

Geetha Shetty Vs. Premalatha

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Court : Kerala

Decided On : Mar-10-2006

Reported in : 2006(2)KLT137

Judge : R. Basant, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 91 and 91(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 26 and 26(2) - Order 6, Rule 15, 15(1) to 15(3) and 15(4); Code of Civil Procedure (CPC) (Amendment) Act, 2002

Appeal No. : W.P. (C) No. 7097 of 2006

Appellant : Geetha Shetty

Respondent : Premalatha

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; P.B. Krishnan, Adv.

Disposition : Petition dismissed

Judgement :

R. Basant, J.

1. The petitioner a successful candidate in the election held under the Kerala Panchayat Raj Act, has come before this Court for the second time in an attempt to ensure premature termination of the Election Petition filed against her by the 1st

respondent - an unsuccessful candidate. The present attempt is to contend that there is no proper verification of the Election Petition and therefore the petition is liable to be dismissed.

2. It will be advantageous, first of all, to refer to Section 91 of the Kerala Panchayat Raj Act with emphasis on Clause 1(c).

91. Contents of petition.--

(1) An election petition-

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 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 corrupt 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.

The requirement of Section 91(1) is that the election petition must be signed and verified as prescribed in the C.P.C, for the verification of the pleadings. It will not be correct to say that the Election Petition becomes a pleading thereby for any other purpose. It only mandates that the petition must be verified and the verification must be in the manner prescribed for verification of pleadings under the CPC.

3. That takes us to the next question as to how pleadings have to be verified under the CPC. Order 6 Rule 15 of the CPC prescribes the manner in which the pleadings are to be verified. I extract the same below. The emphasis must be on Sub-rule (4). There is no contention that any other Sub-rule has not been complied with:

Verification of pleadings.

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

4. As one reads the rule, it is very evident that the verification is to conform to the requirement of Rule 15(1) to (3). Rule 4 which has been introduced by the amendment in 2002 only imposes an additional duty on the person verifying the pleadings to furnish an affidavit in support of the pleadings. Requirement of Sub-rule (4), according to me, does not at all prescribe the manner in which the pleadings are to be verified. It only imposes an additional responsibility and duty on the person verifying the pleadings to file an affidavit in support of the pleadings.

5. This is a new requirement introduced in the CPC by the amendment brought about in 2002. The substantive provision is available in Section 26 of the amended Code which reads as follows:

26. Institution of suits.--

(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed,

(2) In every plaint, facts shall be proved by affidavit.

6. The court below considered the objections raised by the petitioner and came to the conclusion that Rule 15(4) does not introduce any further requirement in verification of pleadings, but only imposes a responsibility on the person verifying the pleadings. After the pleadings are verified, he must file an affidavit in support of his pleadings. Notwithstanding the fact that Order VI Rule 15 has the sub heading 'verification of pleadings' it would be myopic to assume that the filing the affidavit under Rule 15(4) is part of verification of pleadings.

7. To my mind, the requirement of Rule 15(4) imposes only an additional responsibility on the person verifying the pleadings to file an affidavit, the substantive stipulation to justify which is available in Section 26(2) of the CPC which has nothing to do with verification of pleadings.

8. The court below rightly took note of the fact that under the provisions of Section 91(1)(c) of the Kerala Panchayat Raj Act there is an obligation to file an affidavit only when a corrupt practice is alleged. That was reckoned by the court below as an indication that no other affidavit is required to be filed. Notwithstanding the fact that Rule 15(4) was introduced only after the Kerala Panchayat Raj Act was enacted in 1994, I am of opinion that it certainly is a relevant input.

9. To recapitulate, the Election Petition is not a plaint. The Election Petition is to be verified in the manner in which the plaint is to be verified. A plaint is to be verified in the manner stipulated in Order 6 Rule 15(1) to (3). Section 26(2) and Order 6 Rule 15(4) stipulate that there must be an affidavit in support of the plaint pleadings. Filing of an affidavit is hence not part of verification of pleadings. It is only an additional responsibility on the person verifying a plaint pleading. Inasmuch as the Election Petition is not a plaint pleading and need only be verified in the manner in which a plaint pleading is verified, the Election Petitioner has no obligation to file any such affidavit as stipulated in Rule 15(4). On the basis of the above reasoning, I come to the conclusion that the conclusion of the court below that the fact that an affidavit as contemplated under Order 6 Rule 15(4) did not accompany the Election Petition is not a ground to reject the Election Petition at the threshold.

10. The learned Counsel for the petitioner has placed reliance on the decision reported in Salem Advocate Bar Association v. Union of India : AIR 2005 SC3353 . In particular, reliance is placed on para. 4 of the said decision which I extract below:

4. Prior to insertion of aforesaid provisions, there was no requirement of filing affidavit with the pleadings. These provisions now require the plaint to be accompanied by an affidavit as provided in Section 26(2) and the person verifying the pleadings to furnish an affidavit in support of the pleading (Order VI Rule 15(4)). It was sought to be contended that the requirement of filing an affidavit is illegal and unnecessary in view of the existing requirement of verification of the pleadings. We are unable to agree. The affidavit required to be filed under amended Section 26(2) and Order VI Rule 15(4) of the Code has the effect of fixing additional responsibility on the deponent as to the truth of the facts stated in the pleadings. It is, however, made clear that such an affidavit would not be evidence for the purpose of the trial. Further, on amendment of the pleadings, a fresh affidavit shall have to be filed in consonance thereof.

I am unable to find any statement of the law or finding in para-4 which runs counter to reasoning given earlier.

11. An Election Petition deserves to be disposed of as expeditiously as possible. The delay in the disposal of the Election Petition would frustrate the very purpose of the Election Petition. If the successful candidate is permitted to continue in office and the Election Petition is not decided promptly, that would be negation of justice. In deciding whether this writ petition challenging the maintainability of an Election Petition deserves to be admitted certainly closer scrutiny is warranted and hence I have chosen to undertake a detailed consideration at the threshold itself.

12. This Writ Petition is, in these circumstances, dismissed.