the election to Rajya Sabha (Council of States) from the State of Telangana scheduled for 03.09.2024 then also the Election Petition instituted by him seeking two reliefs viz. (a) for declaring the Election result dated 27.02.2024 of respondent as void; and (b) declaring the Election Petitioner as Returned Candidate will not become infructuous.

(d) Assuming for the sake of arguments that (i) the election petitioner is declared successful in the election to Rajya Sabha (Council of States) from the State of Telangana scheduled for 03.09.2024 and (ii) the Election Petitioner also emerges successful in the Election Petition No. 1 of 2024, then also he will have a right to exercise for retaining the seat/resign the seat in terms of Section 70 of the R.P. Act, 1951 by writing under his hand addressed to the Chairman, within the time prescribed under Rule 91 of the Conduct of Elections Rules, 1961.

5. For the foregoing reasons, the contention that hearing in EMP No. 2 of 2024 is required to be deferred as the main Election Petition No. 1 of 2024 can become infructuous on the Election Petitioner becoming successful in his election to Rajya Sabha (Council of States) from the State of Telangana scheduled for 03.09.2024, is not justified. Election Petition No. 1 of 2024 would not

be rendered infructuous even if the election petitioner is declared successful on 03.09.2024 in his election to Rajya Sabha (Council of States) from the State of Telangana.

In view of above, the application (EMP No. 3 of 2024) is dismissed.

**Jyotsna Rewal Dua,
Judge**

August 21, 2024 (PK)