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Court : Himachal Pradesh

Decided On : Dec-13-1990

Reported in : AIR1991HP68

Judge : V.P. Bhatnagar, J.

Acts : [Representation of the People Act, 1951](#) - Sections 81(3), 82, 86 and 86(1); ;
[Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10

Appeal No. : Election Petn. Nos. 1 and 2 of 1990

Appellant : Moti Ram and anr. Etc.

Respondent : Moti Ram

Advocate for Def. : M.L. Sharma, Adv.

Advocate for Pet/Ap. : Inder Singh.;A.K. Goel and ; Vijay Thakur, Adv.

Judgement :

ORDER

V.P. Bhatnagar, J.

1. Shri Moti Ram respondent was declared to have been elected a Member of the Himachal Pradesh Legislative Assembly from 60-Chachiot Assembly Constituency in the elections held during February, 1990. His election has been challenged by

way of filing two separate election petitions on the ground that the nomination paper of Shri Karani Singh was improperly rejected by the Returning Officer vide his order dated February, 7, 1990. Since both petitions involved determination of similar questions of facts and law, it was ordered on July 25, 1990 that the petitions be consolidated and further, that proceedings would henceforth be recorded in Election Petition No. 2 of 1990.

2. The petitions were contested by Shri Moti Ram respondent by way of raising a number of preliminary objections. It was averred that the copies of the petitions served upon him were not the true copies of the original and, therefore, the provisions of Section 81(3) of the [Representation of the People Act, 1951](#) (hereinafter referred to as 'the Act') had not been complied with. Also, the petitions and annexures attached thereto had neither been signed nor verified in the manner laid down in the Code of Civil Procedure. The provisions of Sections 83(1)(c) and (2) of the Act stood violated. Another objection raised was that Shri Karam Singh, Shri Shiv Lal and the State Government were necessary parties. It was pleaded that the election petitions merited dismissal on each of the above grounds. This was vehemently contested by the petitioners.

3. The following preliminary issues were framed:--

1. Whether copies of the petitions served upon the respondent in Election Petitions I and 2 of 1990 are not the true copies of the respective petitions and the provisions of Section 8(3) have not been complied with? If so, effect thereof. O.P.R.

2. Whether Shri Karam Singh, Shri Shiv Lal and the State Government are necessary parties? If so, its effect. O.P.R.

3. Whether the petitions and annexures attached thereto are neither signed nor verified in the manner laid down in C.P.C.? If so, its effect. O.P.R.

Issue No.: 1

4. Section 81(3) of the Act provides that 'every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in

the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy, of the petition. Shri Moti Ram is the only respondent impleaded in both the petitions. Therefore, it was incumbent upon the petitioners to attach one copy of the petition at the time of its presentation. This requirement was duly met and there is no dispute about it. However, the question which requires determination is whether the copy so attached was attested by the petitioner under his own signature to be a true copy of the petition.

5. An election petition which does not comply with the provisions of Section 81 has to be dismissed. This is the clear mandate of Section 86 of the Act. Petitioners were, therefore, required to attest the copy meant to be delivered to the respondent under their own signatures to be a true copy of the petition. But it is well settled law by now that substantial compliance of this provision is sufficient. What the law frowns upon is if the variation found is misleading. The above statement of law emerges from a number of authorities relied upon by both the parties.

6. In *Sharif-ud-Din v. Abdul Gani Lone*, AIR 1980 SC 303, it has been held that the attestation of election petition by the Advocate is not due compliance of Section 81(3) and that the petition is liable to be dismissed in limine under Section 86. It is manifest that the ratio of this case does not help the respondent for the simple reason that it is not his case that the copies of the petitions were signed by the Advocate representing the petitioners and not the petitioners themselves.

7. In *M. Karunanidhi v. H. V. Handa*, AIR 1983 SC 558 the point at issue was about the quantum of expenditure incurred by the successful candidate and one of the allegations was that he had spent a sum of Rs.50,000/- on 50 fancy banners. Photo-graph of one such banner had been annexed with the original petition but not supplied to the respondent along with the copy of the petition meant to be delivered to him. On those facts, it was held that the photograph was an integral part of the petition within the ambit of Section 83(1)(b) and that true copy of the petition had not been furnished to the respondent thereby violating the provisions of Section 81(3) of the Act. Once again, the above facts have no similarity with the facts of the case in hand and the law laid down does not advance the case of the

respondent in any manner.

8. The next case relied upon by Shri M. L. Sharma, learned counsel for the respondent, is *A. Madan Mohan v. Kalavakunta Chand-rasekhara*, AIR 1984 SC 871 which lays down that the copies of the annexures are not required to be served upon the respondent. In fact, the law on this point is very clear inasmuch as it has been held time and again that true copies of annexures and documents are to be furnished to the respondent only if such annexures and documents are integral part of the election petition and not otherwise.

9. The law laid down in *Rajendra Singh v. Smt. Usha Rani*, AIR 1984 SC 956 also does not help the respondent because in that case it was found as a matter of fact that the copy supplied to the respondent was incorrect and misleading.

10. The last case relied upon by Shri M. L. Sharma, learned counsel for the respondent, is *Ved Parkash Gaur v. Sukhan*, AIR 1984 Delhi 276 wherein photostat copies of the election petition were furnished to the respondent without any attestation whatsoever. This was held to be insufficient compliance of the provisions of Section 81(3) of the Act.

11. Shri Indar Singh, learned counsel for the petitioners, on the other hand, sought reliance from *Murarka P adhey Shyam Ram Kumar v. Roop Singh Rathore*, AIR 1964 SC 1545 wherein their Lordships of the Supreme Court have held that the copy to be furnished to the respondent need not be absolutely exact copy of the original but that it should be so true that there is no possibility of misunderstanding it. Thus, it should not be calculated to mislead an ordinary person.

12. In *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, AIR 1964 SC 1027, on the facts of that case, it has been held that omission to add words 'true copy' in the copy of the election petition constitutes non-compliance of Section 81(3). However, in *Dr. Anup Singh v. Abdul Ghani*, AIR 1965 SC 815 wherein the copies meant for the respondent were only signed and the words 'attested to be a true copy' not written at all, it was held that this constituted sufficient compliance of Section 81(3) because the purport of putting signature was to attest the contents.

13. Coming to the facts of the present case, it has been fairly conceded by Shri M. L. Sharma that there is no variation between the original petition and the copy of the election petition Ex. R-2 which has been proved while tendering evidence on this issue and further that his contention is only confined to the point of attestation being not proper. He has drawn my attention to the copies of the index, memo of parties, list of documents and translation of letter dated March 2, 1978 where the petitioners have only written 'true copy' and signed. The objection is that they should have written 'attested to be a true copy' and not merely 'true copy'. Then there are two documents viz. form of name, parentage and address of petitioner and list of documents relied upon which are only signed by the petitioners. The argument is that the discrepancy may not be very material but the law in election matters is so tyrannical that provisions of Section 86 will have to be invoked and the petition dismissed without bringing equity into play. I am afraid I cannot agree. There are certain provisions in the Act compliance of which has been made mandatory and its infraction fatal per se to the election petition but the nature of variations referred to above between the original copy of the election petitions and the copies meant to be delivered to the respondent does not attract the provisions of Section 86. The documents in question cannot be held to be integral part of the petition. Respondent could not have been misled in any manner and, in any case, signing these documents as 'true copy' instead of 'attested to be a true copy' and there being no variation between the two constitutes full compliance of the provisions of law. The last two documents referred to above were only signed and even the words 'true copy' were not written thereon but here also these documents viz. form of name, parentage and address of the petitioners and list of documents relied upon can neither be held, on the facts of this case, as part and parcel of the election petition nor insufficient attestation as held in *Dr. Anup Singh v. Abdul Ghani* (AIR 1965 SC 815) (supra).

14. For the reasons given above, I hold that the copies of the petitions served upon the respondent are the true copies of the respective petitions and have been duly attested and provisions of Section 81(3) of the Act have been fully complied with. Issue No. 1 is, therefore, decided against the respondent.

Issue No.: 2

15. The frame of the issue shows that the objection raised by the respondent was to the effect that Shri Karam Singh, Shri Shiv Lal and the State Government were necessary parties. At the time of arguments, however, Shri M. L. Sharma, learned counsel for the respondent, gave up his objection with respect to Shri Karam Singh as also the State Government and limited his argument only with respect to Shri Shiv Lal.

16. Succinctly put, the argument is based on the conjoint reading of Section 82(b) and Section 86(1) and is that in case allegations of any corrupt practice are made in the petition against any candidate he is a necessary party to be impleaded as a respondent and failure to do so will attract the rigour of Section 86(1) and entail dismissal of the petition straightway.

17. It is not in dispute that Shri Shiv Lal was a candidate of Congress (I) within the ambit of Clause (b) of Section 79. In fact, he fought the elections but could not succeed. Thus, the question which requires determination is whether the petitioners have made allegations of corrupt practice against Shri Shiv Lal. The respondent has not adduced any evidence whatsoever on this point and he strongly banks upon the contents of para 7(e) of Election Petition No. 2 of 1990 to urge that the aforesaid contents constitute such allegations of corruption. In order to appreciate the contents of para 7(e), some facts which are not disputed may first be stated. The main challenge thrown against the election of the respondent is the improper rejection of nomination paper of Shri Karam Singh by the Returning Officer on February 7, 1990. Shri Karam Singh had been admittedly appointed a Member of the Himachal Pradesh Khadi and Village Industries Board vide Government Notification dated December 27, 1986 which notification also appointed him as chairman of the said Board. Shri Karam Singh submitted his resignation on January 31, 1990 with the request that it be accepted with immediate effect but the State Government notified the acceptance on February 12, 1990. Now the last date of filing the nomination papers was February 3, 1990 and the date of Scrutiny on the 5th of that month. Withdrawal be made till February 7, 1990. It was on this date when the Returning Officer rejected the nomination papers of Shri Karam Singh on the ground that he was holding an office of profit under the Government. It is manifest that in case the resignation of Shri Karam

Singh had been accepted by the Government on January 31, 1990, his nomination papers could not have been rejected. In this background the contents of para 7(e) may now be reproduced since, according to the respondent, these averments per se constitute allegations of corruption within the ambit of section 123 (7) of the Act. Para 7(e) runs as follows :-

'That the State Government cannot sit over arbitrarily on the resignation so submitted and accept the same at its sweet will, so as to deprive a citizen of his constitutional right to contest the election any by its wrong, mala fide and arbitrary action it cannot elect to accept the resignation at its own whims and pleasure and, as such, in law the resignation would be deemed to have been accepted with effect from 31-1-1990, even in alternative, if his resignation is required to be accepted andnot thereafter and, as such, the order of the Returning Officer is wrong, illegal and the nomination papers of Shri Karam Singh have been improperly rejected. It is submitted that the action of the State Government in not accepting the resignation was mala fide in order to enhance the prospects of winning the election by its nominated candidate Shri Shiv Lal. Shri Karam Singh had been continuously a Member of the Himachal Pradesh Legislative Assembly and during this period he remained the Chairman of the Himachal Pradesh Territorial Council, thereafter he remained as Minister in the Government of Himachal Pradesh and remained as Member of the Himachal Pradesh Legislative Assembly till 1977, Shri Karam Singh had better prospects of winning the election from the Constituency. The action of the State Government in not accepting the resignation of Shri Karam Singh was with a motive to enhance the prospects of winning the election by Shri Shiv Lal, the Congress (I) nominated candidate, as at the relevant time the Gov-ernment was of the Congress (I) Party, as such, it intentionally sat over the resignation and avoided to accept the resignation of Shri Karam Singh, the State Government accepted the resignation on 12-2-1990 without any reason as to why it was not accepted on 31-1-1990 or at least up to the date of scrutiny i.e. 5-2-1990. It is submitted that from the various provisions of the Himachal Pradesh Khadi and Village Industries Board Act, 1966 and the rules framed thereunder, it is obvious that the office of the Chairman of the Board is not an office under the State Government, more so, the Chairman does not draw any profits from the office of Chairman of the Board.

It is the petitioners case that Shri Shiv Lal was a candidate nominated by Congress (I) which was the ruling party in the State and constituted the Government at that point of time. The argument, therefore, is that the petitioners themselves have alleged in para 7(e) by necessary implication that Shri Shiv Lal was helped by the State Government for the furtherance of the prospects of his election inasmuch as the acceptance of the resignation was delayed by the State Government. Shri Shiv Lal, therefore, procured the assistance of the State Government to brighten his prospectus and thus was guilty of indulging in corrupt practice. In the face of this averment no further evidence, so the argument runs, is needed to establish that allegations of corrupt practice having been levelled against one of the candidates, namely Shri Shiv Lal and, therefore, his non-joinder would invoke dismissal under Section 86(1) of both the election petitions. Shri M. L. Sharma, learned counsel for the respondent, has drawn my attention to the law laid down in *Udhay Singh v. Madhay Rao Sctndia* AIR 1976 SC 744 to the effect that pleadings are to be read as a whole and it is the substance and not the form which is to be looked into. According to Shri Sharma, the substance of the averments made in the petition when read as a whole and particularly in para 7(e) is nothing short of levelling charge of corrupt practice against Shri Shiv Lal, Shri Shiv Law was, therefore, a necessary party.

18. I find no force whatsoever in the above contention.

19. The law which emanates from Section 82(b) and Section 86(1), as also from what has been repeatedly stated by the Supreme Court, is very clear. If allegations of corrupt practice are made against any candidate in an election petition, said candidate is a necessary party and failure to array him as a respondent would bring the statutory mandate of section 86 into play. The election petition would entail dismissal on that short ground and there is no escape from it so much so that the said lacuna cannot even be cured by having recourse to the provisions of Order I Rule 10 or Order VI Rule 17 of the Code of Civil Procedure. If the allegations regarding corrupt practice lack full particulars, the candidate is still a necessary party. Reliance in this behalf may be sought from *Shiv Chand v. Ujger Singh*, AIR 1978 SC 1583 and *Mohan Raj v. Surendra Kumar Taparia*, AIR 1969 SC 677.

20. Evidently, the main question which has to be answered is whether the contents of the election petitions tantamount to allegations of corruption against Shri Shiv Lal Here, Shri Sharma, learned counsel for the respondent, has invited me, in all earnestness, to break new ground in developing the law as to what constitutes allegations of corruption within the meaning of Section 123 (7). The crux of his submission has been noticed above. In my opinion, to accept it would amount to reading in Section 123 (7) what simply does not exist.

21. What caused the delay in acceptance of the resignation of Shri Karam Singh by the State Government is one aspect of the matter. More crucial than that and which touches the heart of the controversy is if the petitioners can be taken to have alleged anywhere that it was Shri Shiv Lal who persuaded the Government, directly or implicitly, not to accept resignation in time. There is not even a remote hint about it in the contents of the election petitions or the evidence adduced on behalf of the respondent. The respondent has himself stepped into the witness box as RW. 1 but has refrained from breathing a single word in the matter. And then, merely because Shri Shiv Lal could possibly be the beneficiary of the delay in acceptance of the resignation would not lead to an inference that he was at the back of it. It has also to be borne in mind that a corrupt practice meant to further the prospects of a candidate cannot be attributed to him merely because he is the beneficiary thereof. This is because of the salient provisions that corrupt practice must be committed by the candidate himself or by his agent or by any other person with the consent of the candidate or his election agent. In any case, making allegations of corrupt practice cannot be left to the realm of drawing inferences. Such allegations should be specific in nature. There has to be some overt act done by the candidate so as to receive assistance a positive act done consciously. No such conclusion flows or can be drawn from the contents of the petition.

22. Learned counsel for both sides have cited a number of authorities in support of their respective contentions. In some cases, it has been held that the allegations made are of corrupt practice whereas in others it has been negated. This has been done on the peculiar facts of each case and I do not think it necessary to refer to those cases in detail because none has got any proximity to the facts of

the present case.

23. There is yet another reason why the respondent cannot succeed on this point. Section 123(7) exhaustively describes the persons in the service of the Government and belonging to classes named therein whose assistance must have been got or procured or attempt made for the furtherance of the prospects of the candidate's election. Nowhere such a person stands indicated as having rendered any assistance to Shri Shiv Lal. Corrupt practice for the purposes of electoral law strictly means what has been stated in the Act. Section 123(7) does not apply to this case for this reason as well.

24. Shri Indar Singh, learned counsel for the petitioners, has endeavoured to develop another argument to repel the contention put forward on behalf of the respondent. It is that Shri Shiv Lal became a candidate on February 7, 1990 when his name was shown in the list prepared under Section 36(8). The nomination papers of Shri Karam Singh were rejected on that very date and, therefore, he ceased to be a candidate on February 7, 1990. Putting it in other words, Shri Shiv Lal was not a candidate before February 7, 1990 and nothing that he did before that date would count for constituting a corrupt practice. On and after February 7, 1990 Shri Karam Singh ceased to be a candidate and, therefore, nothing that Shri Shiv Lal did after that date could benefit him qua Shri Karam Singh. I am not impressed with this line of argument but it would be needless to discuss in detail since for the reasons already stated above I find no merit whatsoever in the case as put-forth for the respondent on this issue.

25. Consequently issue No. 2 is also decided against the respondent.

Issue No.: 3

26. This issue was not pressed at the time of arguments by learned counsel for the respondent. Hence, it is decided against the respondent.

27. The preliminary issues having been disposed of as above, the petitions may now be proceeded with on merits.

