

Mohd. Kaisar Vs. Chabbili Devi

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Court : Allahabad

Decided On : May-02-2008

Reported in : 2008(3)AWC2693

Judge : Sunil Ambwani, J.

Appellant : Mohd. Kaisar

Respondent : Chabbili Devi

Advocate for Pet/Ap. : Shri. T.P. Singh

Disposition : Petition dismissed

Judgement :

Sunil Ambwani, J.

1. Heard Shri T.P. Singh, senior advocate assisted by Shri Siddharth Nandan for the petitioner. Shri Siddharth Verma appears for the respondent.

2. The petitioner was declared elected in the elections of President, Nagar Panchayat Dewarniya, Tehsil Bahedi, Distt. Bareilly, held on 6.11.2006. The result was declared on 17.11.2006. He is aggrieved by the order dated 4.3.2008, passed by the Additional District Judge, Court No. 7, Bareilly in Election Petition No. 34 of 2006 between Chabbili Devi v. Mohd. Kaisar rejecting his application under Order VII, Rule 11, Code of Civil Procedure for rejection of the plaint.

3. Shri T.P. Singh, learned Counsel for the petitioner submits that the election petition was liable to be dismissed on the ground of non-compliance of the provisions of Section 20(5) of the Municipalities Act. 1916, as it was not presented by the petitioner in person before the District Judge. He submits that the election petition lacks necessary particulars, to support the grounds of interpolation of votes as no material particulars, namely serial number of valid votes ; the names of the counting agents ; the number of counting table ; name of counting supervisors : details of votes and the basis of information was disclosed in the election petition. The election petition leads to civil as well as criminal consequence. Although vague allegations are made against the returning officers and other persons, they were necessary parties and were not impleaded in the election. The election petition has been filed with fishing and roving allegations, which do not constitute cause of action and was liable to be rejected.

4. Shri Siddharth Verma on the other hand submits that cause of action is the bundle of facts, which constitutes a cause to maintain a petition. There are clear and sufficient pleading in the election petition with regard to the irregularities in the election. Paragraphs 2 to 12 clearly provide for all the details, which constitute cause of action to file election petition. He would submit that after the amendment in Sub-section (5) of Section 20 by U.P. Act No. 17 of 1982 the words 'in person' have been omitted and that the election petition can be presented to the District Judge exercising Jurisdiction in the area in which the municipality to which the election petition relates is situate, provided that it is accompanied by treasury challan showing that the prescribed security is deposited. He submits that Sub-section (1) of Section 20 provides that the election petition shall contain a concise statement of the material facts on which the petitioner relies and set forth the full particulars of any corrupt practice that the petitioner alleges including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the dates and place of commission of each such practice. He submits that these allegations are clearly set out in the election petition.

5. The Tribunal has found that there is endorsement of presentation of the petition on the back of the first page election petition certified by the Munsarim of the Court of District Judge and the signatures of the election-petitioner on it, is identified by

her counsel. It has also found that there was sufficient pleading supported by material particulars and thus the election petition was not liable to be rejected under Order VII, Rule 11 of the Code of Civil Procedure.

6. Shri T.P. Singh submits that the note of Munsarim on the election petition is sufficient material to prove that the election petition was not presented by the petitioner herself before the District Judge and that her signatures were obtained subsequently. There is no enforcement made by the District Judge himself that it was presented before him by the election petitioner.

7. Without going into the effect of the deletion of words 'in person' in Sub-section (5) of Section 20 by U.P. Act No. 17 of 1982 and the effect of the amendment if these words were actually placed in the rules, I find that there is no such requirement either in the Act or in the Rules that the District Judge will make a note/endorsement that the election petition was presented before him by the election petitioner herself. The fact whether the petitioner was present, and the election petition was presented by her personally before the District Judge, and that the effect of the note of the Munsarim has to be considered after oral evidence is led. The petitioner may prove that she was present and was identified by her counsel and that she presented the petition before the District Judge. The note on the election petition is not conclusive evidence of the fact of presentation of the election petition, in person before the District Judge, nor any such presumption can be raised that she was not present at the time of the presentation of the petition, or it was not presented before the District Judge.

8. With regard to material particulars of corrupt practice in the election petition, the law is fairly settled. The election petition with vague allegations, which do not contain precise statement of material facts is treated to be petition, which does not disclose cause of action and is as such not maintainable.

9. In *Virendra Nath Gautam v. Satpal Singh* : AIR 2007 SC581 , the Supreme Court clarified the meaning of the word 'material facts' and held in the context of Section 83 of the Representation of Peoples Act, which is part mateira to Sub-section (1) of Section 20 of the Municipalities Act, 1916:

The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.) p. 349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

In the leading case of *Philipps v. Philipps*, Cotton, L.J. stated:

What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts, which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial. In *Bruce v. Odhams Press Ltd.*, Scott, L.J. referring to *Philipps v. Philipps* observed, All ER p. 294:

The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action ; and if any one 'material' statement is omitted, the statement of claim is bad ; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order XXV, Rule 4 (see *Philipps v. Philipps*) ; or 'a further and better statement of claim' may be ordered under Rule 7. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already

drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

10. In the present case, the Election Tribunal has found that opposite party No. 1 with his accomplices and the Presiding Officer allowed 76 persons, who were entered at two places in the elector's list of Nagar Panchayat, and were entitled to vote at only one place voted at two places and thereby all these 76 votes were liable to be rejected. One of the person was not present and was employed. The 21 persons had died before 3.11.2006 (the date of election) in whose names the votes were cast. Shri Ata-ur-Rehman of Samajvadi Party and Chairman of the Minorities Finance Commission was the representative of the Baheri Vidhan Sabha area in Legislative Assembly. His brother Shri Wafa-ur-Rehman is Block Pramukh of Block Damkhauda, Tehsil Baheri. They misused their position by exercising undue influence on local police and administrative officers and caused 'herapheri' (bungling) in the ballots on which votes were directed to be recounted. The returning officer was a subordinate officer in the ministry of Shri Ata-ur-Rehman and he was made to declare that the election petitioner secured 2,396 votes instead of 2,406 votes and the elected candidate/ opposite party No. 1 secured 2,401 votes instead of 2,395 and consequently declared the opposite party No. 1 elected with a difference of five votes. The election petitioner annexes a list of these 21 persons, who had died before the elections on 3.11.2006 along with election petition, and had clearly stated that these persons were shown-to have voted for opposite party No. 1 with the help of his supporters.

11. I do not find any illegality in the view taken by the Election Tribunal that these facts were sufficient, and constituted material facts of which particulars were also given. The facts regarding 76 voters allowed to participate at both the places and

21 dead electors, who were shown to have casted their votes, the list of which was given with the election petition constitute material facts. Whether there are sufficient particulars, which could be said to be material facts will depend upon facts of each case. It is essential that all basic and primary facts, which must be proved at the trial by the party to establish the existence of cause of action or defence, are material facts and must be stated in the pleading by the party. The object is that frivolous petition should be thrown out and that defendant should get sufficient opportunity to represent and to defend himself against the allegations made in the election petition. In this case the allegations are clearly given in the election petition with list of persons, who were allowed to vote at two places and 21 electors with their list annexed, who were dead and were shown to have casted their votes. Their names have also been given. These would constitute basic and primary facts, which are to be proved at the trial. The election petitioner is not required to give complete evidence in the election petition. He must, however, give sufficient facts and particulars to draw the battle lines clearly between the parties so that no one is taken by surprise in the trial. If the basic facts and the particulars, as in the present case are given, it will not be necessary to give entire evidence in the election petition itself. In *D. Ramachandran v. R.V. Janakiraman* : [1999]1SCR983 , it was held that the Court will not dissect pleadings and strike out pleading, which does not disclose cause of action.

12. The petitioner has not filed the written statement so far. Before parting with the case the Court observes that it is not necessary for defendants to wait until his application under Order VII, Rule 11, C.P.C. is decided to file the written statement. After the amendment to Order VIII, Rule 1, C.P.C. the written statement has to be filed within 30 days and with adjournment upto a maximum period of 90 days. The mandate of the Code of Civil Procedure with regard to time frame within which the written statement has to be filed is relaxed by the Supreme Court in *Kailash v. Narihku* : AIR 2005 SC2441 , only to the extent, where there are exceptional circumstances, which have prevented the filing of the written statement, and are occasioned by the reasons beyond the control of the defendant. Costs may be imposed and affidavits explaining the reasons may be demanded. This relaxation, however, does not include the time spent in waiting for the decision of the application under Order VII, Rule 11,

13. The writ petition is dismissed.

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