

Prem Pal Singh Vs. Avnish Kumar Singh and Others

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Court : Allahabad

Decided On : Mar-21-1995

Reported in : AIR1995All411

Judge : D.S. Sinha, J.

Acts : [Representation of the People Act, 1951](#) - Sections 80, 81, 81(3), 82, 83, 86(1) and 117; Conduct of Election Rules, 1961 - Rule 56(7); Conduct of Election (Amendment) Rules, 1969 - Rule 45

Appeal No. : Civil Misc. Application No. A-11 of 1994

Appellant : Prem Pal Singh

Respondent : Avnish Kumar Singh and Others

Advocate for Def. : S/Sri K.R. Singh, ;K.N. Tripathi and ;Neeraj Tripathi, Advs.

Advocate for Pet/Ap. : S/Sri Vijendra Singh, ;Asrar Ahmad and ;Yashpal Singh, Advs.

Judgement :

ORDER

1. By means of instant application No. A11 dated 12th/29th July, 1994, under Section 86(1) of the [Representation of the People Act, 1951](#), hereinafter called the Act, the contesting respondent No, 1 urges the Court to inflict upon the petitioner

extreme penalty of dismissal of his election petition for the alleged non-compliance of the mandatory provisions contained in Section 81(3) of the Act.

2. On 28th November, 1993, the respondent No. 1 was declared elected as Member of the Uttar Pradesh Legislative Assembly from Dataganj Assembly constituency No. 47 in the district of Budaun.

3. The petitioner, one of the candidates who lost the election, has filed the present election petition calling in question the election of the respondent No. 1 under Section 81 read with Section 80 of the Act on the following two grounds:--

'(A) Because the result of the election of the respondent No. 1 has been materially affected by non-compliance and contravention of the provisions of [Representation of the People Act, 1951](#); Conduct of Election Rules 1961 and the Orders and Directions issued by the Election Commission of India from time to time under the Constitution read with provisions of Representation of the People Act and the Conduct of Election Rules; 1961.'

'(B) Because, the result of the election of the respondent No. 1 has been materially affected by improper reception of the votes in his favour which Votes in fact were invalid and were liable to Be rejected and the improper rejection of votes cast in favour of the petitioner which in fact were valid votes and were liable to be counted in favour of the petitioner as valid votes.'

The concise statement of the alleged material facts in support of ground (A) is to be found in paragraph 12 of the petition which contains sub-paragraphs No. (i) to (xiv). Sub-paragraphs 12(iv), 12(v), 12(vi) and 12(ix) which have been relied upon by the respondent No. 1 in support of his prayer for dismissal of the election petition are extracted below:--

'(iv). That under Rule 45 of the Conduct of Election Rules 1969 the Presiding Officers at the close of the polling are required to fill up the details of the ballot papers utilised in a ballot paper account to be maintained in Form-16, Part I. At the start of counting the ballot papers found inside the ballot boxes are recorded on Form 16, Part II. In the polling held for 47-Dataganj Assembly Constituency there

are discrepancies in the total number of votes polled and the total number of votes found inside ballot boxes. Besides there is further discrepancy in the total number of votes found inside the ballot boxes and the total number of votes as shown in the final result sheet in Form 20. The allegations made in para under reply are based upon the figures as recorded in certified copies of Form 16, Part I. Form 16. Part II and Form 20.'

(Underlining by the Court)

'(v) That the total of the votes polled as recorded in Form 16, Part 1 is 103535 while the total number of votes found inside the ballot boxes is 103459 as per Form 16, Part II. And the total number of votes as shown in Final result sheet is 103497. The discrepancies in the aforesaid figures which do not tally with each other is indicative of the fact that the counting process was not correctly conducted. The averment in this paragraph are based on the figures shown in Form 16, Part I and Form 16, Part II_and the final result sheet in form 20, the certified copies of which are being filed along with this Election Petition.'

(Underlining by the Court)

'(vi) That on polling station 21 NaveenPrimary Pathashafa Deharpur Khurd, the number of votes polled was 594 as per Form 16, Part I while the total number of votes as shown to have been found inside the ballot box is 544 as per Form 16, Part II with no explanation whatsoever as regard to 50 votes. The averments made are based upon the figures shown in certified copies of Form 16, Part I and Form 16. Part 11 pertaining to said polling station which are on record of this election petition.'

(Underlining by the Court)

'(ix) That the counting supervisors similarly failed to prepare a bundle with correct number of votes of each candidate after counting and the bundles containing less than 50 votes cast in favour of respondent No. 1 were also counted as having contained 50 votes. This irregularities has resulted in discrepancies in the figures set out in result sheet in Form 20, According to the information supplied by

counting agents of the petitioner on table No. 2 viz. Jafaruddin the counting supervisor of table No. 2 viz. Anand Kumar Pal, Junior Engineer, Public Works Department, committed this irregularity in the first round of counting and the bundles of respondent No. 1 containing less than 50 votes were counted as having 50 votes thereby resulting in discrepancy in the number of votes allotted and counted on the table.'

(Underlining by the Court)

4. It is not in dispute that Parts 1 and II of Form 16 (Ballot Paper Account), maintained under Rule 45 of the Conduct of Election Rules, 1961, and Form 20 (Final Result Sheet), under Rule 56(7)(b) of the Conduct of Election Rules, 1961, which are referred to in the paragraphs 12(iv), 12(v) 12(vi) and 12 (ix), and the certified copies whereof are stated to have been filed along with the petition in paragraph 12(v) and asserted to be on record of the election petition in paragraph 12(vi) did not accompany the petition presented in the Court. Consequently, these documents were not supplied to the respondent No. 1 along-with the copy of the election petition served upon him.

5. Intensely relying upon the decision of this Court rendered in Jagram Singh v. Pritam Singh and others, reported in 1992 All LJ at page 502, Sri K. R. Singh, learned counsel appearing for the respondent No. 1, contended that non-supply of the copies of Parts I and II of Form 16 and of Form 20 alongwith the copy of the election petition to the respondent No. 1 amounted to non-compliance of the mandatory requirement of the provisions of sub-section (3) of Section 81 of the Act entailing dismissal of the election petition under sub-section (1) of Section 86 of the Act.

6. Sri Vijendra Singh, learned counsel for the petitioner, controverted the contention of the learned counsel for the respondent No. 1 on the ground that Parts I and II of Form 16 and of Form 20 were not integral part of the petition and were merely documents intended to be relied upon by the petitioner as evidence in support of his grounds for questioning the election of the respondent No. 1. According to him, non-supply of the said documents to the respondent No. 1 along with the copy of the election petition did not amount to non-compliance of. To buttress his

submission, the learned counsel placed reliance upon the decision of the Hon'ble Supreme Court of India in U. S, Sasidharan v. K. Karunakaran and another, reported in AIR 1990 SC 924.

7. Section 83 of the Act mandates that every election petition shall contain a concise statement of material facts on which the petitioner relies; and that in a petition which is founded on the ground of any corrupt practice the petition shall also contain full particulars of the alleged corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such corrupt practice.

8. Although the requirement of making of a concise statement of material facts upon which the petitioner relies and of setting forth full particulars of any corrupt practice he alleges is mandatory, the Act does not prescribe any particular form to be used for pleading a concise statement of material fact and particulars.

9. A concise statement of material facts on which the petitioner relies or particulars of corrupt practice alleged to have been committed may be incorporated in the main body of the election petition or in any schedule or annexure thereto, duly signed by the petitioner and verified by him in the same manner as the election petition. The material facts and particulars may also be pleaded by reference to a separate document containing such material facts and particulars. Where the mode of pleading of material facts and particulars in the election petition adopted by the petitioner is incorporation by reference to any document such document becomes integrated in the election petition.

10. But, a document does not become integrated in the election petition merely by its mention in the petition. Mention of a document may be made in the election petition to indicate the intention of the election-petitioner to rely upon it as evidence in support of the material facts or particulars already disclosed in the election petition and such document may also be filed along with the election petition for the purpose. If a document referred in the election petition is filed along with it as evidence to be relied upon in support of the material facts or particulars already disclosed in the petition, the document cannot be treated as integral part

of the election petition. This is the settled legal position (See U.S. Sasidhafan v. K. Karunakaran, AIR 1990 SC 924).

11. Section 86(1) of the Act ordains the High Court to dismiss in election petition which does not comply with the provisions of Section 81 of Section 82 or Section 117. Subsection (3) of Section 81, which is relevant in the context of the controversy, requires every election petition presented to the High Court to be accompanied by as many copies thereof as there are respondents mentioned in the petition. It further requires every copy of the election petition accompanying the election to be attested by the petitioner under his own signature to be a true copy of the petition. Obviously, the copy or the copies of the election petition required to accompany the election petition presented to the High Court are meant for service upon the respondent or respondents, as the case may be, for the purpose giving them notice of the case of the petitioner; and object of demanding strict compliance of the provisions of sub-section (3) of Section 81 of the Act regarding supply of copy of the election petition attested under the signature of the petitioner to be a true copy of petition is to ensure that the respondent is not prejudiced in making a proper and effective defence. It cannot be gainsaid if the respondent is not furnished with true copy of the election petition along with copy of the material document forming integral part of the pleadings in the election petition he will surely be prejudiced in making a proper and effective defence.

12. A conjoint reading of paragraphs 12(iv), 12(vi) and 12(x) leaves no room for doubt that concise statement of material facts and particulars on which the petitioner relies in support of his ground (A), as is required by Section 83 of the Act, is fully contained in the said paragraphs. Reference to Parts 1 and II of Form 16 and Form 20 has been made only to add emphasis to the already stated material facts and to indicate that these documents may be relied upon by the petitioner as evidence to support the material facts. The documents were not filed along with the petition as part thereof or otherwise although it is stated in the petition that they 'are being filed along with the Election Petition' and 'are on record of this election petition'. Mere statement by the petitioner that the documents 'are being filed alongwith this Election Petition' or that the documents 'are on record of this election petition' cannot make the documents an integral part of an election

petition. The Court, therefore, holds that the documents in question are not integral part of the election petition of the petitioner and non-supply thereof will in no way prejudice the respondent No. 1 in making his effective defence. Thus, omission to file or to supply the copies of the said documents to the respondent No. 1 cannot invite the lethal penalty of dismissal of the election petition for non-compliance of the provisions of Section 81(3) of the Act.

13. Legal position regarding requirement of serving upon the respondent a copy of a document, either referred in election petition or filed in the proceedings as evidence, along with a copy of the election petition as has been declared by the Hon'ble Supreme Court of India in the case of U.S. Sasidharan v. K. Karunakaran (AIR 1990 SC 924), is as follows:--

'On the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of Section 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent alongwith a copy of the election petition.'

14. The contents of the documents, namely, Parts I and II of Form 16 and Form 20, are already pleaded in the election petition by giving relevant figures in its sub-paragraphs reproduced earlier. The documents will only prove or disprove the said figures, and will have the status of evidence, not pleading. The documents being evidence were not statutorily required to be served on the respondent No. 1. Failure, if any, to serve upon the respondent No. 1 copies of the said documents along with the election petition cannot be held to be fatal, by any stretch of imagination.

15. The decision in the case of Jagram v. Pritam Singh (1992 All LJ 502), relied upon on behalf of the respondent No. 1, by itself does not lay down any law having the effect of a binding precedent. It cannot be assigned a status higher than an

illustration of the manner and course adopted by the Court on the facts and circumstances of the case. As a matter of fact, the Court followed and felt fortified by the decision of the Hon'ble Supreme Court of India in the case of U.S.Sasidharan v. K. Karunakaran (AIR 1990SC 924), which still continues to be lodestar.

16. Foregoing discussion leads to an inevitable conclusion that the application of the respondent No. 1 (No. A11 dated 12/29th July, 1994) praying the Court to dismiss the election petition of the petitioner for non-compliance of the provisions of Section 81(3) of the Act is devoid of substance. It is rejected accordingly.

17. Application dismissed.

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