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Court : Rajasthan

Decided On : Jan-08-1986

Reported in : AIR1987Raj63; 1986(1)WLN376

Judge : V.S. Dave, J.

Acts : [Representation of the People Act, 1951](#) - Sections 81(1); ;Rajasthan High Court Ordinance, 1949 - Sections 46; Rajasthan High Court Rules - Rule 4; [Constitution of India](#) - Articles 225 and 329

Appeal No. : Election Petn. No. 7 of 1985

Appellant : Bhanwar Singh

Respondent : Navrang Singh

Advocate for Def. : Jagdeep Dhankhar, Adv.

Advocate for Pet/Ap. : K.K. Sharma, Adv.

Disposition : Application dismissed

Judgement :

ORDER

V.S. Dave, J.

1. This comes up for the disposal of two applications filed on behalf of respondent, Navrang Singh, one filed under Section 81 read with Section 86 of the Representation of People Act, 1951 (hereinafter referred to as 'the Act'), whereby it has been prayed that the election petition be dismissed for non-compliance of Section 81(1) of the Act. By another application it has been prayed that Rule 4 of the rules regarding election petition under the Representation of the People Act, 1-951 framed by the High Court in exercise of the powers conferred by Section 46 of the Rajasthan High Court ordinance be struck down as the same are beyond the powers available to the High Court under Article 225 of the Constitution and the said rule is violative of Section 81(1) of the Act as it overrides this provision. In fact the second application was filed during the course of hearing of the earlier application when the petitioner had taken stand that the election petition has been presented in accordance with Rule 4 of the aforesaid rules.

2. The contention of the respondent is that the election petition has been presented by Rajendra Prasad Advocate and not by the petitioner himself, while according to Section 81(1) of the Act the petitioner himself should present the petition. It is submitted that presentation of the petition by the election petitioner is mandatory provision of law and non-compliance of it must result in dismissal of the election petition under Section 86 of the Act. It is submitted that it is undisputed between the parties that the petitioner neither presented the petition nor was physically present at the time of presentation of the election petition. It is further submitted that letter of authorisation from the election petitioner was also not submitted. The learned counsel in this respect relied upon the decision in case of Ramanlal Premi v. Shiv Pratap Singh, ILR (1978) Madh Pra 569 : (AIR 1978 NOC 182) and also seeks support from the observations made in Sheodan Singh v. Mohan Lal, AIR 1969 SC 1024. The learned counsel has submitted the written arguments and has submitted that election petition is required to be presented by two such authorities and in such manner as may be provided for by or under any law made by the appropriate legislature, as is provided in Article 439(b) of the Constitution. In this view of the matter it is submitted that the presentation of the election petition is to be governed by Section 81 and not by any other provision and the rules framed by the Rajasthan High Court in this behalf can be of no avail in view of the provisions of Article 329(b) of the Constitution. It is further submitted

that the repealed Section 81(2) of the Act where the expression was an election petition shall be deemed to have been presented stands repealed which makes it further clear that Code of Civil Procedure or any other law has no application in the matter of presentation of the election petition and the entire matter has to be governed by the provisions of the Act. The learned counsel has further relied on a portion from the judgment reported in Satya Narain v. Dhuja Ram, AIR 1974 SC 1185 cited by learned counsel for the petitioner and submitted that the petition can only be presented, as required by Section 81(1) of the Act and further that the Rule 4 is beyond the powers available to the High Court under Article 225 of the Constitution and Section 46 of the High Court Ordinance, 1949.

3. The learned counsel for the petitioner submits that the election petition has been validly presented under Section 81(1) of the Act because Section 81(1) of the Act only makes a provision as to who can file an election petition and does not deal with as to who should actually present it before the Registry. It is submitted that Section 81 of the Act nowhere provides that the petitioner should be physically present at the time of presentation of the election petition and as to the manner of presentation rules have been framed under the High Court Ordinance which authorise an Advocate to file the same. It is submitted that the petitioner has specifically authorised Shri Rajendra Prasad Arya to present the election petition and the vakalatnama filed by him duly executed by the petitioner clearly authorises the Advocate to present the election petition on his behalf. Besides this Rajendra Prasad has further filed a letter in writing to the effect that he has been authorised by the petitioner Bhanwar Singh to present the election petition. It is submitted that there is no requirement of law that authority letter should be filed along with the election petition particularly when the Vakalatnama contains a clause to that effect.

It is submitted that it is merely a rule of technicality and Rule 4 does not require a separate authority to be filed. It is further submitted that these rules have been framed under the authority given to the Rajasthan High Court by virtue of Section 46 of the Rajasthan High Court Ordinance, 1949 and also under Article 225 of the Constitution. It is further submitted that Article 329 of the Constitution only puts a bar for interference by Court in electoral matters and according to Clause (b) the election can only be called in question by election petition presented to authority in

a manner as is provided by or under any law made by the appropriate legislation. It is submitted that Rule 4 of the High Court Rules is a properly enacted rule because Article 225 of the Constitution as well as Section 46 of the Rajasthan High Court Ordinance given power to the High Court to legislate. In the alternative, it is submitted that even if this Court holds Rule 4 is beyond the powers of the High Court then also the same can be struck down prospectively and the petitioner cannot be non-suited as on the date of presentation it was validly presented. The learned counsel relies on Ram Harsh Misra v. Sukhad Raj Singh, AIR 1976 All 47, Lal Bahadur Singh v. Vishal Singh, 1963 All LJ 542, Ganpat Singh v. The Election Tribunal Mainpuri, 1960 All LJ 48 and Neduramalli Janardhana Reddy v. Y. C. Ranga Reddy, (1971) 46 Ete LR 374 (Andh Pra).

4. Before I deal with the point it is purposeful to refer to the various provisions to which reference has been made during the course of arguments. Section 81 of the Act as was initially enacted reads as under :

'Section 81(1). 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 Election Commission by any candidate at such election or any elector within fortyfive days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidates at the election and the dates of their election are different, the later of those two dates.

Explanation-- In this sub-section, '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.

(2) An election petition shall be deemed to have been presented to the Election Commission.

(a) When, it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf.

(i) by the person making the petition, or

(ii) by a person authorized in writing in this behalf by the person making the petition or

(b) When it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.'

Sub-section (2) of Section 81 was omitted by Act 47 of 1966 with effect from 14-12-1966 and, therefore, to that extent Section 81 stands amended by repeal of Sub-section (2).

5. In the written arguments the learned counsel has made a wrong reference to Article 439(b) of the Constitution, in fact it ought to have been Article 329(b) as referred to subsequently. Article 329(b) of the Constitution reads as under : --

'Article 329(b). Bar to interference by Courts in electoral matters.-- Notwithstanding anything in this Constitution. No election to either House of Parliament or to the House or either House of the Legislature for a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.'

Article 225 of the [Constitution of India](#) reads as under

'Article 225. Jurisdiction of existing High Courts.-- Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.'

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction'.

Section 46 of the Rajasthan High Court Ordinance reads as under.

'Section 46. Power to make rules.-- The High Court may consistently with the laws for the time being in force make rules.

(a) to regulate the sittings of the Court.

(b) to regulate the practice of the Court.

(c) to provide for the forms to be used in the Court for proceedings, and prescribe forms in which books, entries and accounts shall be kept by its officers.

(d) to settle tables of fees to be charged on documents filed in the Court and to be allowed to all officer and clerk of the Court advocates practising therein.

(e) to regulate all such matters as it may think fit with a view to the promoting of the efficiency of the High Court and the maintaining of proper discipline'.

Rule 4 of the Rules framed by the Rajasthan High Court is as follows : --

'Rule 4. Reckoning of time where any particular number of days is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continue to be closed.'

Section 81(1) of the Act stood as such and has not been amended consequent upon repealing Section 81(2). The only change brought is in respect of the forum, i.e. the High Court and the period of limitation and about the mode of presentation no change has been made except repealing the deeming provision. In case

Section 81 is a paraphrased and only relevant words for the purpose of the application are read, then Section 81(1) of the Act reads as under.

'An election petition may be presented on one or more grounds to the High Court by any candidate at such election or any , elector.'

The word 'presented' in the aforesaid paraphrasing enables any candidate or art elector to challenge the election by an election petition and no other person, therefore, call in question the election. The main controversy between the arties is on the word 'presented' whether the word 'presented' used in Section 81(1) of the Act means presented 'in person' or presented by any 'candidate' or any 'elector'. The word 'presented' used here is as a verb and what is the verbatical meaning of it has to be considered. This word 'presented' goes with election petition and qualifies the persons on whose behalf the election petition can be presented. If the words 'by any candidate at such election or any elector, and not interpreted as on behalf of any candidate or an elector' then there may be circumstances where great hardships can be caused. For example a candidate or an elector who has been defeated and has suffered a heart attack or such disablement which prevents him for months out of the bed and his town is away from the seat of the-High Court, then he cannot challenge the election though he very much wants to do it. Webster in his Ill Internationa! Dictionary has mentioned the meaning of word 'by', it means in proximity to, long or through, during the course of, through the means of an instrumentality at in conformity or harmony with, on behalf of and so long and so forth. Therefore, on behalf of, is one of the meanings of the word 'by' and, therefore, it is also a plain meaning of the word 'by', therefore, in my opinion the word 'by' used in Section 81(1) of the Act has to be given a wide meaning and it is meant here in this section to either on behalf of or instrumentality. This becomes more cleat when the official Hindi translation of manual of English law on compilation of statutory provisions governing elections to Parliament and State Legislature published by Ministry of Law, Justice and Company Affairs Government of India. It reads as under :

^81** vftZ;ks dk mifLFkrfd;k tkuk&1&fd;k fuokZpu dh iz'ukxr djus okyh fuokZpu vthZ /kkjk 100 dhmi/kkjk 1 vkSj /kkjk 101 esa fofufnZ'V vk/kkjks es ls ,d ;k vf/kd

ijmPp U;k;ky; dks ,sls fuokZpu ds fdlh vH;FkhZ }kjk ;k fdlh fuokZpd }kjk fuokZfprvH;FkhZ ds fuokZpu dh rkjh[k ls ;fn fuokZpu esa ls vf/kd vH;FkhZ gS vkSj mudsfuokZpu vH;FkhZ ds fuokZpu dh rkjh[k ls ;k ;fn fuokZpu esa ls ,d ,sls vf'kdfuokZfpr vH;FkhZ gS vkSj muds fuokZfpr dh rkjh[k fHkUu gS] rks mu rkjh[kksa esals i'pkrorh rkjh[k ls iSrkyhl fnu ds Hkhrj fdUrq ml rkjh[k ls igys ugh mifLFkr dh tk ldsxh A

li'Vhdj.k bl mi/kkjk esa ^fuokZpd**ls og O;fDr vfHkizr gS tks ml fuokZpu es] ftlls fuokZpu vthZ IEHko gS] er nsusds fy, gdnkj Fkk] Hkys gh mlus ,sls fuokZpu es ernku fd;k gks ;k u fd;k gks A

3 gj fuokZpu vthZ ds lFkml dh mruh izfr;k gksaxh ftrus izR;FkhZ ml vthZ es of.kZr gS vkSj vthZnkj gj ,slhizfr dk vius gLrk{kj ls vuqizekf.kr djsxk fd og vthZ dh lgh izfr gS A

Here the Hindi translation of the words used are

ds fdlh vH;kFkhZ }kjk ;k fdlh fuokZpd }kjkfuokZfpr vH;kFkhZ ds mifLFkr dh tk ldsxh A

also supports the interpretation which I have given above. It is in this view of the matter that the Rajasthan High Court under the powers conferred on it by Section 46 of the Ordinance and Article 225 of the Constitution framed rules about dealing with the election petition and the Rule 4 has been enacted. A perusal of Rule 4 makes it quite clear that it can be presented either in person or by an Advocate duly authorised in this behalf by the party concerned. Earlier when the petition used to be presented before the Tribunals Section 81(2) of the Act was on the statute where the deeming provision had been given so as to remove the ambiguity or the doubts, but it was repeated subsequently still in my opinion the word 'by' in Section 81(1) cannot be given a limited meaning so as to make the presentation by the candidate or the elector in person only. In Ram Harsh Misra v. Sukhad Rai Singh, AIR 1976 AH 47 it has been held as under :

'The Vakalatnama in favour of the Advocate is worded in general terms so as to given all possible authority for the conduct of the election case including the filing

of any paper. The expression 'filing of any paper', in my opinion, includes the presentation of election petition also. In any case, on the facts as found above, the petition was handed over to the Bench Secretary of the Court under the direction of the Court by Advocate of the petitioner in the immediate presence of the petitioner and that presentation would be quite valid in view of the Supreme Court decision referred to above. The issue is decided in the negative.'

In *Nedurumalli Janardhana Reddy v. Y. C. Ranga Reddy*, (1971) 46 ELR 374 (Andh Pra) it has been held as under :

'There is nothing in the [Representation of the People Act, 1951](#) which lays down a different procedure for the presentation of election petitions than the one prescribed by the Code of Civil Procedure for presentation of plaints. The election petition having been duly signed and verified by the petitioner and being accompanied by the requisite number of copies and affidavits and security for deposit of costs satisfies all the requirements of Ss. 80 and 81 of the Representation of the People Act and having been presented by the Advocate for the petitioner must be deemed to have been presented in accordance with law.'

In *Lal Bahadur Singh v. Vishal Singh*, 1963 All LJ 542 it has been held as under :
--

'Under the U.P. Town Areas (Conduct of Election of Chairmen) Rules, 1953 a question arose in Ganpat Singh's case whether the personal presentation of an election petition by the petitioner was necessary under Rule 47. The question was answered in the negative. The provisions of Rule 47 appear to be *pari materia* with the provisions of Clause (2) of Rule 24. The relevant portion of Rule 47 reads,

'Election petitions will be presented by only those persons who were candidates for an election against which election petition is filed.'

Interpreting this rule it was laid down that

'In our opinion there is no sufficient ground for placing this restricted interpretation on this sub-rule. We think that the primary object of Sub-rule (1) of Rule 47 is to define, and thereby limit, the class of persons who can challenge an election. Its

purpose is to make clear that the validity of an election can be questioned only by a candidate at that election whose name is on a certain list or whose nomination paper has been rejected; it does not, in our view, prescribe the manner in which the election petition is to be presented. Unless there is something in an enactment which shows that a certain act must be performed by a particular person or the nature of the Act is itself such that it can be performed only by that person, that act can ordinarily be done by a duly authorised agent. If it had been the intention that a petitioner must personally present his election petition it would have been a very simple matter for the rule-making authority to make provision to that effect and so put the matter beyond doubt as it has done, for example, in Clause (36) of the U.P. Municipalities (Conduct of Election of President and Election Petition) 1955 where it is expressly provided that an election petition shall be presented in person by the petitioner or, if there are more than one petitioner, by any one or more of them. 'That has not been done, and we do not consider that Order 47 requires the petitioner to present his petition in person. Such a construction may result in a petitioner who is incapacitated by accident or illness from presenting a petition at all, for it is a common ground that the provisions of the Indian Limitation Act have no application to the presentation of a petition under the Town Area Act'.

In *Ganpat Singh v. The Election Tribunal Mainpuri*, 1960 All LJ 48 it has been held as under

'It is difficult sometimes to distinguish between an irregularity and a nullity, but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection, if he can waive it, it amounts to an irregularity, if he cannot, it is a nullity. We think that there can be no doubt that it is open to a respondent, if he so chooses, to ignore the fact that the petition had not been presented by the petitioner in person'.

Thus, though on a different approach but a similar view has been taken in the aforesaid cases that the election petition cannot be dismissed on such technicality.

6. Now coming to the question of vires of Rule 4, learned counsel for the respondent on the basis of observations made in *Satya Narain v. Dhuja Ram*, AIR 1974 SC 1185 argued that presentation of election petition has to be governed by

the provisions of Section 81(1) of the Act as their Lordships have held that 'right to challenge an election is conferred under the Act which is made in conformity with the provisions of Article 329(b) of the Constitution. It is well settled that it is a special right conferred under a self contained special law and the Court will have to seek answers to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provision. It is not common law right and an election petition cannot be equated with a plaint in the civil suit'. The aforesaid observations of their Lordships are in a different contest and are not applicable in the present case. Article 329(b) bars the interference by Court in electoral matters and restricts forum and the manner which is to be provided for by or under any law made by appropriate Legislature. The question in the present case is not either of the forum or the manner, the question is only about the interpretation of the word 'by' and the validity of the rules framed by the High Court. Article 225 of the Constitution gives jurisdiction to make rules of the Court and so also Section 46 of the Ordinance. The only thing is that the rules framed should not be in violation of or in contradiction of the provisions of Section 81(1) of the Act. Rule 4 in no manner limits the powers of the Court to deal with the election petition rather it was essential to frame rules and if the meaning is to be given with limited scope then the petition cannot even be presented before the Registrar because High Court means the Chief Justice and such other Judges as the President may, from time to time, deem it necessary to appoint and the Registrar is not the High Court. He receives the election petitions under Rule 4 only, therefore, rules or procedure had to be framed and those rules are not violative of either Article 225 of the Constitution or Article 329(b) of the Constitution or Section 81(1) of the Act. This argument, therefore, also is of no avail.

7. Another argument of the learned counsel for the respondent that a letter of authority has not been presented along with the election petition, suffice it to say that the vakalatnama filed has a recital authorising the counsel Shri Rajendra Prasad Sharma to present the election petition. Besides this, Shri Rajendra Prasad, Advocate has filed before the Registrar along with the petition the letter written by himself in his own handwriting stating that he has been duly authorised by Shri Bhanwar Singh son of Nahar Singh, Rajpoot, r/o Nawalgarh, District Jhunjhunu to present the election petition before this Hon'ble Court. This has been

filed along with the election petition before I the Registrar and in my opinion it is sufficient compliance of Rule 4.

8. As a matter of aforesaid discussions, the applications filed by respondent have no force and are dismissed with cost which I assess at Rs. 300/-. The respondent is directed to file the written statement within two weeks.

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