

**Satish Kumar Vs. Election Tribunal (District Judge), Alwar and anr.**

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**Court :** Rajasthan

**Decided On :** Dec-03-1962

**Reported in :** AIR1963Raj157

**Judge :** D.S. Dave and; L.N. Chhangani, JJ.

**Acts :** [Representation of the People Act, 1951](#) - Sections 83, 90(3) and 116A;  
[Constitution of India](#) - Article 226

**Appeal No. :** Civil Writ Petn. No. 489 of 1962

**Appellant :** Satish Kumar

**Respondent :** Election Tribunal (District Judge), Alwar and anr.

**Advocate for Def. :** Government Adv. for Respondent No. 1 and; C.L. Agarwal,  
Adv. for Respondent No. 2

**Advocate for Pet/Ap. :** R.K. Rastogi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Dave, J.**

1. This is a writ application under Articles 226 and 227 of the [Constitution of India](#) and it arises in the following circumstances: -

2. The petitioner' Satish Kumar and respondent No. 2 Badri Prasad and a few others contested the general election held on the 26th February, 1962 from the Bansur Constituency for membership of the Rajasthan Legislative Assembly. The petitioner was declared elected as he received the highest number of votes. Respondent No. 2 lost the election. Respondent No. 2 then filed an election petition to challenge the election of the petitioner before the Election Commission. The said petition was sent for disposal to the Election Tribunal, Alwar, presided over by Shri Syed Ikramul Haq, R. H. J. S. The petitioner in his written statement raised several objections which led the Tribunal to frame more than 58 issues. Out of them 16 issues (Nos. 1, 7, 10, 14, 15, 22 to 25, 31, 36, 40, 54, 55, 57 and 58) were considered by the Tribunal to be preliminary issues and so they were decided on the 18th October, 1962 after hearing both the parties. Issues Nos. 24 and 25 were decided partly in favour of the petitioner and the rest were decided against him; It is against this order that the present application is directed.

3. The writ application is a very lengthy one but the objections raised by the petitioner may be divided into two categories. The first and main contention raised by the learned counsel for the petitioner relates to his objection on the basis of which issue No. 54 was framed by the Tribunal. It is contended that according to Section 83 of the Representation of the People Act, 1950 (Act No. 43 of 1950), hereinafter referred to as the Act, it was incumbent upon respondent No. 2 to support the corrupt practices alleged by him by an affidavit in the prescribed form, and since the affidavit filed by him was not in the prescribed form nor did the affidavit disclose as to which facts were true to the knowledge of the petitioner and which of them he believed to be correct on the basis of. information received by him. The affidavit was no affidavit in the eye of law. It has been argued that without a proper affidavit the Tribunal had no jurisdiction to proceed in the matter, that it had decided issue No. 54 wrongly and that by giving a wrong decision it had assumed jurisdiction which was not vested in it. It is prayed that this Court should, therefore, interfere in the matter, quash all the further proceedings and dismiss the election petition.

4. The next contention which relates to the remaining issues noted above is, that the petitioner had requested the Election Tribunal to direct respondent No. 2 to

supply full particulars of the corrupt practices alleged by him, that the Tribunal had committed error in arriving at the conclusion that the particulars supplied by respondent No. 2 were sufficient, that this finding of the Tribunal is incorrect and, therefore, this Court should set aside its orders. It is further prayed that respondent No. 2 should be directed to give all the particulars required by the petitioner and if he fails to do so, his election petition regarding those charges should be dismissed.

5. Learned counsel for respondent No. 2 contests the writ application. It is urged by the learned counsel for respondent No. 2 that the affidavit given by his client was quite in order even though it was not in the prescribed form. It is pointed out that the election petition was filed before the Election Commission on the 9th April, 1962, that the form of affidavit which was prescribed by the Central Government appeared for the first time in the Gazette of India dated the 27th February, 1962 but it did not come to the notice of respondent No. 2, and so it was not presented in that form. Respondent No. 2 had, however, substantially complied with the requirements of the prescribed affidavit and at any rate he had given another affidavit in the prescribed form in accordance with the directions of the Tribunal and so the election petition could not be dismissed on that ground.

6. Regarding the second objection of the petitioner, it is urged that the question whether the particulars of the alleged corrupt practices given by respondent No. 2 were sufficient or insufficient was essentially one of fact and the decision of the Tribunal could not be challenged before this Court in its extraordinary jurisdiction. It is pointed out that an appeal lies to this Court under Section 116A of the Act against every order of the Tribunal under Sections 98 or 99 of the Act, that no appeal is provided against an interlocutory order made by the Tribunal and that this Court should not, therefore, interfere in its writ jurisdiction by treating the writ application as if it were an appeal.

7. It would be proper to take up the first objection first. We agree with learned counsel for the petitioner to the extent that according to the proviso to Sub-section (1) of Section 83 of the Act, it is incumbent upon the petitioner filing an election petition, in case any corrupt practice is alleged, to support the allegation of such a

corrupt practice and the particulars thereof by an affidavit in the prescribed form and such affidavit must accompany the election petition. In the present case however it is not alleged by the petitioner that the election petition was not accompanied by an affidavit. In other words, respondent No. 2 had filed an affidavit along with the election petition. The objections raised by the petitioner in this behalf are two-fold. The first objection is that the affidavit was not in the prescribed form and secondly that it, was not according to law, inasmuch as it did not mention which facts were true to the knowledge of respondent No. 2 and which of them he believed to be correct on the basis of information received from other persons. Thus, according to the petitioner, the affidavit filed by respondent No. 2 was a mere scrap of paper.

The Election Tribunal has observed that after going through the whole of the affidavit, it could not find any illegality as respondent No. 2 had verified all the paras of his writ petition partly on the basis of his personal knowledge and partly on the basis of his knowledge gathered from his workers. It was also observed that the affidavit did not appear to have been filed in the prescribed form since the form was not in the knowledge of respondent No. 2 that the use of the prescribed form was simply a formality and the absence of that particular form did not prejudice the case of the present petitioner in any way. With these remarks, it dismissed the present petitioner's objections and directed respondent No. 2 to present another affidavit in the prescribed form.

8. It may be observed at the out-set that we do not agree with the Tribunal to the extent that the presentation of an affidavit was a mere formality. The proviso relating to the affidavit being filed with the election petition was inserted by the Legislature by Act No. 40 of 1961 and after the said amendment it became incumbent upon every petitioner filing an election petition to support it by an affidavit in the prescribed form in case any corrupt practice was alleged. It appears that the intention of the Legislature to introduce this proviso was to prevent the petitioner filing an election petition from making wild allegations about corrupt practices and to impose on him a reasonable restraint, so that if false statements were made he could be prosecuted for perjury. The Legislature also considered it proper that the Central Government should prescribe the form of affidavit so that

the petitioner may be able to present affidavit in that form. This does not, however, mean that if an affidavit substantially complies with the form prescribed, it must be thrown out simply because it does not tally with the prescribed form in immaterial particulars.

We have looked into the affidavit which was filed by respondent No. 2. It was mentioned in para No. 1 thereof that the contents of paras Nos. 1, 2, 3, 4, 6 and 7 of the election petition were true and correct to his personal knowledge. To this extent it was perfectly in order and no exception could be taken to it. Then respondent No. 2 proceeded to say that 'the contents of para No. 5 and its sub-paras (a) to (f) are verified as true partly on the basis of my personal knowledge and partly on the basis of the information gathered from my workers'. According to learned counsel for the petitioner, this part of the affidavit was not in order and respondent No. 2 ought to have stated clearly which facts were true to his personal knowledge and which he believed to be true on the basis of the information gathered from other persons.

Learned counsel for respondent No. 2 has tried to justify even this part of the affidavit, but we do not agree with him. It may be pointed out that in *Nauratanmal v. Harisingh*, AIR 1952 Raj 90, it was observed by this Court that

'It is the duty of a person swearing an affidavit to state separately what parts of it he is swearing on personal knowledge and what parts on belief or information received.'

The affidavit filed by respondent No. 2 saying that the contents of para No. 5 and its sub-paras (a) to (f) were true partly on the basis of personal knowledge and partly on the basis of the information gathered from his workers was no affidavit in the eye of law. He ought to have made it clear which facts were true to his knowledge and which of them he verily believed to be correct on the basis of the information gathered from others. This is also, in essence, the purpose of the formal affidavit which has been prescribed by the Central Government by notification appearing in the Gazette of India, Part II, Section 3, dated 27th February, 1962.

9. The question, however, arises whether the Election Tribunal should have dismissed the election petition simply because a part of the affidavit, was not in correct form or it was open to the Tribunal to permit respondent No. 2 to present a new affidavit indicating clearly which of the facts on the basis of which corrupt practices were alleged were true to his knowledge and which of them he believed to be correct on the basis of the information derived from others. In our opinion, it was not incumbent upon the Election Tribunal to dismiss the election petition only on account of the said defect. By permitting respondent No. 2 to file a new affidavit in the prescribed form according to law, it was not permitting him to make any new allegation which was not already contained in the election petition. Respondent No. 2 had verified the contents of para No. 5 by an affidavit and the only mistake committed by him was not to make a clear distinction as to which of them were true to his own knowledge and which he believed to be true on the basis of the information derived from others.

It cannot be said if the petitioner could be prejudiced simply because respondent No. 2 was given an opportunity to make this clear distinction. It may be pointed out that according to Section 85 of the Act, the Election Commission is required to dismiss the election petition if the provisions of Section 81 or Section 82 or Section 117 are not complied with. Similarly, it is provided in Section 90(3) of the Act that the Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 notwithstanding that it has not been dismissed by the Election Commission under Section 85. It is noteworthy, that it is Section 83 which deals with the contents of the petition and it is in that section that the proviso requiring the petitioner to file an affidavit along with the election petition appears. Section 83 does not find place either in Section 85 or in Section 90(3) of the Act and therefore it is not obligatory for the Election Tribunal to dismiss the election petition on account of every non-compliance of Section 83.

10. Learned counsel for the petitioner has relied on *Shantilal Chaudhary v. Raghurajsingh*, 7 ELR 489 : (AIR 1953 Madh-B 267) in which it was held that

'in giving the Election Tribunal the power to dismiss an election petition for non-compliance with Sections 81, 83 or 117, the Legislature had vested the Tribunal

with the jurisdiction to decide whether a petition or the schedules attached to it containing the list of corrupt practices have been properly verified or not, and if it decides that they have not been properly verified, the High Court will not interfere with the decision under Articles 226 or 227 of the Constitution, even though its decision may be erroneous, as the powers conferred by those articles are not intended to be exercised for correcting errors of law or fact.'

This view was expressed when Sections 81 and 83 were mentioned in Section 83(4) of the Act. Thereafter the law has undergone a change and, as pointed out above, Section 83 has been omitted from Section 90 (3) of the Act. In this changed state of law, it cannot be held that the Election Tribunal ought to have dismissed the election petition simply because the affidavit was defective in part.

11. Learned counsel for the petitioner has referred to *Dewanchand and Sons v. Dora Amy Few*, AIR 1953 Bom 50 to support the contention that the defect in the affidavit was fatal to the election petition. It may be observed that the learned Judges in that case were considering the provisions of Rule 211 of their Court in connection with a summary suit. It is clear from a perusal of the said decision that the procedure for a summary suit was a novel procedure. It constituted a departure from the ordinary well-established rules governing trial of suits. In an ordinary suit the plaintiff is entitled to a judgment only after a trial. In a summary suit he was entitled to a judgment without a trial. The remedy was, therefore, very stringent and the procedure was also an extraordinary one. The success of the suit depended mainly on the affidavit which was filed therewith and in those circumstances it was very necessary that the affidavit must be according to the rule of the Court.

In an election petition the petitioner cannot hope to be successful merely on the basis of an affidavit. We have already pointed out above that the provision of filing an affidavit along with the election petition was made only in order to put a reasonable restraint on the petitioner so that if wrong facts were given on oath, he could be prosecuted for perjury. The case relied on by learned counsel for the petitioner is, therefore, not very helpful to him in the facts and circumstances of the present case. Learned counsel has not been able to refer to any other case in

which a mere defect in the affidavit might have been held to be fatal to the election petition.

12. We, therefore, see no good ground to interfere with the discretion exercised by the Election Tribunal in permitting respondent No. 2 to present another affidavit in the prescribed form according to law.

13. It now remains to determine the question whether this Court should interfere in its extraordinary jurisdiction with an interlocutory order passed by the Tribunal to the effect that the particulars given by respondent No. 2 regarding the corrupt practices were sufficient. It would suffice to say that the question whether the particulars given by respondent No. 2 were sufficient, is essentially one of fact and, therefore, it would not be proper for this Court to interfere in the matter in its extraordinary jurisdiction. It may be further pointed out that under Section 50 (5) of the Act the Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition.

This section no doubt enjoins upon the Tribunal not to allow an amendment of the petition if it has the effect of introducing particulars of a corrupt practice not previously alleged in the petition, but it certainly gives it a discretion to allow the particulars of the corrupt practices, if they have already been alleged in the petition, to be amended or amplified if such amendment or amplification is necessary for ensuring a fair and effective trial of the petition. Again Sub-section (6) provides that every election petition must be tried as expeditiously as possible and the Tribunal should endeavour to conclude the trial within six months from the date of the publication of the copy of the petition in the official gazette. In the present case, it is common ground between the parties that six months have already elapsed and still the trial of the election petition has not made good progress. ,

Section 116A now provides an appeal from every order made by the Tribunal under Section 98 or Section 99 to this Court. No appeal has been provided from any interlocutory order passed by the Tribunal. Under the circumstances, it would

not be proper for this Court to exercise its extraordinary powers and interfere in the matter with regard to interlocutory orders. Such interference would not only be against the intention of the Act but is also likely to result in delay. In *Veluswami Thevar v. Raja Nainar*, 17 ELR 101 (Punj), their Lordships of the Supreme Court considered the question as to the propriety of High Courts interfering in writ petitions under Article 226 of the [Constitution of India](#) with interlocutory orders passed in the course of an enquiry before the Election Tribunal. It was observed by their Lordships that 'the jurisdiction of the High Court to issue writs against orders of the Tribunal is undoubted; but then, it is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 226.

It should be remembered that under the election law as it stood prior to the amendment in 1956, election petitions were dismissed on preliminary grounds and the correctness of the decision was challenged in applications under Article 226 and in further appeals to this Court, with the result that by the time the matter was finally decided, the life of the Legislature for which the election was held would have itself very nearly come to an end and the proceedings become infructuous. A signal example of a case of this kind is to be found in the decision reported in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*, 10 ELR 357 : ((S) AIR 1955 SC 610). It is to remedy this defect that the Legislature has now amended the law by providing a right of appeal against a decision of the Tribunal to the High Court under Section 116A, and its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its decision should be set right in an appeal under that section.

In this view, it would be proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders.' In view of the said observations of their Lordships, we think that it would be very improper for us to interfere with the impugned interlocutory order of the Tribunal. It would certainly be open to the petitioner to urge before this Court if and when an appeal is filed under Section 116A of the Act to show if he has been prejudiced in any manner on account of the failure on the part of respondent No. 2 to give all the particulars which were necessary for him to meet the case.

14. There is no force in this writ application at this stage and it is hereby dismissed with costs.

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