CASE NO.:
Appeal (civil) 3553-3554 of 2005

PETITIONER:
Pothula Rama Rao

RESPONDENT:
Pendyala Venakata Krishna Rao & Ors

DATE OF JUDGMENT: 02/08/2007

BENCH:
K. G. Balakrishnan & R. V. Raveendran & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

K. G. Balakrishnan, CJI.

These appeals under section 116 of the Representation of the People Act, 1951 ('Act' for short) are preferred against the order dated 10.2.2005 of the Andhra Pradesh High Court, allowing application nos. 1064 and 1065 of 2004 in Election Petition No. 2/2004 and consequently rejecting the said Election Petition filed by the appellant.

2. The first respondent was elected to the Andhra Pradesh Legislative Assembly from 'No. 72 - Kovvur Assembly Constituency' in the election held on 24.4.2004. The appellant, a voter of the Constituency filed the said election petition for declaring the election of the returned candidate to be void, on the following four grounds :

(i) The nomination of Shri Pendyala Atchuta Ramaiah was improperly rejected by the Returning Officer, by treating him as a dummy candidate.

(ii) The nomination of first respondent was improperly accepted.

(iii) The nomination of Jelly Venkata Ramanaiah was improperly accepted.

(iv) The list of the contesting candidates prepared by the Returning Officer was not in alphabetical order as required by section 38 of the Act.

The first ground fell under section 100(1)(c), the second and third grounds under section 100(1)(d)(i) and the fourth ground under section 100(1)(d)(iv) of the Act.

3. The returned candidate - first respondent, contested the election petition and filed two applications - IA No. 1064 of 2004 for striking off paras 8 to 11 of the election petition, under Order VI Rule 16 CPC read with section 83 of the Act and IA No.1065 of 2004 for rejection of the election petition under Order VII Rule 11 (a) CPC read with section 83 of the Act. The High Court, after hearing, allowed the said applications by an elaborate order dated 10.2.2005. It struck off paras 8 to 11 of the election petition containing the grounds of challenge to the election and as a consequence, dismissed the election petition as not disclosing any cause of action. The said order is challenged in this appeal.

4. We may at the outset refer to two decisions laying down the principles relating to striking out pleadings. In Dhartipakar Madanlal Agarwal vs. Rajiv Gandhi (AIR 1987 SC 1577), this Court observed :

"The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the CPC and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent\005\005\005\005On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings\005\005If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11."

In Hari Shanker Jain vs. Sonia Gandhi [2001 (8) SCC 233], this Court held as follows:
"Section 83(1)(a) of RP Act, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party 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\005\005\005Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary\005\005. Failure to plead "material facts" is fatal to the election petition\005\005\005..
It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

We will examine the correctness of the decision of the High Court, keeping the said principles in view.

5. The first ground relates to the rejection of the nomination of Pendyala Atchuta Ramaiah, a dummy candidate. The Appellant alleged that the nomination of Atchuta Ramaiah was rejected on the ground that he was a dummy candidate, set up by Telugu Desam Party ('TDP' for short), that the concept of "dummy candidate" was not recognized under the Act and the ground on which the nomination of Atchuta Ramaiah was rejected, was not a ground for rejection under section 36(2) of the Act. The term 'dummy candidate' and 'official candidate' are well recognized in election law. The first proviso to sub-section (1) of section 33 makes it clear that a candidate

not set up by a recognized political party shall not be deemed to be duly nominated unless his nomination paper is subscribed by ten proposers who are electors of the constituency. The use of the word 'set up' by a recognized party in the said proviso shows that a positive act was required on the part of the political party with reference to the candidate. The Election Symbols (Reservation & Allotment) Order, 1968 ('Symbols Order' for short) explains when a candidate shall be deemed to be set up by a recognized political party. Para 13 of the Symbols Order makes it clear that the mere fact that the candidate had made a declaration that he belongs to a recognized political party or the fact that the candidate is a member of a recognized political party or the fact that such candidate's name is borne on the rolls of the members of the party, will not make him a candidate 'set up' by a recognized political party. It provides that to be a candidate set up by a political party, a notice by the political party in Form-B to the effect that the person is the approved candidate of the party, should be delivered to the Returning Officer not later than 3 p.m. on the last date for making nominations, and the said Form-B should be signed by an office-bearer of the political party as prescribed in the said para. A candidate who is a member of the political party, and who is issued Form B by the political party, is thus the official candidate of the political party. On the other hand, a candidate who belongs to a recognized political party, but who is not issued a B-Form, is referred to the dummy candidate of such political party. The nomination of an official candidate set up by a recognized political party (by securing B-Form) is required to be subscribed by one elector as a proposer. But a candidate who is not set up by a recognized political party, requires ten proposers for making his nomination to be valid. This position is well settled. [See : Krishna Mohini v. Mohinder Nath Sofat (AIR 2000 SC 317)]. The first respondent was the official candidate of TDP, as he was issued the B-Form by TDP. Atchuta Ramaiah's nomination was not subscribed by 10 proposers but by only one proposer. The nomination of Atchuta Ramaiah was rejected by the Returning Officer, not on the ground that he was a 'dummy candidate' but because his nomination was not subscribed by ten voters of the constituency, and thus there was non-compliance with the first proviso to section 33(1). The rejection is under sub-section 2(b) of section 36 which provides for rejection of any nomination on the ground that there has been a failure to comply with provision of section 33 or section 34.

6. If an election petitioner wants to put forth a plea that a nomination was improperly rejected, as a ground for declaring an election to be void, it is necessary to set out the averments necessary for making out the said ground. The reason given by the Returning Officer for rejection and the facts necessary to show that the rejection was improper, should be set out. If the nomination had been rejected for non-compliance with the first proviso to sub-section (1) of section 33, that is, the candidate's nomination not being subscribed by ten voters as proposers, the election petition should contain averments to the effect that the nomination was subscribed by ten proposers who were electors of the Constituency and therefore, the nomination was valid. Alternatively, the election petition should aver that the candidate was set up by a recognized political party by issue of a valid 'B' Form and that his nomination was signed by an elector of the Constituency as a proposer, and that the rejection was improper as there was no need for ten proposers. In the absence of such averments, it cannot be said that the election petition contains the material facts to make out a cause of action. In this case the election petition contained an averment that the nomination of Achuta Ramaiah was rejected on the untenable ground that he was a dummy or substitute candidate set up by TDP. But there is no averment that he was 'set up' as a candidate by TDP in the manner contemplated in para 13 of the Symbols Order, that is by issuing a valid B-Form in his favour. Nor did the election petition aver that his nomination paper was subscribed by ten proposers. Therefore, the petition was lacking in material facts necessary to make out a cause of action under section 100(1)(c) of the Act. The High Court, therefore, rightly struck off the said ground of challenge contained in para 8 of the election petition.

7. The second ground urged by the appellant was that the Returning

Officer ought to have rejected the nomination of the first respondent, as his name was entered twice in the General Electoral Roll for 'No.72 - Kovvur Assembly Constituency' at Sl. No.797 and also at Sl. No. 802 of Part 50. Section 18 of Representation of the People Act, 1950 ('1950 Act' for short), no doubt, provides that no person shall be entitled to be registered in the electoral roll for any constituency, more than once. But the question is whether the nomination of a candidate is liable to be rejected, if his name is entered in more than one place in the electoral roll. If the name of a voter is entered more than once, the consequence is that it can be corrected by the Electoral Registration Officer under section 22 of the 1950 Act either on an application or suo moto. Section 2(1)(e) of the Act defines 'elector' in relation to a constituency as a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the 1950 Act. Double entry of the name of a citizen in the electoral roll of a constituency is not a ground of disqualification (for registration in an electoral roll) under section 16 of the 1950 Act. Nor is it a ground for rejecting the nomination under section 36(2) of the Act. In this context, we may refer to a decision of this Court in Baburao vs. Manikrao [AIR 1999 SC 2027], where a somewhat similar question was considered. In that case, a candidate's name was entered in the electoral rolls of two constituencies. This Court held that the mere fact that person's name finds place in more than one constituency, does not automatically entail disqualification under section 16 of the 1950 Act. Be that as it may. The High Court, therefore, rightly held that even if the allegations were accepted as true, that would not constitute improper acceptance of nomination and therefore, would not constitute a ground for declaring the election as void. Para 9 of the election petition was rightly struck off, as not disclosing a cause of action.

8. The third ground pleaded by the appellant was that the nomination of Jelly Venkata Ramaniah, who was a candidate set up by Bahujan Samaj Party, ought to have been rejected as his nomination was not subscribed by ten proposers. According to appellant, Bahujan Samaj Party was not recognized political party in the State of Andhra Pradesh, and therefore, the nomination had to be subscribed by ten proposers, as provided in the proviso to section 33(1). But the Election Commission of India recognized BSP as a national party as per Notification dated 22.3.2004 (published in the AP Gazette dated 24.3.2004). Para 6(2) of the Symbols Order provides that a 'recognized political party' shall either be a national party or a state party. As BSP is recognized as a national party, there is no need for the said party to be recognized as a 'state party'. The term 'recognized political party' in the proviso to sub-section (1) of section 33, refers to a recognized national party as also to a 'recognized state party'. The High Court rightly, therefore, rightly held that para 10 of the election petition, does not disclose any cause of action.

9. The last contention of the appellant was that the names of the candidates were not shown in an alphabetical form in the list of contesting candidates published under section 38(1) of the Act and that gave an electoral advantage to first respondent by making his name conspicuous. The names as appearing in the list and names as per alphabetical list according to appellant are as follows :

List of candidates as published and as contained in the Ballot Paper

Alphabetic list according to appellant

(1) Jelly Venkata Ramaiah - BSP
(2) Pendyala Venkata Krishna Rao - TDP
(3) S. Rao - INC
(4) Govinda Rao Korni - Ind
(5) V. Vishnumurthy - Ind
(6) Veerraju Gellam - Ind
(7) G. Venkateswara Rao - Ind

(1) Govinda Rao Korni
(2) S. Rao
(3) Veerraju Gellam
(4) Pendyala Venkata Krishna Rao
(5) Jelly Venkata Ramaiah
(6) G. Venkateshwara Rao
(7) V. Vishnumurthy

Sub-sections (2) & (3) of section 38 of the Act, relevant for our purpose, is extracted below :
"38. Publication of list of contesting candidates. - (1) \005\005\005\005..

(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely :-

(i) candidates of recognized political parties;

(ii) candidates of registered political parties other than those mentioned in clause (i);

(iii) other candidates.

(3) The categories mentioned in sub-section (2), shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.

The handbook for Returning Officers, issued by the Election Commission also instructs how the list should be prepared. The names are required to be arranged in three categories/groups. The first is of candidates of recognized national and state political parties. The second is of candidates of registered unrecognized political parties. The third is of independents. The arrangement of names in each category, should be in alphabetical order in the official language of the State. The Handbook for Returning Officer required that for purposes of determining the alphabetical order, the first letter of the name, irrespective of whether the name given is the proper name or surname, should be the basis, by ignoring the initials. It is seen that the list was accordingly prepared placing the candidates of first category in alphabetical order first followed by the Independants in alphabetical order next, as there were no candidates in the second category. The alphabetical order in Telugu, the official language of the State, has been followed. Thus, there is no irregularity or error in the preparation of list of candidates. Therefore, para 11 of the election petition did not disclose any cause of action.

10. We, therefore, find that the High Court had rightly struck off the pleadings contained in paras 8 and 9 of the election petition. The High Court was also right in holding that paras 10 and 11 did not disclose any cause of action to proceed with the matter. There were no other grounds challenging the election. The order allowing the applications and rejecting the election petition, does not suffer from any infirmity or error. The appeals are, therefore, dismissed.