

CASE NO.:
Appeal (civil) 8102 of 2003

PETITIONER:
Sardar Harcharan Singh Brar

RESPONDENT:
Sukh Darshan Singh & Ors.

DATE OF JUDGMENT: 27/10/2004

BENCH:
CJI & C.K. Thakker

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

Elections to the Punjab Legislative Assembly were held in the month of January-February, 2002. We are concerned with 105 Muktsar Assembly Constituency. There were 12 candidates in the fray. The constituency went to polls and after counting the result was declared on 24.2.2002. Sukh Darshan Singh, respondent No. 1, who contested as an independent candidate, secured 32,465 valid votes while the appellant Sardar Harcharan Singh Brar, who was fielded by the Congress party, secured 32,265 valid votes. Other candidates secured lesser votes. The respondent No. 1 was declared elected.

The appellant filed an election petition under sections 80, 80A and 81 of the Representation of the People Act, 1951 (hereinafter 'the Act', for short). The main grounds on which the election of respondent No. 1 was sought to be set aside were that the nomination of one on the respondents was improperly accepted which had resulted in the result of the election being materially affected and that the respondent No. 1 was guilty of having committed the corrupt practice of obtaining the assistance of a police officer within the meaning of Section 123(7) of the Act. Several instances of commission of such corrupt practice were set out in the election petition.

On the pleadings being completed, the learned Designated Election Judge of the High Court framed six issues, out of which the following two have been heard and decided as preliminary issues by the impugned judgment :-

1. Whether the averments made in the election petition lack in material facts and do not disclose any cause of action? If so, its effect? OPR
2. Whether the affidavit filed in support of the election petition is not valid? If so, its effect? OPR

Both the issues have been answered against the election petitioner-appellant with the result the election petition has been held liable to be dismissed and dismissed accordingly. The election petitioner has come up in appeal under Section 116 A of the Act.

The short point which arises for decision in this appeal is whether the election petition could have been held liable to be dismissed at the threshold and without being tried and heard on merits. Under Section 86(1) of the Act, an election petition is

liable to be dismissed without being set down for trial, if it does not comply with the provisions of Section 81 or Section 82 or Section 117. Sections 81, 82 and 117 respectively provide for presentation of petition, parties to the petition and security for cost. Obviously the objections raised by the contesting respondents forming basis of the two preliminary issues are not covered by Section 86(1) of the Act. The High Court has proceeded on the premises that inasmuch as the averments made in the election petition alleging the commission of corrupt practice do not disclose material facts as required by Section 83 of the Act and the election petition is also not supported by an affidavit as required by proviso to sub-Section (1) of Section 83 of the Act read with Rule 94A of the Conduct of Elections Rules, 1961 (hereinafter 'the Rules', for short), the election petition does not disclose any cause of action and therefore does not raise any triable issue. It is the correctness or otherwise of the view taken by the High Court which arises for consideration. Section 83 of the Act and Rule 94A of the Rules provide as under :

Act

"83. Contents of petition \026 (1) An election petition \026

(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 names 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 petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[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.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Rules

94A. Form of affidavit to be filed with election petition \026
The affidavit referred to 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."

So far as the law centering around the above-said provisions is concerned, several decided cases of this Court have covered the field and the law is settled leaving hardly any scope for further elaboration. We would refer only to a few of the cases which would suffice for above purpose.

In Samant N. Balakrishna and another Vs. George Fernandez and others, (1969) 3 SCC 238, the mandatory nature of the provisions contained in Section 83 was dealt with and consequences flowing from any breach of provision were set out. It was held that Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. 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 and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action.

Some of the principles elaborated in Raj Narain Vs. Smt. Indira Nehru Gandhi and another (1972) 3 SCC 850 are relevant for our purpose. Dealing with the corrupt practice, the Court held that :

(i) While a corrupt practice has got to be strictly proved, it does not follow that a pleading in an election proceeding should receive a strict construction. Even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds.

(ii) The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the courts is whether a petitioner should be refused an opportunity to prove those allegations merely because the petition was drafted clumsily. Opportunity to prove should not be refused.

(iii) If the allegations made in an election petition regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and those allegations cannot be amended after the period of limitation for filing an election petition, but the court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified.

"Material facts" in Section 83 of the Representation of People Act, 1951 shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present a full picture of the cause of action so as to make the opposite party understand the case he has to meet. Under Section 86(5) of the Representation of People Act if the corrupt practice is alleged in the petition the particulars of

such corrupt practice may be amended or amplified.

(iv) An election petition is not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out. If an objection was taken and the Tribunal was of the view that full particulars have not been set out, the petitioner has to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the charge which remained vague could be struck down.

The Court sounded a note of caution : "Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated with a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it."

The principles have been reiterated recently in H.D. Revanna Vs. G. Puttaswamy Gowda and ors. (1999) 2 SCC 217, V.S. Achuthanandan Vs. P.J. Francis and anr. (1999) 3 SCC 737 and Mahendra Pal Vs. Ram Dass Malander and ors. (2000) 1 SCC 261. We are tempted to quote the following passage from the three-Judge Bench decision in Mahendra Pal's case (supra) wherein the learned Chief Justice has summed up the statement of law in the following words:

"Section 83(1)(a) of the Act mandates that in order to constitute a cause of action, all material facts, that is, the basic and preliminary facts which the petitioner is bound under the law to substantiate in order to succeed, have to be pleaded in an election petition. Whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge levelled and the facts and circumstances of each case. The distinction between "material facts" and "particulars" has been explained by this Court in a large number of cases and we need not refer to all those decided cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. The function of particulars is, thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between "material facts" and "material particulars" is indeed important because different consequences follow from a deficiency of such facts or particulars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil

Procedure. In the case of a petition suffering from a deficiency of material particulars the court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with the permission of the court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation."

The learned Designated Election Judge has been undoubtedly at pains in dealing with the several averments made in the election petition and closely examining and analysing the same in order to find out whether the requirements of Section 83 (1) were satisfied. The learned Judge then formed an opinion that the averments made were lacking in material facts. During the course of hearing, the learned counsel for both the parties have carried us through the averments made in the election petition, parawise and almost word by word, in an attempt at substantiating the submissions made by them respectively. According to the learned counsel for the writ petitioner-appellant, the averments made in the election petition contained not only the material facts but also the particulars and it is not necessary to plead the evidence or the matters of minute details. On the contrary, the learned counsel for the respondent No. 1, while supporting the judgment of the High Court, has submitted that the averments made in the election petition fall short of disclosing all material facts and therefore, cannot be tried.

Having gone through the contents of the election petition, we are satisfied that the High Court has not been right in directing the petition to be dismissed at the threshold by forming an opinion that the averments made in the election petition were deficient in material facts. It is not necessary to burden this judgment with reproduction of the several averments made in the election petition. The High Court has already done it. The test laid down in the several authorities referred to hereinabove and in particular in the case of Raj Narain (supra) is fully satisfied. The grounds of corrupt practice and the facts necessary to formulate a complete cause of action have been stated. Even the particulars have been given. However, if the Court feels that the particulars as given in the petition are deficient in any manner the petitioner can be directed to supply the particulars and make the deficiency good. In any case, deficiency in particulars could not have been a ground for dismissing the petition at the threshold. It is only the non-supply of particulars though ordered by the Court which could have led to either striking off of the pleadings or refusal to try the related instances of alleged corrupt practice. We cannot countenance the view taken by the High Court.

So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to sub-Section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by Rule 94A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition in limine

under sub-Section (1) of Section 86 of the Act. The point is no more res integra and is covered by several decisions of this Court. Suffice it to refer to two recent decisions namely G. Mallikarjunappa and anr. Vs. Shamanur Shivashankarappa and ors. (2001) 4 SCC 428 and Dr. Vijay Laxmi Sadho Vs. Jagdish (2001) 2 SCC 247, both three-Judges Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed in limine under Section 86(1) of the Act if the election petition does not comply with either the provisions of "Section 81 or Section 82 or Section 117 of the RP Act". The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

Having formed an opinion that there was any defect in the affidavit, the election petitioner should have been allowed an opportunity of removing the defect by filing a proper affidavit. Else the effect of such failure should have been left to be determined and adjudicated upon at the trial, as held in G. Mallikarjunappa and anr.'s case (supra).

For the foregoing reasons, the appeal is allowed with costs. The judgment of the High Court is set aside. The election petition shall stand restored on the file of the High Court for hearing and decision consistently with what has been stated hereinabove.