

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026
ARISING OUT OF SLP (C) NO. 18487 OF 2023

DINESH KUMAR

...APPELLANT(S)

VERSUS

SURTA NATH @ SURAT NATH & ORS.

...RESPONDENT(S)

J U D G M E N T

1. Leave granted.
2. The appellant is a returned candidate in the election to the post of Pradhan of Gram Panchayat Parwa, Block Chhanvey, Tehsil Sadar, Mirzapur, U.P.. The first respondent, the unsuccessful candidate, filed election petition before Court of Sub-Divisional Officer, acting as Election Tribunal challenging appellant's election. The election petitioner examined two witnesses. The appellant sought cross-examination of said witnesses which was denied by the Sub-Divisional Officer¹ and the appellant's writ petition under Article 226 challenging the same came to be dismissed by the High Court². Thus, the present appeal is by the returned candidate.
3. Short facts germane and necessary for the disposal of the present appeal are as follows;

¹ Vide order dated 08.06.2022 in Election Petition No. 7424 of 2021.

² Vide order dated 21.07.2023 in WRIT - C No. 23513 of 2022.

3.1 Elections to the office of Pradhan, Gram Panchayat Parwa, were notified by the State Election Commission on 26.03.2021. Pursuant thereto, the elections were conducted on 26.04.2021 with eight candidates, including the appellant and first respondent, contesting for the said post. Upon counting of votes, it was found that the appellant had secured 286 votes, whereas first respondent, secured 285 votes. Appellant was hence declared elected on 03.04.2021 and a certificate was issued in his favour by the competent authority.

3.2 Aggrieved by the declaration of appellant as returned candidate, the first respondent instituted Election Petition on 14.06.2021 under Section 12-C of the U.P. Panchayat Raj Act, 1947 before the Prescribed Authority/Sub-Divisional Officer, Sadar, Mirzapur. The present appellant entered contest in the said proceedings by filing his written statement and disputing the assertions made in the election petition. The controversy thereafter proceeded to trial before the Election Tribunal.

3.3 During the course of proceedings, two witnesses, namely Vijay Shankar and Ramesh Chandra, tendered their evidence by way of affidavit in examination-in-chief in April 2022. Thereafter, on 27.04.2022, the appellant moved an application seeking permission to cross-examine the aforesaid witnesses, asserting that such cross-examination was necessary for testing the veracity and credibility of their statements and for an effective adjudication of the election dispute.

3.4 The Election Tribunal, however, by order dated 08.06.2022, rejected the appellant's application for cross-examination. Challenging the said order, the appellant approached the High Court of Judicature at Allahabad by filing a writ petition which came to be dismissed vide order impugned before us.

4. The High Court, by judgment and order dated 21.07.2023, dismissed the writ petition, holding that in view of proviso (ii) and (iv) of Rule 4 of the U.P. Panchayat Raj (Settlement of Election Disputes) Rules, 1994, (hereinafter, "Rules, 1994") the Election Tribunal was not bound to permit cross-examination. For ready reference, the relevant portion of Rule 4 of Rules, 1994 is extracted below:

"4. Hearing of the petition.- (1) Subject to the provisions of the Act and these rules, every election petition shall be tried by the Sub-Divisional Officer, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, for the trial of suits:

Provided that –

(i) the Sub-Divisional Officer may hear the petitioner or his counsel and if he finds that the petition has no substance, reject the same without the issue of any notice to the opposite parties;

(ii) it shall not be necessary for the Sub-Divisional Officer to record the evidence in full and he may maintain only a memorandum of evidence produced by the parties before him;

(iii) if there is a sole petitioner and he dies, or there is a sole respondent and he dies, the petition shall abate;

(iv) the Sub-Divisional Officer may allow only such evidence to be produced as he deems relevant for the purpose of deciding the petition.

...."

5. High Court, while dismissing appellant's prayer for cross-examination, observed as under;

"9. Rule 4 of 1994 Rules provides for hearing of the election petition arising out Panchayat Election.

10. From bare reading of the aforesaid provision of 1994 Rules, it is crystal clear that the application of Civil Procedure Code has been made to a limited extent and so far as recording of evidence is concerned the proviso (ii) and (iv) of Rule 4 of 1994 Rules, are complete code in itself.

11. The reliance placed by the learned counsel for the petitioner upon Order 18 Rule 4 of CPC and Section 137 of CPC is misconceived. The aforesaid provision being general in nature shall not apply where Special Law provides specific procedure.”

6. We have heard learned counsels appearing for the respective parties.
7. The core issue that arises for our consideration is whether the scheme of Rule 4 of the 1994 Rules can be construed so as to exclude the right of a contesting party to cross-examine witnesses whose affidavits have been brought on record in support of an election petition.
8. At the outset, it must be noted that Rule 4(1) expressly postulates that an election petition “*shall be tried... as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908*”. The proviso, no doubt, relaxes certain procedural rigours by permitting the Tribunal not to record evidence in full and to confine itself to such material as it deems relevant. However, the expression “*as nearly as may be*” is indicative of a legislative intent to preserve the essential features of a trial, while allowing flexibility in matters of form and procedure. The proviso cannot, therefore, be read in a manner that obliterates substantive safeguards inherent in a fair trial.
9. The High Court has proceeded on the premise that clauses (ii) and (iv) of the proviso constitute a “complete code” governing evidentiary procedure before the Election Tribunal, thereby excluding the application of the

provisions of the Code of Civil Procedure relating to cross-examination. Such an interpretation, in our considered view, is unduly restrictive and overlooks the distinction between procedural flexibility and denial of a substantive right, apart from the crucial distinction between ‘statement of a witness’ and ‘evidence’.

10. The right of cross-examination, though often described as a component of procedural law, has consistently been recognised as an integral facet of the principles of natural justice. In *Muddasani Venkata Narsaiah v. Muddasani Sarojana*³, this Court underscored that cross-examination is “a matter of substance and not of procedure”, and that failure to cross-examine a witness ordinarily leads to an acceptance of the truth of his testimony. This Court emphasised that a party is required to put its version to the witness, and absence of such challenge permits the Court to presume that the testimony has been accepted. The principle was elaborated further by holding that the obligation to confront a witness in cross-examination is “*one of essential justice and not merely technical*”.

11. It is equally well settled that the requirement of cross-examination is not inflexible and must be assessed in the context of the nature of the dispute. This Court in *K.L. Tripathi v. State Bank of India*⁴ observed that;

“32. *The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility*

3 (2016) 12 SCC 288.

4 (1984) 1 SCC 43.

of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no *lis* regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination *per se* does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.”

(emphasis supplied)

12. As observed by this Court, the concept of fair play in action is not a rigid formula but is dependent upon the facts of each case. Where the facts are undisputed or the party does not seek to challenge the credibility of the witness, denial of cross-examination may not result in prejudice. Conversely, where the *lis* involves disputed questions of fact and the testimony of witnesses is relied upon to establish such facts, the right to cross-examine becomes indispensable. Further, this Court in *Gopal Saran v. Satyanarayana*⁵ has cautioned that it would not be safe to rely on examination-in-chief recorded which was not subject to cross-examination. It must also be noted that right to cross-examine is not merely a statutory right, but an inherent

5 (1989) 3 SCC 56.

component of natural justice.

13. As per the procedure for the purpose of determining election related disputes under Rules, 1994, Rule 4 modifies the requirement of recording evidence. There is a discretion vested in the Sub Divisional Officer acting as Election Tribunal to consider whether cross-examination is necessary or not. Rule 4 (ii) and (iv) incorporates this discretion, enabling the presiding officer to decide whether cross-examination is necessary or not. If the Election Tribunal is of the view that the factual averments in examination in chief are such that it is necessary to subject it to cross-examination, he may permit the said witness be subjected to cross-examination. At the same time, if he is of the opinion that the statement does not extend beyond narration of a fact over which there is no dispute or does not touch upon real controversy of case, he may not permit cross-examination. Hence, under these circumstances, there is therefore a burden on applicant seeking cross-examination to justify need for cross-examination. We will now examine whether the appellant has discharged this obligation and for this purpose, the entirety of the application seeking permission to cross-examine is reproduced herein for ready reference:

14. The following is the application of the appellant:

*"Application on behalf of Dinesh Kumar, defendant No. 1 and others
through Ashok Chandra Shukla, Advocate.*

Sir,

It is submitted that the aforementioned petition is fixed for evidence, in which the affidavits of the witnesses on behalf of the

petitioner have been filed. The cross-examination of the witnesses who have filed the affidavit in the above petition is necessary. The counsel for the applicant desires to cross-examine the witnesses on the affidavits filed in the matter for which the permission is necessary and justified.

Hence, it is prayed to the Hon'ble Court to grant an opportunity to the counsel for the defendant for cross-examination of the witnesses on the affidavits filed by the deponents in the petition."

15. From a reading of the above referred application moved by the appellant, there is absolutely no reason or justification given for cross-examining the witnesses.

16. It is in the context of this application that the Election Tribunal rejected the prayer by holding as follows:

"There is no mention of any reason or ground for cross-examination in the application of the opposite party. The petition is fixed for the evidence of opposite party No.1. The opposite party has filed the application with an intention only to delay the matter. There is no sufficient ground to grant permission for cross-examination nor is cross-examination necessary. It is clear under the Rule that the permission for evidence may be given by the court which is relevant for deciding the petition. Finally, prayer has been made to reject the application dated 27.04.2022 filed on behalf of opposite party No.1. I heard the arguments of the learned counsel for the parties on application dated 27.04.2022 and duly perused the evidence available on record. On analysis it is clear that proviso 2 and 4 of Rule 4 of the U.P. Panchayat Raj (Settlement of Election Dispute) Rules, 1994 provide that no justification appears to cross-examine the witnesses submitted through the affidavit. In such circumstances, the application dated 27.04.2022 filed by opposite party No.1 is rejected. The matter be put up on 13.06.2022 for the defendants' evidence."

17. The appellant challenged the above referred order of the Election Tribunal before the High Court by filing a writ petition under Article 226 of the Constitution of India. The High Court affirmed the decision of the Election

Tribunal and dismissed the writ petition. However, High Court also made an observation that proviso (ii) and (iv) of Rule 4 of Rules, 1994 form a complete code in themselves as far as recording of evidence is concerned, and therefore provisions for cross-examination in Code of Civil Procedure, or Evidence Act, 1882 has no applicability. By this observation, the High Court seems to suggest that there is no right of cross-examination at all. We are not in agreement with this observation, as such a conclusion is contrary to a plain reading of Rule 4.

18. We have no hesitation in agreeing with the conclusion reached by the Election Tribunal, as affirmed by the High Court, declining the appellant's request for cross-examination, since the application filed by the appellant fails to disclose any grounds necessitating such cross-examination. Our disagreement is confined only to the observation made by the High Court while interpreting Rule 4 of the Rules, 1994. We accordingly clarify that while the discretion of the Election Tribunal in the facts of the present case warrants no interference, the legal position enunciated by the High Court on the scope of Rule 4 does not lay down the correct law.

19. In conclusion, we hold that a party seeking cross-examination of a witness is entitled to make such a claim by giving sufficient and justifiable reasons for the same. Under Rule 4, the Sub-Divisional Officer, acting as Election Tribunal, is empowered to consider the request and on being satisfied may permit cross-examination. In the present case, the appellant has not

given any reason to justify cross-examination of the witnesses. The Sub-Divisional Officer, acting as Election Tribunal, has rightly denied cross-examination. The conclusions of the Election Tribunal as also of the High Court warrant no interference.

20. In view of the above discussion, the civil appeal stands dismissed. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
APRIL 29, 2026.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 18487/2023

[Arising out of impugned final judgment and order dated 21-07-2023 in WRITC No. 23513/2022 passed by the High Court of Judicature at Allahabad]

DINESH KUMAR

Petitioner(s)

VERSUS

SURTA NATH @ SURAT NATH & ORS.

Respondent(s)

(IA No. 168550/2023 - EXEMPTION FROM FILING O.T.)

Date : 29-04-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ALOK ARADHE

For Petitioner(s) : Mr. S.R.singh, Sr. Adv.
Mr. Sushant Kumar Yadav, Adv.
Mr. Mangal Prasad, Adv.
Mr. Prateek Yadav, Adv.
Mr. Anurag Singh, Adv.
Mr. Rana Yashvir Singh Chauhan, Adv.
Mr. Prithvi Yadav, Adv.
Ms. Radha Rajput, Adv.
Ms. Anusha Yadav, Adv.
Mr. Ankur Yadav, AOR

For Respondent(s) : Mr. Ghanshyam Singh, Adv.
Mr. Rajnish Kumar Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The civil appeal is dismissed in terms of the signed Reportable Judgment.

3. Pending interlocutory application(s), if any, is/are disposed of.

**(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS**

**(NIDHI WASON)
ASSISTANT REGISTRAR**

(Signed Reportable Judgment is placed on the file)