

Ramkumar Mishra Vs. Kesharimal

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Court : Madhya Pradesh

Decided On : Mar-27-1973

Reported in : AIR1975MP26; 1974MPLJ579

Judge : Surajbhan, J.

Acts : [Representation of the People Act, 1951](#) - Sections 83

Appeal No. : Election Petn. No. 23 of 1972

Appellant : Ramkumar Mishra

Respondent : Kesharimal

Advocate for Def. : J.P. Bajpai, ;M.K. Date and ;A.P. Tare, Advs.

Advocate for Pet/Ap. : L.S. Baghel, Adv.

Disposition : Application partly allowed

Judgement :

ORDER

Surajbhan, J.

1. The respondent has filed an application (I. A. No. 32 of 1973) that so far as the corrupt practice alleged in paragraph 5 of the petition, is concerned, there is no affidavit to this effect and, therefore, the petition be dismissed under Section 87 of

the [Representation of the People Act, 1951](#) (hereinafter referred to as 'the Act').

2. The petitioner, in reply, has stated that the affidavit has already been filed with the petition but so far as paragraph 5 of the petition is concerned, the defect in the affidavit crept in due to a typing mistake and it was not detected before filing the petition.

3. I heard both the learned counsel for the parties. Shri Bajpai, learned counsel for the respondent, has invited my attention to paragraphs 11 and 15 of the judgment of the Division Bench of this Court, reported in *Dwarkanprasad v. Kamalnagar*, 1964 MPLJ 682 at pp. 691, 696 and 697 = (AIR 1964 Madh Pra 273 at pp. 279, 283). He also stressed that the decision of the Supreme Court in *Kamal Narain v. Dwarkanprasad*, AIR 1966 SC 436 is an authority for the proposition that the affidavit sworn before the Clerk of Court in the District Court was good and the question whether Section 83 of the Act is mandatory or directory was not decided. He also cited in support of his contention a ruling reported in *Hardwar Lal v. Kanwal Singh*, AIR 1972 SC 515. He has further urged that in spite of the fact that in paragraph 16 of his written statement, an objection was taken that the affidavit is not according to the prescribed form, even then the petitioner did not take care to file a proper affidavit in this regard. Shri Baghel, learned counsel on behalf of the petitioner, on the other hand, has urged before me that the petition cannot be dismissed because of the fact that the affidavit is already there and in order to cure the defect found therein, the petitioner has filed another affidavit and the provisions of Section 83 of the Act are not mandatory.

4. Having heard both the learned counsel, I have come to the conclusion that paragraph 5 of the petition must not go for trial for the reasons I presently show. Proviso to Section 83 of the Act provides that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof and the reason for the same is very clear that the allegations of corrupt practices in an election petition are quasi criminal in nature and it is essential to protect the rights of the person against whom the allegations are made, that the person making the allegation must be in a position to swear as

regards the truth of the allegations of corrupt practice and the particulars thereof. In other words, this condition was made precedent in order to avoid frivolous and false allegations to be made against the returned candidate. It is not necessary to decide whether the provisions of Section 83 of the Act are mandatory or directory but in the instant case, the petition was filed on 26-4-1972 and the written statement was filed on 9-10-1972 and in paragraph 16 of the written statement, an objection was taken that the affidavit accompanying the petition is not in the prescribed form. It is true that the averment is not clear to the effect that there was no affidavit as regards paragraph 5 of the petition, but even then, this objection should have put the petitioner on guard to carefully see his affidavit and correct the defect. He has not done so. The filing of an election petition is a serious matter. It is also true that the purity of the election has got to be maintained. Therefore, the person who files the election petition must be very careful to see that every requirement of law is properly followed. In this case, the petitioner has not been vigilant and looking to the facts and circumstances of the case, I am clearly of the view that the allegations contained in paragraph 5 of the petition shall not go for trial, but the election petition cannot be dismissed as urged by the petitioner.

5. The result, therefore, is that the application (I. A. No. 32 of 1973) filed by the respondent is allowed to the extent stated above. The allegations contained in paragraph 5 of the petition shall be struck out and will not go for trial.