

Ram Sukh Vs. Dinesh Agarwal

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Court : Uttaranchal

Decided On : Jan-15-2008

Reported in : AIR2008Utr33

Judge : B.S. Verma, J.

Appellant : Ram Sukh

Respondent : Dinesh Agarwal

Disposition : Petition dismissed

Judgement :

ORDER

B.S. Verma, J.

1. Heard Sri Vijay Bahuguna, Senior Advocate, assisted by Sri L.K. Tiwari and Sri V.B.S. Negi, learned Counsel for the objector-respondent and Sri. V.K. Bist, Senior Advocate assisted by Sri. V.K. Kaparwan, learned Counsel for the election petitioner on the application under Order 6, Rules 16 and 17 and Order 7, Rule 11 of the Code of Civil Procedure (for short the Code) read with Section 86 of the Representation of People Act 1951 (for short the Act).

2. Initially, the election petition was filed against the returned candidate and six others but the election petitioner has sought deletion of names of respondent Nos.

2 to 17, which was allowed vide Court order dated 18-6-2007.

3. This application has been moved by the respondent to dismiss the election petition at the threshold mainly on the ground that the election petition does not disclose any legal cause of action and the same does not comply with the provisions of Section 83 of the Act. It has also been alleged that the election petition does not contain concise statement of material facts and does not furnish necessary particulars of material facts on which the allegations of corrupt practice have been made.

4. A Draver has been made in the preliminary objection by the respondent No. 1 to the effect that the election petition of the petitioner lacks material facts and full particulars as well as there is non-disclosure of any cause of action, therefore, the election petition is liable to be dismissed in limine.

5. Elections to the State Legislative Assembly of Uttaranchal (now Uttarakhand) were held on 21-2-2007 and the results were declared on 27-2-2007. The petitioner was one of the candidates in said elections from 13-Laxman Chowk Legislative Assembly Constituency, Dehradun. Besides the petitioner, as many as 17 others including the respondent Dinesh Agarwal were also the candidates in the said election. The petitioner Ram Sukh fought the election as a candidate of Nationalist Congress Party with the symbol of Clock while the respondent was a candidate of Indian National Congress with the symbol of palm of hand. After the counting of votes was completed, the respondent has been declared as elected by the Returning Officer on 27-2-2007.

6. Petitioner having lost the election has challenged the election by the present petition inter alia on the grounds described hereinafter. On 5-2-2007, petitioner appointed one Manbit Singh Dagur as his election agent and submitted two sets of required Form-8 (Praroop-8) before the Returning Officer, who in turn obtained signatures of the petitioner and his election agent thereon and returned one set to the petitioner. On 15-2-2007, the Returning Officer got the signatures of the petitioner and other candidates as also their polling/election agents in Pro forma i.e. Anulgnak-22. The petitioner was under bona fide impression that the signatures of his polling agent would have been sent to the polling officers of all

polling stations along with other polling agents, but the Returning Officer deliberately did not send the signed Anulagnak 22 of the petitioner and his agent to different polling stations. Due to this, the polling agent of the petitioner was not permitted by the polling officers to act as such on the day of polls, i.e. 21-2-2007. The petitioner promptly contacted the Returning Officer on his mobile phone No. 9411112201 9411112201 at 7-42 a.m. on 21-2-2007, who asked the petitioner to come to Kutchery camps. When the petitioner reached Kutchery, the office of the Returning Officer was closed and nobody was present there. Thereafter the petitioner along with his polling agent went to nearby polling stations to verify whether the signed Pro-forma reached to them or not but the petitioner was informed that the required pro forma containing signature of petitioner's polling agent was not available in any of the polling stations. Again, the Returning Officer was contacted on his mobile phone at 9.50 a.m. and informed him of this fact. The Returning Officer asked the petitioner to wait for the Assistant Returning Officer being sent to him outside his office. No body came even lapse of an hour. According to the petitioner, at 11.30 a.m. Assisting Returning Officer came to the office of the Returning Officer and got the signature of the petitioner and his polling agent on Anulagnak 22 though the same had already been done on 15-2-2007. Thereafter the clerk of the Returning Officer came along with a file and informed the Assisting Returning Officer that the required pro forma duly signed by them was available therein, but the same was not duly verified by the Returning Officer/Assisting Returning Officer. The same was got done and given to the petitioner. On that account, a period of about four hours was elapsed. The Assisting Returning Officer then telephoned to one Kanoongo and two Patwaris and asked them to collect copies of aforesaid Anulagnak 22 from his office and to distribute the same in all 111 polling stations. This exercise struck 3.00 p.m. and by that time 80% polling was over. The Returning Officer was apprised of the resentment of the petitioner by phone at 12 : 50 p.m. According to the petitioner, this inaction on the part of Returning Officer materially affected the election as almost all other polling agents of the petitioner working in other polling stations got confused and supporters of the petitioner either returned or voted in favour of congress candidate.

7. The petitioner was contesting as a candidate of Nationalist Congress Party and was getting vast support from the voters. Due to the aforesaid reason, the respondent No. 1 demoralized and started using unfair practice in the election. He first passed the petitioner to withdraw from the contest and on refusal by petitioner, a rumour was spread by the respondent No. 1 that the petitioner has withdrawn from the election. In denial thereof, a press release was published in the News Paper by the petitioner. Thus, the respondent No. 1 used corrupt practice.

8. The respondent No. 1 also got fabricated fatva from Devband circulated among the Muslim voters for casting their votes in favour of the Congress candidate. Thus, the Muslim voters were unduly influenced by issuance of religious fatva.

9. In paragraph No. 24, the petitioner has alleged that the Polling Officer at various polling centres did not seal electronic voting machine in presence of election agents of the petitioner and other candidates. On 27-2-2007 also, before commencement of counting, the Returning Officer did not get the seal of strong room certified from any of the polling agents. In fact same was already broken.

10. In paragraph No. 25, it has been alleged that the electronic voting machines of various polling stations were either changed or further used after polling was over. This fact finds support from the chart appended to the foot of paragraph No. 25. Thus the fairness of the election of entire 13 Laxman Chowk Assembly Constituency becomes doubtful and misuse of official machinery in support of then ruling congress party is proved.

11. In the application (CLMA No. 1771 of 2007) it has been contended that the election petition does not disclose the names of the polling stations where the polling agents of the petitioner were refused admission and it does not mention relevant facts and particulars as to how the election of the returned candidate was materially affected. The petitioner has not disclosed the number and names of his supporters who voted for the Congress candidate which materially affected the election. The petitioner lost the election by a huge margin of votes.

12. According to the respondent, the election petitioner has not filed his affidavit in support of the allegations of corrupt practice which is the mandatory requirement

of proviso to Section 83(1)(c) of the Act and as such entire election petition is liable to be dismissed and allegations of corrupt practice made in paragraph No. 14, 17, 19, 20 and 21 as well as the grounds D and E of the election petition are liable to be struck off.

13. The election petitioner has filed his objection against the application made by the respondent and has contended that the application is liable to be dismissed summarily as the same has not been properly titled. It has also been contended that the respondent has not filed his written statement though statutory period for filing the same has expired. Without filing the written statement, the respondent cannot raise any preliminary objection hence the application filed under Order 6, Rules 16 and 17 and Order 7, Rule 11 of the Code and under Section 86 of the Act deserves to be dismissed.

14. It has also been contended that the legal cause of action has been fully disclosed in the election petition and the pleadings made in the election petition are sufficient to prove cause of action. There is full compliance of Section 83 of the Act. It has been alleged that the allegations of corrupt practice have been fully described in paragraph Nos. 14, 15, 17, 19, 21 and 27 of the election petition and the allegation of the respondent that the election petition lacks of material facts is not acceptable.

15. Order 6, Rule 16 of the Code reads as under:

16. Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

16. Learned Counsel for the respondent further urged that the petitioner has not disclosed any cause of action to file the election petition, therefore, for want of non-disclosure of cause of action, the election petition is liable to be rejected at the

threshold.

17. Learned Counsel for the respondent further submitted that in the present election petition the petitioner has not given a concise statement of the material facts on which the petitioner has placed reliance, therefore, for want of non-compliance of the provisions of Section 83(1) of the Act the election petition is not entertainable. Learned Counsel also submitted that since there is no ground available to the petitioner as envisaged by Section 86 of the said Act, therefore, the election petition is liable to be thrown out at the threshold.

18. To sum up, the argument of the learned Counsel for the respondent is that the pleadings in the present election petition are entirely vague, that the election petition does not contain concise statement of material facts, that there is non-compliance of the provisions as contained in Section 83(1) of the Act and that no ground is legally available to the election under Section 100 of the Act to seek the remedy to declare the election of the respondent as void. Learned Counsel for the respondent has submitted that the election petition is liable to be dismissed in limine for want of mandatory requirement under Section 83(1) of the Act. In support of his arguments, learned Counsel for the respondent has placed reliance upon the case of Azhar Hussain v. Rajiv Gandhi MANU/SC/0284/1986 : [1986]2SCR782 , wherein it has been inter alia held that 'there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders can be passed if the mandatory requirement enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.'

19. Section 83 of the Act reads as under:

83. Contents of petition.- (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relied;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges 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 practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided 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 corrupted practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

20. At the outset it may be mentioned that the grounds for declaring election to be void have been enumerated in Section 100 of the Act, which reads as under:

100. Grounds for declaring election to be void,- (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent.

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

21. In Ground A the election petitioner has stated that the Returning Officer was duty bound to be certain compliance which he failed to comply, hence the election was materially affected. In this ground the petitioner could not dare say that the result of the election so far as it concerns a returned candidate has been materially affected on that count, Hence Ground A is vague and is liable to be struck out.

22. In Ground B, the election petitioner has alleged that the respondent spread a rumor that the petitioner had withdrawn from the election to get support from the supporters of the petitioner does not disclose concise statement of material fact to substantiate this allegation. Hence this ground of corrupt practice is also vague and is liable to be struck out.

23. Ground C and Ground D relate to the functioning of Electronic Voting Machines for which no demonstration camps were organized in the constituency to make the electorates aware in that regard. In Ground D it has been further alleged that the respondent No. 1, his agents and supporters also misled the voters by informing them that by pressing button at serial No. 1 the machine gets in motion and then they should press the button of desired serial number for casting vote to the candidate of their choice. In this connection neither the name of the person who has misled the voters has been disclosed nor any date time and place of such activity have been mentioned. However, it had been stated that corrupt practice was made by the respondent. Therefore, Ground Nos. C and D are entirely vague.

24. In Ground No. E it has been stated that the respondent also got fabricated fatva from Devband circulated among the Muslim voters for casting their votes in favour of Congress candidate, but in this behalf, neither names have been disclosed nor date, time and place of circulation of fatva have been mentioned.

25. In Ground F, there is allegation that the Electronic Voting Machines were not sealed in presence of election agent of the petitioner, but there is no specific allegation that due to non-compliance of any statutory requirement, the election of the respondent was materially affected. Similar is the allegation on Ground Nos. G and H.

26. I have considered the averments made in the present election petition vis-a-vis the submissions and contentions raised by the rival parties. It is significant to note that the allegations of corrupt practice are entirely superficial in nature. The concise statement of material facts is completely wanting. Besides, mandatory requirement of affidavit in support of the allegations of corrupt practices is lacking in this election petition.

27. So far as the Ground of corrupt practice taken in the present petition is concerned, the same is of no help to the election petitioner for the simple reason that no affidavit in support of the allegation as envisaged by Proviso to Section 83(1) of the Act has been filed by the petitioner. The election petition containing allegation of corrupt practice was required to be accompanied by an affidavit in the prescribed form, but the same had not been done in the instant case. To fill up this

lacuna, a lame effort has been made by filing an affidavit at a later stage and that too after expiry of the period pre scribed for filing the election petition. The election petition was presented before the Registrar on 7-4-2007. The prescribed period for filing the election petition was to expire on 13-4-2007 as the result of the election was declared on 27-2-2007. The petitioner was required to present the election petition accompanied by the affidavit in sup port of allegation of corrupt practice in the prescribed form. The affidavit was even sworn in by the election petition on 15th April, 2007 after the expiry of the prescribed period of limitation. The affidavit as tendered by the petitioner cannot be termed as a proper affidavit. The election petition is not accompanied by an affidavit in the pre scribed form in support of the allegation of corrupt practice and the particulars thereof. As such the defect in the election petition is incurable and fatal. Therefore, the affidavit sworn in and filed subsequently after the expiry of limitation by the petitioner in the case at hand cannot be taken into consideration. The Apex Court in the case of Ravinder Singh v. Janmeja Singh MANU/SC/0586/2000 : AIR 2000 SC3026 while dealing with the provisions of Section 123(1)(A)(b) and 83(1) of the Act has observed in paragraph No. 9 as under:

9. Coming now to the charge of corrupt practice, falling under Section 123(1) of the Act, for which material facts and particulars have been detailed in paragraphs 28 to 39 of the election petition, we find that those allegations could not be put to trial either. There is no affidavit filed in support of the allegations of corrupt practice of bribery.

28. The Apex Court has held that 'in the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto; could not be put to trial the defect being of a fatal nature.'

29. Besides above, it has nowhere been stated by the election petitioner that the result of the election, in so far as it concerns a returned candidate, has been materially affected either by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any noncompliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act. As mentioned above, the election petitioner has even nowhere alleged or

pleaded in the grounds taken in the election petition that the result of the election, in so far as it concerns a returned candidate, has been materially affected. Only in the last line paragraph No. 12 of the election petition it has been mentioned that 'due to this inaction of the Returning Officer the election of 13 Laxman Chowk Legislative Assembly Constituency was materially affected. The petitioner could not even dare say that the result of the election, in so far as it concerns a returned candidate, has been materially affected due to the inaction of the Returning Officer. Therefore, for want of specific pleadings as well as for want of concise statement of material facts as well as for want of full particulars of any 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 practice coupled with the fact that no affidavit in support of allegations of corrupt practice has been filed, I am of the considered view that the present election petition cannot be put to trial. It is a fit case to dismiss the election petition at the threshold.

30. The objection/application filed by the respondent under Order 6, Rules 16 and 17 and Order 7, Rule 11 of the Code of Civil Procedure read with Section 86 of the Representation of People Act 1951 deserves to be allowed and is hereby allowed. The election petition is accordingly dismissed at the threshold. Costs easy.