

Subhash Arya Vs. Charanjit Singh

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Court : Delhi

Decided On : Jul-21-1980

Reported in : AIR1981Delhi23; 18(1980)DLT289

Judge : S.S. Chadha, J.

Acts : Representation of People Act, 1951 - Sections 81

Appeal No. : Election Petition Appeal No. 2 of 1980

Appellant : Subhash Arya

Respondent : Charanjit Singh

Advocate for Pet/Ap. : B.P. Bansal,; M.C. Bhandare and; S. Bhandari, Advs

Judgement :

S.S. Chadha, J.

(1) The election of Shri Charanjit Singh (the respondent) the returned candidate to the Lok Sabha from South Delhi Parliamentary Constituency at the last general elections to the Parliamentary Constituencies held in January, 1980 has been called in question in this election petition by Shri Subhash Arya alleged to be an elector registered as such at Sr. No. 17, Part No. 387 (15/73) of the South Delhi Parliamentary Constituency.. The 'polling for the South Delhi Parliamentary Constituency took place on Jan. 3, 1980 and counting took place on January 6

and January 7, 1980. The result of the election was declared on January 7, 1980 by the Returning Officer and as a result thereof the respondent was declared elected as a Member of the House of People i.e. Lok Sabha on January 7, 1980. This election petition under Section 81 of the Representation of the People Act, 1951 (hereinafter called the Act) was filed on February 20, 1980 for declaring the election of the respondent void on the grounds specified under Section 100(1)(a), 100(1)(d)(i), 100(1)(d)(iii) and 100(1)(d)(iv) of the Act. Summons for the appearance of the respondent and for filing the written statement were issued. The written statement was filed. The replication was also filed. The pleadings of the parties gave rise to the following issues which were framed on May 7, 1980:

(1) Whether the petitioner is an elector of the South Delhi Parliamentary Constituency and thus competent to present this election petition ?O.P.P.

(2) Whether the allegations of improper reception of votes contained in para 10(xii) of the election petition lack in material particulars? If so, to what effect ?O.P.R. .

(3) Whether the nomination paper of the respondent was improperly accepted by the Returning Officer O.P.P.

(4) If issue No. 3 is held in favor of the petitioner, whether the result of the election, in so far as it concerns the returned candidate, has not been materially affected? O.P.R.

(5) Whether on the date of his election, the respondent was not qualified to be chosen to fill the seat under the Representation of People Act, 1951 inasmuch as the respondent was not an elector for the South Delhi Parliamentary Constituency or for any other Parliamentary Constituency as alleged in para 10 of the election petition ?O.P.P.

(6) Whether the election of the respondent is liable to be declared void as a result thereof under Section 100(D(a) ?O.P.P.

(7) Whether there was any improper reception of votes O.P.P.

(8) If issue No. 7 is held in favor of the petitioner whether the result of the election, in so far as it concerns the returned candidate, has been materially affected and thus the election of the respondent is liable to be declared void under Section 100(1)(d)(iii)? :

(9) Relief.

ISSUES Nos. 1 and 2 were treated as preliminary issues and it was directed that Issues Nos. 7 and 8 would arise for determination on the decision of Issue No. 2. This order disposes of the preliminary issues, Issue No. 1

(2) Section 81 of the Act provides that an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of the election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. The Explanation says that elector means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not. A plea is taken in the election petition that the petitioner is an , registered as such at Sr.No. 17 Part No.387(15/73) of., the, South Delhi Parliamentary Constituency. The petitioner further claims that being an elector in the constituency in dispute he is competent to maintain and prosecute the election petition under Section 81 of the Act,, , The respondent has merely denied in the written statement that the petitioner is an elector registered as such at Sr. No. 17 Part No. 387(15/73) of the South Delhi Parliamentary Constituency.

(3) The petitioner summoned an official from the office of the Chief Electoral Office, Delhi in support of this issue. Public Witness PW1 Sh. Bachan Singh, a Lower Division Clerk of the office of the Chief Electoral Office, Delhi deposed that he had brought electoral roll maintained by the Chief Electoral Office, Delhi in respect of the Parliamentary Constituency South Delhi for the election held in January, 1980; that he had before him Part-387 of the South Delhi Parliamentary Constituency; that Sh. Subhash Arya S/o Sh. Acharaj Lal is entered in the electoral roll at Sr. No. 17 and that the earlier entry was Subhash Chand and' this

was corrected by a corrigendum. The witness also produced the certified copy of the extract from the electoral roll (incorrect) which is Ex. Public Witness PW1/1, the certified copy of the corrigenda from the electoral roll duly corrected which is Ex. Public Witness PW1/2 and the printed copy of Part 387 of the South Delhi Parliamentary Constituency which is Ex. PW1/3. A combined reading of the extract from the electoral roll Ex. Public Witness PW1/1 and the corrigenda Public Witness PW1/2 leads to the irresistible conclusion that Sh. Subhas Arya S/o Sh. Acharaj Lal is an elector of South Delhi Parliamentary Constituency and his name is entered at Sr. No. 17, Part No. 387(15/73) of the South Delhi Parliamentary Constituency. Mr. M.C. Bhandare, the learned counsel for the respondent contends that the identity of the petitioner with the elector at Sr. No. 17 is not established as the petitioner did not enter the witness box to say so. He further points out that the House No. at Sr. No. 17 given in the electoral roll is J-7/52-A, Rajouri Garden, New Delhi whereas the address of the petitioner in the election petition is given as resident of J-7/53-A, Rajouri Garden, New Delhi. This argument of the learned counsel for the respondent is devoid of any merit. The petitioner had made a definite averment in the election petition that he is an elector registered as such at Sr. No. 17, Part No. 387(15/73) of the South Delhi Parliamentary Constituency. The name of the elector in the electoral roll given as Subhash Arya S/o Sh. Acharaj Lal and the same corresponds with the petitioner in the election petition. There is thus identity of the petitioner as an elector as established by Ex. Public Witness PW1/1 and Public Witness PW1/2. It is not the case of the respondent that J-7/52-A Rajouri Garden is not the house No./address of the petitioner when his name was registered as an elector in the South Delhi Parliamentary Constituency. Merely the change of residence, if any, of an elector who was entitled to vote at the election, at the time of filing of the election petition will not make him incompetent to present the election petition. The requirement of Section 81 of the Act is that the election petition calling in question any election may be presented, inter alia, by any elector at such election. The elector means a person who was entitled to vote at the election to which the election petition relates. Sh. Subhash Arya S/o Sh. Acharaj Lal is an elector registered as such at Sr. No. 17, Part No. 387(15/73) of the South Delhi Parliamentary Constituency and is thus competent to present and maintain this election petition under Section 81 of

the Act. Issue No. 1 is decided in favor of the petitioner. Issue No. 2

(4) The petitioner in paras 9 and 10 of the election petition has alleged, inter-alia, that the election of the respondent is liable to be declared void on the ground specified in Section 100(1)(d)(iii) of the Act which provides that the High Court shall declare the election of the returned candidate to be void if the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper reception of any vote or the reception of any vote which is void. The plea of the petitioner in Sub para (xii) of para 10 of the election petition is that 5,000 persons whose names had either been deleted or whose names did not at all figure in the final list of electoral roll were allowed to cast their votes in the election in dispute illegally and that the reception of their votes is void affecting the result of the election materially. The objection by the respondent in the written statement is that the petitioner has given no particulars whatsoever of such alleged persons whose names did not figure or whose names were deleted and yet who were allowed to vote. The objection of the respondent to the lack of particulars is the subject matter of this issue.

(5) The examination of the provisions of Section 83 of the Act will show that the petitioner is required to include in the election petition :

(A) a concise statement of the material facts on which the petitioner relies; and

(B) 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 corrupt practice.

(6) MR.M.C.BHANDARE has cited at the bar two authorities of the Supreme Court bringing out the distinction between the 'material facts' and 'particulars'. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes

bad. The function of the particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet' (Samant N. Balakrishna etc. v. George Fernandez and ors. : [1969]3SCR603 . In Shri Udhav Singh v. Madhav Rao Scindia , S.C.C. 511 their Lordship of the Supreme Court had held :

'LIKE the Code of Civil Procedure this section, also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of Sub-section (1) corresponds to Order 6 Rule. 2, while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under O. 6, R. 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.'

(7) The cardinal provision in Section 83(1)(a) is that the election petition must contain material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action and would include facts relating to the holding of the election, the result thereof, the right of the petitioner to present the election petition, the grounds on which it is sought to be set aside, the non-compliance with the provisions of the Constitution and/or of the Act, the result of the election was materially affected etc Such material facts have been stated in the election petition. It is for this reason the issues restricted to the lack of material particulars in para 10(xii) of the election petition., .The use of particulars is intended to meet a further and quite separate requirement, of the pleadings. It is imposed in fairness and justice to the respondent. The function of the particulars is to fill in the picture the petitioner's cause of action with information sufficiently detailed to put the respondent on his guard as to the case he has to meet and to enable him to prepare for the trial. It would serve another purpose of enabling the

court to exclude irrelevant matters and concentrate upon real matters in controversy for ensuring a fair and speedier disposal of the election petition. In Uday Singh case (supra) it was held :

'PARTICULARS', on the other hand, are 'the details of the case set by the party'. 'Material particulars' within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose finishing touches to the basic 'contours of a picture already drawn, to make it full, more detailed and more informative.'

(8) The election petition is verified by the petitioner that the contents of paragraphs 1 to 13 (i.e. including para 10(xii)) are true to his knowledge. The petitioner says that 5,000 persons whose names had either been deleted or whose name did not at all figure in the final electoral roll were allowed to cast their votes at the election illegally. This plea is lacking in particularisation as to the persons whose names had been deleted or the persons whose names did not at all figure in the final electoral roll and yet were allowed to cast their votes. It is essential to call upon the petitioner to furnish better particulars of, the 5,000 persons whose names had either been deleted or whose names did not at all figure in the final electoral roll to ensure a fair trial of the election petition. The election petition has to be tried by this Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suit. The Code of Civil Procedure empowers the court to call for better and further particulars. That provision is to be found in Order VI, Rule 5. The power to call for particulars in respect of any pleading in an election case is, therefore, necessary for the fair trial of the election petition.

(9) Issue No.2 is held in favor of the respondent and against the petitioner. The petitioner is called-upon to furnish further and better particulars] within one week from today of, the allegations contained in para 10(xii) by making it full, more detailed and more informative. The petitioner is called upon to give the Sr. No. Part No. of the South Delhi Parliamentary Constituency in respect of those

persons whose names are alleged to have been deleted in the final electoral roll and were allowed to cast their votes in the election dispute. The ipetitioner should further give full particulars of the persons whose names did' not at all figure in .the. final electoral roll and are alleged to have been allowed to cast their votes, inother words by giving the name of the person, father's/husband/mother's name, male or female, a,pproximate age and the house number/address, and the polling booth number where the vote was cast.

(10) The election petition be listed for further proceedings on July 30,1980

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