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Court : Rajasthan

Decided On : Jul-08-1991

Reported in : 1992(1)WLC383; 1991WLN(UC)386

Judge : Inder Sen Israni, J.

Appeal No. : S.B. Election Petition No. 5 of 1990

Appellant : Nawrang Singh

Respondent : Bhanwar Singh

Disposition : Application dismissed

Judgement :

Inder Sen Israni, J.

1. The petitioner has filed an election petition challenging the election of respondent from Rajasthan Legislative Assembly Constituency No. 27, Navalgarh, the result of which was declared on March 1, 1990. The respondent has filed preliminary objections regarding the maintainability of the petition.

2. It is submitted by Shri V.K. Agrawal, learned Counsel that an affidavit filed alongwith the petition does not disclose the source of information as required by relevant provisions of CPC. Therefore, in eye of law no affidavit has been filed and thus the provisions of Section 83 of the Representation of People Act, 1951 (for

brevity of 'Act, 1951') have not been complied with. It is also submitted that verification of the petition has not been done as required under Section 83 of the Act, 1951. It is also pointed out that material facts & material particulars as required under provisions of Section 83 of Act, 1951 have not been disclosed, therefore, no cause of action has arisen for filing this petition. It is further pointed out that copies of documents which formed integral part of the petition have been filed with the petition, but copies of such documents not been given to the respondents. The learned Counsel has lastly raised the objection regarding presentation of the election petition. It has been contended that the petition could have been presented only at Jaipur Bench and not at Jodhpur. Therefore on this ground also the petition is liable to be rejected.

3. I have heard both the parties at length and also gone through the documents on record and also the law quoted at the bar.

4. It has been submitted by learned Counsel for the petitioner 'respondents') that an affidavit filed in support of the petition is no affidavit in eye of law &, therefore, the petition deserves to be dismissed on this account It may be stated that under provisions of Section 83 of the Representation of People Act, 1951 (for brevity 'the Act, 1951') it is 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.' Thus, it is clear that the affidavit has to be filed as prescribed by the relevant provisions. In the conduct of Election Rules, 1961 (for short 'the Election Rules') it is provided under Rules 94-A that 'the affidavit referred in the proviso to Sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25'. It is thus, clear that the affidavit has to be in the Form No. 25. Parts (a) & (b) of the Form-25 regarding affidavit are as under:

(a) that the statements made in paragraphs...of the accompanying election petition about the commission of the corrupt practice of...and the particulars of such corrupt practice mentioned in paragraphs...of the same petition and in paragraphs...of the Schedule annexed thereto are true to my knowledge.

(b) that the statement made in paragraphs...of the said petition about the commission of the corrupt practice of...and the particular of such corrupt practice given in paragraphs...of the said petition and in paragraphs...of the Schedule annexed thereto are true to my information.

Thus it is clear from the paras extracted above that there is no requirement for disclosing source of information and what is required is that the deponent should state on oath that particulars of corrupt practice given in specified paragraphs of the petition or schedule annexed thereto are true to his information. The affidavit filed by petitioner has to be scrutinised keeping in view the provisions mentioned above. In para 2 of his affidavit, it has been mentioned that the corrupt practice of booth capturing and undue influence under Section 123(8) and Section 123(2) of the Representation of People Act are believed to be true to information. It is, therefore, clear that the requirements of Form-25 have been fully observed. It was not necessary for the petitioner to disclose the source of information as contended by learned Counsel. I am fortified in my opinion that the same view was expressed by the Apex Court in *K.M. Mani etc. v. P.J. Antony and Ors.* : [1979]1SCR701 While relying on *Virndra Kumar Saklech v. Jagjiwan and Ors.* : [1972]3SCR955 , it was held that 'the law in this respect is contained in the proviso to Section 83(1) which requires that the affidavit shall be in the 'prescribed form'. A cross reference to Rule 94-A and Form 25 of the Conduct of Election Rules, 1961, shows that it is enough for the election petitioner to say that the statements made in the relevant paragraphs were true to his 'information'. Similarly in *Prabhu Narayan v. A.K. Srivastava* : [1975]3SCR552 , it was held in para 6 that the affidavit in support of an election petition need not itself disclose the source of information. In *Krishan Chancier v. Rain Lal* 1973 S.C.C. 759, it was pointed out by the Apex Court that when there are specific Rules made under the Act which govern the election petitions, no other Rules are applicable. Nor is disclosure of the source of information a requisite under Order 6 Rules 15 and Order 19 Rule 2 of the Code of Civil Procedure have no relevance and do not support the submission that if the affidavit in support of the petition does not state the source of information on which the several allegations in the petition are based, those allegations cannot be deemed to have been made. Therefore, I do not find any force in this objection raised on behalf of the petition and the same is, therefore, rejected.

5. The learned Counsel for the petitioner has further raised an objection and pointed out that material facts and particulars regarding alleged corrupt practices have not been pleaded and names, place, time etc. of the particular incidents have also not been given, concise statement of material facts has not been given. Whatever details have been given did not constitute the booth capturing as provided under Section 135A of the Act, 1951. It is submitted in para 4-B regarding polling station No. 28 it has been mentioned that an FIR was submitted by the presiding officer of Police Station, Navalgarh on 27.2.90. However, the same has neither been produced as part of the election petition nor its alleged true contents have been correctly reproduced in the election petition. A copy of the FIR was also not supplied to the respondent. It is also pointed out that in schedule attached with the petition, there is no mention as to who gave beatings and told voters to go out of polling station or who cast the vote by impersonation. It is also submitted that the word 'voter' has no meaning and in Section 2 of the Act, 1951 the word 'voter' has been used. The learned Counsel has placed reliance on *Ashar Hussain v. Rajiv Gandhi* 1986 (Suppl.) S.C.C. 315. This was a case, in which the allegations regarding offensive speeches have been made. It was held by the Apex Court that in absence of mention in the election petition of time, date and place of the showing that alleged statements had been made and in absence of allegation that such statements were made to prejudice election of any candidate or to further the prospects of the returned candidate, no charge of corrupt practice is made out and election petition was liable to be rejected. In this petition there were allegations of publication of offensive posters. It was held that non-filing of the poster before court was fatal to the election petition. In *Navrang Singh v. Bhanwar Singh* E.L.R. Vo. 1681, irregularities and illegalities were alleged to have been committed during counting of votes. It was held that since serial number of ballot papers, the polling station and the segment to which the ballot papers related, particulars of illegality or impropriety said to have been committed in the matter of acceptance or rejection of a particular ballot paper and steps taken by the candidate, his election agent were not mentioned. Therefore, the petition was liable to be rejected. *U.S. Sasidharan v. K. Kantnakaran and Anr.* : [1989]3SCR958 was an election petition regarding requirement to supply true copy along with the petition, which was held to form integral part of the election petition. A video cassette depicting progress

of the constituency and containing speeches of government servants allegedly used at the instance of the returned candidate was submitted in sealed cover in court instead of supplying the same to the returned candidate alongwith the petition on charge of corrupt practice under Section 123(7) of the Act, 1951. It was held Section 8(3) was not complied with hence the petition was Habile to be dismissed. *M. Kamnanidhi v. Dr. H.V. Hande and Ors.* 1984 (2) S.C.C. 473 was an election petition in which one of the corrupt practice alleged under Section 123 of the Act, 1951, was incurring of expenditure in excess of the limit fixed under Section 77 of the Act. It was alleged that respondent erected about 50 banners throughout constituency each of which would cost not less than Rs. 1000/-. A photograph of the said banner was referred in the petition and filed alongwith it. However, copy of the same was not furnished alongwith the petition to the respondent. It was held that in the present case the photogarph was part of averment contained in paragraph 18(b) and an integral part of election petition and not merely a piece of evidence. In absence of photograph the averment contained in para 18(b) would be incomplete. Therefore, petition was dismissed under Section 86(1). It is further pointed out that the allegations are absolutely vague & do not disclose any cause and do not disclose complete details, names of the persons involved in corrupt practice, which is necessary to prove the corrupt practice as defined under Section 123 of the Act, 1951.

6. It will be appropriate to re-capitulate the relevant provision before reaching any conclusion. Section 83 of the Act, 1951 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 relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the name 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 petition and verified in the manner laid down in the Code of Civil Procedure 1908 (5 of 1908) for the verification of pleadings.

The relevant portion of Section 86 of the Act, 1951 reads as under:

86. Trial of election petitions : - (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under Clause (a) of Section 98.

Section 87 of the Act, 1951 reads as under:

87. Procedure before the High Court - (1) Subject to the provisions of this Act & of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure application under the Code of Civil Procedure 1908 (5 of 1908) to the trial of suits;

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872) shall subject to the provisions of this Act, be deemed to apply in all respects.

Sub-Section (8) of Section 123 of the Act, 1951 is relevant for this petition which reads as under:

(8) Both capturing by a candidate or his agent or other person.

Explanation : - (1) In this section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

It is also provided in Clause 4 of the explanation that for the purpose of Clause (8) 'booth capturing' shall have the same meaning as in Section 135A.

The relevant portion of Section 135A reads as under:

135A Offence of booth capturing whoever committes an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three year and with fine.

Explanation - For the purpose of this Section, 'booth capturing' includes, among other things, all or any of the following activities, namely:

(a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote.

A bare perused of Section 83 shows that petitioner has to make concise statement of material facts on which he relies. The petitioner has to set forth full particulars of any corrupt practice that the petitioner alleges, including as full statement as possible of the names of parties alleged to have committed such corrupt practice at the date and place of commission of each such practice. Thus, the requirement of Section 83 is to give as full statement as possible.

7. It is pointed out by Shri J.S. Rastogi, learned Counsel that in para 4, it has been mentioned that on 27.2.90 the respondent and his workers agents and supporters with his consent virtually seized and took possession of poling stations. It is further

alleged that parties were made to surrender the ballot papers and only supporters of the respondents could exercise their right of vote. The votes were cast by impersonation. Voters were prevented and threatened from giving votes cast by impersonation. Voters were prevented and threatened from giving votes and asked to go away without casting their votes on the polling day. The polling agents of the petitioner and other candidates were turned away out of the polling stations by respondent and his agent and workers. After making these general allegations in details of the alleged corrupt practice have been given. In para 4(A) there is mention regarding booth capturing of polling station No. 88. Name of the presiding officer has been given. It is mentioned that a complaint was made to the returning officer, Navalgadh stating that respondent and his supporters with his consent forcibly entered the polling station and threw away table, chairs and broke the door and windows of the polling station, the ballot boxes were thrown away. The marks copy of electoral roll was torn away by the respondent and his supporters. The ballot papers having seal made in favour of the candidates were snatched away and torn away by the respondent and his supporters. The polling officers were beaten and received injuries, police man on duty was also beaten. The arrow marked seal and the ballot papers were forcibly taken from polling party. The polling party. The polling stopped for two hours. It is also submitted that arrow cross seals and inkpad was also taken away by them. Report was sent to Returning Officer; Navalgadh on 27.2.90, who submitted first information report to the police station, Navalgadh on 27.2.90. The fact of the booth capturing and violence etc. has also been made by presiding officer in the diary. The voters who are standing in the line at the polling station No. 88 were asked to leave the polling station under threat. In sub para (B), it is mentioned that the respondent, his agent, supporters with his consent at polling station No. 88 threatened the voters with dire consequence and they were made to leave the polling station. The polling agents of the petitioner and other candidates were beaten and polling had to be stopped. The ballot papers were snatched from polling party and were taken away. These facts were brought to the notice of Judicial Magistrate also. The name of Presiding Officer has been mentioned and it is stated that he mentioned these facts in his diary also. The first information report was submitted in police station, Navalgadh on 27.2.90 at 12.45 P.M. In sub-para (C) at Polling Station No. 96, the

respondent, his agent and supporters with consent of respondent beaten the voters to leave the polling station and the votes were caste impersonation of genuine voters. The ballot paper Nos. 178154, 178135 & 178158 were snatched from the voters, who were asked to leave the polling station. The petitioner's workers somehow got these ballot papers and they are filed with the petition. These ballot papers contain seal and signature of Presiding Officer. The Presiding Officer has made note of these facts in his diary. In sub-para (D), it is stated that the respondent and his agent and workers with his consent threatened the voters and beaten them and were asked to leave the polling station No. 44. Votes were note of these facts in his diary. The name has been mentioned. The further details of the names of person, who captured the polling station and names of voters and other details have been given in the schedule attached with the election petition. In sub-para (E), it is mentioned that at polling station No. 44 the respondent, his workers and supporters threatened the voters and cast votes by impersonation. One voter Shri Vidhyadhar S/o Shri Moolchand Dundlod went to cast his vote at the polling station on 27.2.90, four persons whose names have been given, attacked and given beatings to Vidhyadhar, who was not allowed to cast vote. An FIR was submitted by Vidhyadhar on the same day in police station, Navalgarh. In para 5, it has been mentioned that thus the respondent and his agents/supporters have indulged in corrupt practice of booth capturing as defined under Section 123/135A and have committed corrupt practice as defined under Section 123(s) of the Act, 1951.

8. In *Daulat Ram Chauhan v. Anand Shanna* : [1984]2SCR419 , in para 18 it has been held that in order to constitute corrupt practice, the following necessary particular, statement of facts and essential ingredients must be contained in the pleadings:

- (1) Direct and detailed nature of corrupt practice as defined in the Act,
- (2) Details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, etc.
- (3) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or

any other person with his express or implied consent.

In *Dhartipakar Madan Lal Agrawal v. Rajiv Gandhi* 1987 (Suppl.) S.C.C. 93 it has been mentioned in para 11 while referring to *Bhagwati Prasad Dixit 'Ghorewala' v. Rajiv Gandhi* : [1986]2SCR823 and several other cases that 'in an election pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action, it should be rejected in limine. These authorities have settle the legal position that an election petition-is liable to be dismissed in limine at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not confirm to the requirement of Section 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11.' From the details of para 4 including sub-paras (A) to (E), it is clear that particulars of the alleged corrupt practice of booth capturing have been given by the petitioner by 'as full a statement as possible' by giving names of the parties alleged to have committed such corrupt practice and date & place of commission of each such practice has also been mentioned. In schedule the names of such persons who captured the polling station No. 88 have been mentioned and date, & time of the incident has also been mentioned; names of polling agent, have also been mentioned, Names of voters numbering 11, who under threat and fear could no exercise their right of vote at the said polling station, have also been mentioned. Regarding polling station No. 96 name of respondent has been mentioned. Regarding polling station No. 28 names of 6 persons have been mentioned, who captured polling booth and threatened voters. Date and time has also been mentioned. Names of voters who were not allowed to vote have also been mentioned. Regarding polling station No. 44 the names of persons who indulged in booth capturing and threatening the voters have been mentioned. Date and time has also been mentioned. Names of voters, who were not allowed to vote have also been mentioned. Names of polling agents have also been mentioned. This schedule has been verified and is signed by the petitioner. Thus, it is evident that the names, date, time and place of occurrence has been mentioned in the petition/schedule attached with the petition which is integral part

of the petition. In *R.M. Sheshadri v. C. Vasantha Pai and Ors.* : [1969]2SCR1019 , it was observed by the Apex Court in para 22 that 'as to the rulings which were cited before us, it is sufficient to say that each case is decided on its own facts & circumstances. It was not necessary for Vasantha Pai to have pleaded his evidence in this behalf. He made a very full plea by giving the numbers of the cars, by naming the polling booths at which voters were brought and by stating quite categorically that it was Seshadi who had produced these cars for the convenience of voters. Rest was matter of evidence and the fact had to be established by evidence'. After carefully considering the pleadings mentioned above, I am of the considered opinion that the petition has set forth full particulars of the alleged corrupt practice of booth capturing and has given as a full statement as possible by giving names, date, and place etc. regarding the commission of the as possible by giving names, date, and place etc. regarding the commission of the each such practice at various polling stations. An affidavit in the prescribed form in respect of the allegations of such practice has also been filed. I, therefore, do not find any force in this contention raised by the learned Counsel and the petition cannot be dismissed on this ground which is rejected.

9. The learned Counsel for the petitioner has also contended that the copy of FIR referred to in para 4-A of the petition has not been supplied to him alongwith the copy of the writ petition. Therefore, on this account also the petition is liable to be dismissed. The FIR was filed by the presiding officer. List of which has been given in para (A). This FIR cannot be said to be integral part of the petition. As the fact of FIR having been filed by the presiding officer has been mentioned, the FIR is only a piece of evidence to prove the fact of filing of FIR. The learned Counsel contended that the copies of documents including notes of diaries of polling officers should have been supplied to the respondent alongwith the election petition. These documents are into integral part of the petition and have been produced as evidence. Therefore, the petitioner according to law, was not bound to supply the copies of the documents to the respondent alongwith the writ petition. In matter of *M. Kamnanidhi (supra)* non-supply of photo copy of banner was held to be fatal and the petition was dismissed because putting of banners was a part of corrupt practice alleged against the respondents. However, this cannot be said regarding FIR on entry in the diary made by the polling officers. In *Madan Mohan v. Kala*

Vakunta : [1984]2SCR894 it was held by the Apex Court that annexures to the election petition in form of documents are not required to be served on respondent since they did not form an integral part of the petition. I, therefore, do not find any force in this objection raised on behalf of the petition, which is liable to be rejected.

10. The last objection raised by Shri V.K. Agrawal, learned Counsel is that the areas falling within the jurisdiction of this High Court sitting at Jodhpur and sitting at Jaipur are fully specified and delineated by the presidential order issued on December 8, 1976 and also by the order issued by the then Chief Justice dated December 23, 1976. In order of Chief Justice the revenue districts falling under the jurisdiction of permanent Bench at Jaipur have been specified and constituency Navalgarh is in district Jhunjhunu which comes within the area of Jaipur Bench.

Therefore, the election petition could have been presented and disposed of only by this High Court at Jaipur. It is submitted that, this petition was, however, presented before the Registrar at Jodhpur and has been transmitted for hearing and disposal by the Registrar, Rajasthan High Court at Jodhpur, who was not competent to do so. It is also contended that the Additional Registrar, Rajasthan High Court, Jaipur Bench, was neither competent nor had any jurisdiction to entertain election petition on April 28, 1990 and put it for order before the Hon'ble Chief Justice under Section 80A(2) of the Act, 1951.

11. Learned both the counsel have addressed at length on this point and have referred to several authorities. It may be pointed out that this objection is raised almost in all the petitioners, in which the learned Counsel for the respondents appears on behalf of any respondent. Therefore, this objection has been considered more than once by this Court and it has been held that the petition could be presented at Jodhpur. A Reference may be made to Jagmohanlal and Anr. v. Hari Singh and Ors. SB Civil Election Petition No. 9/80 decided by Hon'ble Justice S.C. Agrawal as he was then, on April 21, 1981 and Blwnwar and Anr. v. Kirori Lal and Ors. SB Election Petition No. 6/85 decided by Hon'ble Justice N.M. Kasliwal as he was then, on September 30, 1985. In both these petitions this objection has been considered at length and the authorities quoted before me were also considered. In both these decisions it was held by this Court that the

petition has been properly presented at Jodhpur and this objection was dismissed. I, therefore, do not find it necessary to discuss the objection and the authorities quoted by both the sides in details since the matter has been already decided by this Court. I am in full agreement that the view taken by my brother Judges in the above two election petitions and adopt the reasons given in both these judgments. I, therefore, do not find any force in this objection also which is liable to be dismissed.

12. In the result I do not find any merit in the preliminary objections raised on behalf of the respondent, which are hereby dismissed.

13. The learned Counsel for the petitioner has filed an application dated December 14, 1990 under Section 44 of Rajasthan High Court Ordinance, 1949, in which, a question of law mentioned herein has been framed and it has been prayed that the same may be referred for consideration to a specially constituted Large Bench:

Whether an Election Petition relating to an election held within the districts assigned to the Permanent Bench of the Rajasthan High Court at Jaipur, presented not at Jaipur but addressed to the High Court of Judicature for Rajasthan at Jodhpur as well as presented to the Registry of High Court at Jodhpur is or is not in compliance with Section 81 read with Section 79(e) and

Section 80A of Representation of the People Act, 1951? if not, what is its effect?

It is pointed out by learned Counsel for the petitioner that even learned Counsel for the respondent himself has filed several election petitions at Jodhpur and not a single election petition has been filed by the learned Counsel for the respondent at Jaipur. Apart from this, I do not find it necessary that any question of law has arisen which may be referred to a specially constituted Large Bench. Question raised by the learned Counsel for the respondent has been already decided by more than one judgments of this Court and I do not find any merit in this application also. The application is, therefore, dismissed.

14. The respondent is now directed to file the written statement within three weeks.

