

Deep Chand Vs. Jaynarayan and ors.

Deep Chand Vs. Jaynarayan and ors.

SooperKanoon Citation : sooperkanoon.com/767507

Court : Rajasthan

Decided On : Nov-04-1977

Reported in : 1977WLN529

Judge : M.L. Jain, J.

Appeal No. : Election Petition No. 9 of 1977

Appellant : Deep Chand

Respondent : Jaynarayan and ors.

Disposition : Petition dismissed

Judgement :

M.L. Jain, J.

1. This is a petition under Sections 80 and 81, of the Representation of the People Act, 1951 filed by Shri Deepchand challenging the election of the respondent No. 1 Shri Jaynarayan to the Rajasthan, Vidhan Sabha from the Sadulpur constituency the result of which was declared on 14-6-77. The petitioner had lost the election by a margin of 759 Votes. By this petition, he prays that the election of, the respondent, No. 1, be, declared avoid general scrutiny and recount may, be, ordered, and then, the result of the election be declared. The main grounds, on which the election of the respondent is challenged are as follows:

- (1) The Returning Officer rejected ballot papers which, were valid.
- (2) Some times the correct total number of votes actually in the bundle of a candidate was not correctly declared.
- (3) Each bundle ought to have been prepared of 50 ballot papers. Some bundles of the petitioner contained more than 50 ballot papers, but they were declared as having 50 ballot papers only.
- (4) The ballot papers in favour of other respondents were counted in favour of the respondent No. 4.
- (5) There exists a discrepancy in the total number of votes shown in Form No. 16 and Form No. 20.
- (6) Numerous ballot papers cast in favour of the petitioner were mixed up with the ballot paper of other respondents and counted in their favour.
- (7) The number of votes in the bundles of Shri Jaynarayan respondent No. 1 were even counted.
- (8) The counting was done on 8 tables by 94 persons, while the petitioner was allowed only four counting agents It was possible for the counting agents to note the irregularities mentioned above. The particulars of these irregularities can only be submitted after inspection, leave to which will be prayed.
- (9) The result of election has been materially, affected by improper acceptance and refusal of votes and by the incorrect sorting counting and bundling of ballot, papers If no such illegalities and irregularities were committed, the petition should have won by a vast majority of votes.

2. The respondent No. 1 has denied the allegation & has stated that the petitioner has not given any particulars in respect of the allegations and therefore, the petition was not maintainable The petitioner did not apply for a recount of votes before the Returning Officer under Rule 63 of the Conduct of Election Rules, 1961, and the allegations made in the petition are nothing but after thought. If the petitioner or his agent had any grievance against counting then he would have

certainly applied for a recount. Without laying down any foundation for the allegations, the petitioner is not entitled either to inspection of the ballot papers or to a recount. The petition deserves to be dismissed for want of material facts.

3. When the matter came up for framing of issue Shri Rajendra Mehta, the learned Counsel for the Respondent No. 1 raised an objection that in the absence of material facts the petition was liable to dismissal as there were no facts on which any triable issue can be framed. The court took time for consideration but before pronouncement of orders, the counsel for the petitioner filed what he called further and better particulars as follows:

(1) The total number of votes found in the ballot boxes were 46406 but the total number of votes polled was shown as 46687 in Form B. 16 were the dead votes.

(2) On the sixth round at table No. 5, the bundles were not of 50 votes and so was the case on the table in respect of postal ballot papers.

(3) The following votes were wrongly counted in favour of Shri Jay Narayan respondent No. 1 instead of being counted in favour of the petitioner:

(i) About 100 votes on table No. 4 in first round

(ii) About 100 votes on table No. 4 in second round

(iii) About 100 votes on table No. 5 in second round

(iv) About 150 votes on table No. 2 in third round

(v) About 150 votes on table No. 3 in third round

(vi) About 200 votes on table No. 5 in fifth round (vii) About 150 votes on table No. 6 in fifth round

Total 950 Votes

4. Had these votes been counted in favour of the petitioner, the petitioner would have got 950 votes more and the respondent would have got 950 votes less with the result that the petitioner would have won by a vast majority of votes.

5. The learned Counsel for the respondent submitted that in the so called better particulars, the petitioner has failed to note the number of postal ballot papers to the true of 281 and if these ballot papers are added then the discrepancy will disappear. It is not necessary that all the bundles must be of 50 ballot papers At each table the ballot papers were arranged into convention bundles of 50 each as far as possible. As regards the counting on various tables, it was rightly pointed out that the petitioner has not shown in what manner his votes were counted for the respondent No. 1. He has sworn in to the allegation on the basis of his personal knowledge. Yet he had not stated why he was not able to make this allegation in his election petition. The learned Counsel also maintained that these better particulars are furnished beyond time of limitation and therefore deserved to be rejected

6. The learned Counsel for the petitioner maintains that it is not possible for the petitioner to furnish any more material facts in the circumstances of the case and there is no precedent in which any election petition was ever dismissed at such a stage without framing of issues and recording of evidence. He relies upon *Jilder Ram v. Gouri Shanker Panday and Ors.* : AIR1955 Pat449 where a voter filed an election petition not being himself a candidate & it was held that he could have done no more than state in his election petition and to lead some evidence to the effect that there had been improper reception, refusal or rejection of votes at the time of counting, in consequence of which the result of election was material affected and if the votes had been properly counted, then the result would have been in favour of the petitioner. This much averment alone was held sufficient to contain an adequate statement of material fact. In *Begum Hafida Ahmed v. Rajendra Nath Barua and Anr.* AIR 1960 Ass & Nag 62 it was held that non-mention of specific votes improperly accepted or rejected will not make the petition liable to be dismissed for vagueness. It was further pointed out that no election petition can be dismissed at the preliminary stage without recording any evidence. Under Section 86 of the Representation of the People Act, 1951, the High Court can dismiss only election petition which does not comply with the provision of Section 81 or Section 82 or Section 117. No petition therefore can be dismissed for non-compliance of sub-Section (1)(a) of Section 83 if it does not contain a concise statement of material facts on which the petitioner relies.

7. I have considered the rival contentions. In *Samant H. Balakrishnum etc. v. George Fernandes and Ors.* AIR 1960 SC 1201 it was held that Section 83 is mandatory. It means that the very first requirement of an election petition is that it must first contain a concise statement of material facts. 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. In stating the material fact, it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. An election petition without material facts is no election petition at all. A petition which merely cites the sections cannot be said to disclose cause of action. The election petition in the present case, merely reproduces the grounds contained in Section 100 of the Act. It is therefore not a petition containing a concise statement of the material facts and therefore, is liable to be thrown out. One has to bear in mind that Section 83 lays down that the election petition must state that material facts on which the petitioner relies and in case of charge of corrupt practices, full particulars, are further required to be given. If material facts are not stated even concisely, the very foundation of the petition is missing. In *Hardwari Lal v. Kanwal Singh* AIR 1970 SC 515 it was stated that 'under Section 87 of the Act, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.' Order 7, Rule 11(a) CPC provides that the plaint shall be rejected where it does not disclose a cause of action. In *Rediffusion (Hong Kong) Ltd. v. Att Gen. of Hongkong* 1970 AC 1136 (PC), Lord Diplock said that an action is an application to a court by a plaintiff for the grant of specified relief against the defendant. A cause of action is a state of facts the existence of which entitles the court to grant to the plaintiff the relief applied for in the action. I therefore think that if the election petition does not state the material facts it can be rejected by the High Court. It has been consistently held by the Supreme Court in *Ram Sewak Yadav v. Hussesion Kamil Kidwai and Ors.* : [1964]6SCR238 *Dr. Jogjit Singh v. Gaini Kartar Singh and Ors.* AIR 1965 SC 773, *Jitendra Bahadur Singh v. Krishna Behari and Ors.* : [1970]1SCR852 and *Beliran Bhalai v. Jai Behari Lal Khachi and Anr.* that an election petition must contain a concise statement of the material facts in a case of recount specially. A

mere allegation that the petitioner suspects 01 believes that there has been an improper reception, refusal or rejection of votes will not be sufficient having regard to the insistence upon secrecy of the ballot papers. At every stage in the process of scrutiny and counting of votes, the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer, inspecting any rejected votes, and to demand their re-count. Therefore, a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting must support his claim by making precise allegations of material facts which having regard to the elaborate rules are or must be deemed to be within his knowledge. The material facts required to be stated in these facts which could be considered as materials supporting the allegations, made. If the election petition in his election petition gives some figure as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts.

8. I am of the view that where the petition is a vague petition and it does not disclose material facts, then it is liable to be rejected at the very threshold without recording evidence and without allowing the petitioner to have a fishing and roving inquiry.

9. The learned Counsel for the petitioner however, laid great stress upon *Manphal Singh v. Surindar Singh* : [1974]1SCR52 in which the statement in the election petition was not considered vague or general, though it was suggested it had not similar allegations as he had made in his petition. I do not think that contention is supported by the facts of the case. In that case, the Supreme Court observed that one rarely comes across in election petition giving such minute details & there is no more than the petitioner could have done except to state the evidence, of which the material facts are to be proved. Part of the report has reproduced the allegations regarding counting and they clearly show how meticulous the petitioner was in giving the details of the irregularities committed in this case, therefore, cannot be pressed into service of the petitioner. In view of the aforesaid observation of the Supreme Court the view expressed in *Kidwai Hussain Kamil v. Yadav Ram Sewak and Ors.* : AIR1964 All86 with utmost respect cannot be accepted in as far as it

holds that the allegations in an election petition relating to the wrong inclusion and wrong exclusion of votes does not require material facts being given. As observed in para 8 of *Jintandra Bahadur v. Krishna Bihari and Ors.* : [1970]1SCR852 , it is not a mere matter of form but is a matter of substance

10. I have already reproduced above all the so called particulars furnished by the petitioner. Even those averments do not bring out any material faces so as to constitute a cause of action. More over, in *Sunder Lal Chachani v. Sampat Lal* (1968) 24 ELR 240 it was laid down by this Court that where the petition is not based on the commission of a corrupt practice, no amendment is possible, permitting a new ground to be raised beyond the time limit for filing an election petition. I have already spoken of the distinction that Section 83 of the aforesaid Act draws between material facts and full particulars Section 86(6) does make a provision regarding amendment of particulars but is discreetly silent about addition or amendment of material facts which therefore can not be permitted if the time for filing the petition has expired. The particulars which the petitioner has supplied do not improve his petition any further.

11. The result of the aforesaid discussion is that the petition does not make out a triable issue, discloses no cause of action and is hereby rejected and dismissed as such. The costs shall be easy.