

MANOHAR JOSHI
v.
BHAURAO RAGOJI PATIL THROUGH
LEGAL REPRESENTATIVES

JANUARY 14, 1992

[S. RANGANATHAN, V. RAMASWAMI AND N. D. OJHA, JJ.]

*Representation of the People Act, 1951: Sections 112 and 117—
Election Petition—Application for substitution—Presentation of—Deposit of
security amount for cost—When to be made—Order of substitution—Court to
specify amount of deposit or give reasons if deposit is not required.*

One 'B' filed an Election Petition challenging the appellant's election as M.L.A. On the death of 'B' the Election Petition abated, and the same was published in accordance with Section 112 (2) of the Representation of the People Act, 1951. Upon the said publication, four applications including those of the Respondents were filed before the High Court for substitution in place of the deceased petitioner. The High Court allowed the two applications by the Respondents and dismissed the other two applications.

Th appellant-M.L.A. has preferred the present appeal by special leave, against the High Court's order substituting the Respondents in the Election Petition.

On behalf of the appellant, it was contended that the High Court was wrong in holding that the question of providing security deposit for costs would arise only after an order for substitution is made; and that the respondent could have been directed to be substituted only after they had actually deposited the amount of security.

On behalf of the respondents, it was contended that when four applications had been made for substitution an order had first to be passed indicating the names of the applicants who were to be substituted and only thereafter the security amount could be deposited.

Dismissing the appeal, this Court,

HELD : 1. The High Court was right in holding that simultane-

A ous deposit of any amount as security for costs at the time of presenta-
tion of the applications for substitution was not necessary. On a plain
reading of Section 117 of the Representation of the People Act, 1951 the
said requirement is applicable at the time of presenting an Election
Petition. An application for substitution made under sub-section (3) of
B Section 112 consequent upon the death of the election petitioner cannot
be put at par with the presentation of an election petition. [34FG]

2. The right to apply to be substituted accrues on fulfilment of two
conditions, viz. that the person making the application should be one
who might himself have been a petitioner and that the application is
made within fourteen days of the publication made under sub-section (2)
C of Section 112. He, however, becomes entitled to be substituted only upon
compliance with the conditions, if any, as to security. The applications
made by the respondents could not, therefore, be dismissed on the
ground that no amount was deposited as security for costs at the time of
presenting the said applications. [35A-C]

D 3. While considering an application for substitution court has to
consider as to whether any deposit is to be made or not as security for
costs and if it is to be made what is the amount which has to be
deposited. If the Court comes to the conclusion on the facts of a given
case that no amount is to be deposited as security for costs an order of
subscription simpliciter would be sufficient. The fact that no deposit as
E security is to be made with reason therefor would, however, have to be
simultaneously stated in the order of substitution. On the other hand, if
the Court comes to the conclusion that some amount has to be deposited
by the applicants who are proposed to be substituted, as security for
costs, the amount should be simultaneously specified in the order of
substitution and the entitlement of such applicant to be substituted
F should be made subject to compliance with the condition of depositing
the amount so specified. [35E-G]

4. In the instant case, the respondents were directed to deposit the
security amount, in the same order permitting their substitution, and it
was deposited the very next day. In view of this circumstance, even
G though the order appealed against may not be said to be in strict
compliance with the requirements of sub-section (3) of Section 112 of the
Act, the order is not interfered with. [35H; 36A, B]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 112 (NCE)
of 1992.

From the Judgment and Order dated 5.8.1991 of the Bombay High Court in Application Nos. 1, 2, 3 and 4 of 1991 in Election Petition No. 24 of 1990.

P.P. Rao, P.H. Parekh and Chetna Anand for the Appellant.

Gopal Subramaniam and M.N. Shroff for the Respondents.

The Judgement of the Court was delivered by

OJHA, J. Special leave is granted.

This appeal has been preferred against the order dated 5th August, 1991 of the Bombay High Court on miscellaneous applications made in Election Petition No. 24 of 1990. The appellant was elected to the Maharashtra Legislative Assembly from the Sadar Constituency. One Bhaurao Ragoji Patil filed Election Petition No. 24 of 1990 challenging the said election. He, however, died on 4th June 1991. He being the sole petitioner the election petition consequent upon his death abated under sub-section (1) of Section 112 of the Representation of the People Act, 1951 (hereinafter referred to as the Act). This fact was published as contemplated by sub-section (2) of Section 112 of the Act. Upon the said publication four applications including one each by the respondents were made under sub-section (3) of Section 112 of the Act for being substituted in place of the deceased petitioner. The applications made by the respondents were allowed by the order appealed against whereas the other two applications were dismissed with certain observations.

The appellant who was the successful candidate at the election has in the present appeal challenged the order substituting the respondents in the election petition in place of the deceased petitioner. In support of this appeal learned counsel for the appellant has urged two grounds. Firstly, it has been submitted that a direction requiring the respondents to furnish security as contemplated by sub-section (3) of Section 112 as a condition precedent should have been given before ordering them to be substituted and the High Court committed an error in holding that the question of providing security would arise only after an order for substitution is made. The second submission made by learned counsel for the appellant is that even though the respondents have been required to forthwith deposit in Court towards security a sum of Rs. 2,000 each, that part of the order has been made only after first directing them to be substituted in place of the original petitioner. According to learned counsel the respondents could have been directed to be substituted

A only after they had actually deposited the amount of security. The order appealed against having been passed according to learned counsel in breach of the mandatory requirement of sub-section (3) of Section 112 of the Act is liable to be set aside.

B For the respondents on the other hand, it has been urged by their learned counsel that when four applications had been made for substitution an order had first to be passed indicating the names of the applicants who were to be substituted and it is only such applicants who were to be substituted could thereafter be required to deposit any amount as security.

C In order to appreciate the respective submissions made by learned counsel for the parties, sub-section (3) of Section 112 of the Act may be reproduced. It reads as hereunder :

“112 (1).

D (2)

E (3) Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and *upon compliance with the conditions, if any, as to the security, shall be entitled to be so substituted* and to continue the proceedings upon such terms as the High Court may deem fit.” (Emphasis supplied)

F Before the High Court it was urged on behalf of the appellant that since the respondents had not deposited any amount as security for the costs of the petition as contemplated by Section 117 of the Act their applications were liable to be dismissed. It is while repelling this submission that the High Court made the aforesaid observation namely, that the question of providing security would arise only after an order for substitution is made. The High Court, in our opinion, does not appear to have committed any error in holding that simultaneous deposit of any amount as security for costs at the time of presentation of the applications for substitution was not necessary. On a plain reading of Section 117 he said requirement is applicable at “the time of presenting an election petition”. An application for substitution made under sub-section (3) of Section 112 consequent upon the death of the election petitioner cannot be put at par to the presentation of an election petition. It is to be noticed in this behalf that sub-section (3) of Section 112 does not contain the requirement of depositing any amount of security for costs at the time of presenting the substitution application. It permits a person who might

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himself have been a petitioner to apply to be substituted as petitioner within fourteen days of the publication made under sub-section (2). The applicant, however, becomes entitled to be so substituted only upon compliance with the conditions, if any, as to security. In other words, the right to apply to be substituted accrues on fulfilment of two conditions : (i) that the person making the application should be one who might himself have been a petitioner and (ii) that the application is made within fourteen days of the publication made under sub-section (2) of Section 112. He, however, becomes entitled to be substituted only upon compliance with the conditions, if any, as to security. The applications made by the respondents could not, therefore, be dismissed on the ground that no amount was deposited as security for costs at the time of presenting the said applications. It is true that the observations referred to above were made by the High Court while repelling the submission made on behalf of the appellant on the basis of Section 117 but to us it appears that the observation as made is rather too wide. Sub-section (3) of Section 112, in our opinion, contemplates simultaneous application of mind by the High Court on the question as to whether the applicant should be substituted or not and also on the question as to what amount of security for costs, if any, is to be deposited by the person who is to be ordered to be substituted. The observation that the question of providing security will arise only after an order for substitution is made does not obviously conform with the requirement of sub-section (3) of Section 112 of the Act. Unlike Section 117 of the Act sub-section (3) of Section 112 uses the words "if any" between the words "upon compliance with the conditions" and "as to security". While considering, therefore, an application for substitution the Court has also to consider as to whether any deposit is to be made or not as security for costs and if it is to be made what is the amount which has to be deposited. If the Court comes to the conclusion on the facts of a given case that no amount is to be deposited as security for costs an order of substitution simpliciter would be sufficient. The fact that no deposit as security is to be made with reason therefor would, however, have to be simultaneously stated in the order of substitution. On the other hand, if the Court comes to the conclusion that some amount has to be deposited by the applicants who are proposed to be substituted, as security for costs the amount should be simultaneously specified in the order of substitution and the entitlement of such applicant to be substituted should be made subject to compliance with the condition of depositing the amount so specified. This, in our opinion, is the true import of sub-section (3) of Section 112 of the Act.

Coming to the facts of the instant case it would be seen as noticed earlier that the respondents were directed by the same order which permitted their substitution "to forthwith deposit in Court towards security a sum of Rs.

- A 2,000 each." We have been informed by learned counsel for the respondents that this condition was complied with by the respondents on the very next day of the passing of the order appealed against. In view of this circumstance, we are of the opinion that even though the order appealed against may not be said to be in strict compliance with the requirements of sub-section (3) of Section 112 of the Act it is not a fit case for interference under Article 136
- B of the Constitution.

In view of the foregoing discussion, this appeal fails and is accordingly dismissed. In the circumstances of the case, however, the parties shall bear their own costs.

G.N.

Appeal dismissed.