

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8919 OF 2012

[Arising out of Special Leave Petition (C) No. 24716 of 2011]

Ajay Maken

.... Appellant

Versus

Adesh Kumar Gupta & Another

.... Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted
2. The appellant herein was declared elected to the 15th Lok Sabha from No.4 New Delhi Lok Sabha Constituency in the election held in the year 2009.
3. Challenging the election of the appellant herein, a voter of the said constituency, filed an election petition No.20 of 2009 in the Delhi High Court. The challenge is on the ground of commission of corrupt

practices falling under section 123(1),(2),(5),(6),(7) read with section 127(a) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). The election petitioner chose to implead only the Returning Officer of the No.4 New Delhi Parliamentary Constituency and the appellant herein as respondents to the election petition.

4. The appellant herein filed Interlocutory Application No. 13851 of 2009 invoking Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") praying that the election petition be dismissed in compliance with the mandate contained in section 86 of the Act, which stipulates "the High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117". The said I.A., was dismissed by an order dated 30-05-2011. Hence, the Appeal.

5. The substance of the objections raised by the appellant herein in the abovementioned interlocutory application is that the election petition filed by the 2nd respondent herein is liable to be dismissed on three counts:

Firstly, on the ground of non-compliance with Section 81(3);

Secondly, that the election petition does not reveal a complete cause of action as it does not contain all the material facts necessary to constitute to be the cause of action; and

Thirdly, that one Vijay Goel who was also a candidate in the said election is also a necessary party as per the provisions of section 82 of the Act but not impleaded as the respondent.

6. At the outset I must mention that though the 2nd of the abovementioned objections was pleaded vaguely in the abovementioned interlocutory application, it does not appear to have been pressed before the High Court and certainly not argued before us. So I shall confine our scrutiny to the correctness of the judgment in appeal so far as the objections Nos.1 and 3 of the appellant are concerned.

7. The High Court summarised the contours of the 1st objection at para 3 of the Judgment as follows:

- (i) "Not all pages and documents furnished to the second respondent, along with copies of the petition, contained signatures of the petitioner;
- (ii) Many portions of the documents filed with the petition were missing;
- (iii) Copies of several pages of annexures (to the petition) furnished to the second respondent were dim or illegible;
- (iv) The election petition was not properly verified;
- (v) The verification clause in the copy furnished to the second respondent did not contain signatures of the petitioner."

8. The relevant portion of the pleadings in this regard are to be found at paras 4 & 5 of the Interlocutory Application as follows:

"4. That the petitioner has filed the election petition in contravention of various provisions of law and **the main petition placed before this Hon'ble Court for trial is not completely signed and verified on each and every page of the petition and attested by the petitioner as required by law.**

5. That there are number of pages of **the petition and documents annexed with the petition** which are either not at all signed by the petitioner and even none of the document/annexure has been verified under the signature of the petitioner as required by law.

The **copy of the petition as supplied** to the respondent No.2 along with Annexures is annexed herewith as **Annexure-'A'**.

On scrutiny of the above referred copy of the petition and inspection of the court record, the applicant/Respondent No.2 has found the following deficiencies which are fatal to the petition.

- (i) None of the pages except the last two pages of the petition i.e. Page no.36 & 37 are signed by the petitioner.
- (ii) Affidavit in support is not as per Delhi High Court Rules and verification of the affidavit is not signed by the petitioner.
- (iii) Para '2' of the affidavit at page No.38, is not legible and does not contain the averments similar to the affidavit filed on record.
- (iv) Annexures from page No.40 to Page No.79 are neither signed nor verified by the petitioner as required by law.
- (v) Page No. 80 to 81 are just illegible initialled by some person but those pages are also not verified.
- (vi) Page No. 82 to 98. are not properly paginated, nor signed verified or even initialled by the petitioner.
- (vii) Page No.99 to 102 are not signed, initialled or verified by the petitioner as per law.
- (viii) Page No. 103 to 113, are not signed, initialled or verified by the petitioner as per law.
- (ix) Page No. 114 to 117, are not signed, initialled or verified by the petitioner as per law.
- (x) Page No. 118 to 120, is not signed, initialled or verified by the petitioner as per law, and even not the same as filed.
- (xi) Page No. 121 to 133, completely illegal.
- (xii) Page no. 134 Blurred, not get printed by the Respondent No.2 not signed or verified as per the law.
- (xiii) Page No. 135 illegible and not same as per the petition on board.
- (xiv) Page No. 138 to 139 are illegible, and not same as per the petition on board.

- (xv) Page No. 144 to 145, page No. 150 to 151, page No. 152 to 280 are illegible, and not same as per the petition on board.
- (xvi) Page Nos. 281 to 283 are not the same as filed along with main period, not signed or verified by the Petition as per law.
- (xvii) Page No. 284 to 287 are illegible, just initialled by some person as true copy but not the same as filed by petitioner with main petition.
- (xviii) Page No. 288 to 296 the pagination in the original petition is different as having various page members as given on typed copies with suffix 'A', neither the typed copies supplied nor the pagination is corrected on copy supplied.

It is humbly submitted that the Registry of the Court has also given chance to the petitioner to rectify the mistakes/remove objections which could not have been given, as the election petitioner has no right to amend modify the petition or its annexures after filing the same, as the annexures are to be read with petition as are treated as integral part of the same."

9. It is not clear from the above whether the various deficiencies pointed out by the petitioner pertain to the original copy of the election petition filed in the High Court or the copy served on the appellant herein. The emphasised portions (emphasis is ours) of the above extracts demonstrate the same.

10. Legally there is a distinction between failure to sign and verify the original copy of the election petition filed in the Court and failure to attest the copy served on the respondent to be a true copy of the election petition. While the latter failure falls within the scope of Section 81(3), the earlier failure falls under sub-Section (1)(c) and sub-Section(2) of Section 83. While the failure to comply with the

requirements of Section 81 obligates the High Court to dismiss the election petition, the failure to comply with the requirements of Section 83 is not expressly declared to be fatal to the election petition. The said distinction is explained by this Court in *Manohar Joshi v. Nitin Bhaurao Patil and another* = (1996) 1 SCC 169 paras 20 and 21^o.

11. However, the High Court categorised the various objections raised in para 5 of the I.A. (extracted earlier), as falling under five heads, which are already extracted (at para 7) earlier by us. Though it appears that while the objections falling under category 1, 3 and 5 pertain to the defects in the copy of the election petition served to the appellant herein, it is not very clear whether the objections falling under categories 2 and 4, referred to above, pertain to the election petition as

^o20. Section 86 empowers the High Court to dismiss an election petition at the threshold if it does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, all of which are patent defects evident on a bare examination of the election petition as presented. Sub-section (1) of Section 81 requires the checking of limitation with reference to the admitted facts and sub-section (3) thereof requires only a comparison of the copy accompanying the election petition with the election petition itself, as presented. Section 82 requires verification of the required parties to the petition with reference to the relief claimed in the election petition. Section 117 requires verification of the deposit of security in the High Court in accordance with rules of the High Court. **Thus, the compliance of Section 81, 82 and 117 is to be seen with reference to the evident facts found in the election petition and the documents filed along with it at the time of its presentation. This is a ministerial act.** There is no scope for any further inquiry for the purpose of Section 86 to ascertain the deficiency, if any, in the election petition found with reference to the requirements of Section 83 of the R.P. Act which is a **judicial function**. For this reason, the non-compliance of Section 83, is not specified as a ground for dismissal of the election petition under Section 86.

21. Acceptance of the argument of Shri Jethmalani would amount to reading into Section 86 an additional ground for dismissal of the election petition under Section 86 for non-compliance of Section 83. There is no occasion to do so, particularly when Section 86 being in the nature of a penal provision, has to be construed strictly confined to its plain language.

presented to the High Court or copy thereof served to the appellant herein.

12. Further, of the eighteen objections pointed out under para 5 of the I.A. (extracted above), which one of the said objections falls under which one of the abovementioned five categories, is not identified by the High Court. Apart from that there is no finding in the Judgment under appeal whether any one of the abovementioned eighteen objections is factually correct or not. I regret to record that the High Court simply extracted paragraphs from the Judgments of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & others* [1964 (3) S.C.R.573], *Satya Narain v. Dhuja Ram & others* [(1974) 4 S.C.C 237], *Rajendra Singh v. Smt. Usha Rani & others* [(1984) 3 S.C.C. 339] and *Chandrakanth Uttam Chodankar v. Dayanand Rayu Mandrakar & others* [(2005) 2 S.C.C. 188] and disposed of the I.A. holding:

"17. In view of the above and having regard to the decision in *Chandrakant Uttam Chodankar* (supra), as well as *Murarka Radhey Shyam Ram Kumar* (supra), this Court is of the opinion that in the present instance, the election petitioner had signed on the copies and, therefore, complied with the standard prescribed under Section 81(3). Similarly, the fact that the Registrar of this Court had initially notified some deficiencies which were cured, after which the matter was placed before the Court, which took cognizance of the petition, would mean that the election petitioner was absolved of any fault. There is no doubt that the election petition, as originally presented, was within the time prescribed by law. Moreover, this Court cannot, enquire into the question as to whether and if so, to what extent, the copies furnished to the second respondent were not complaint with

Section 81(3) of the Act, that would amount to a mini trial - a procedure unknown to the Act and in fact contrary to its objective. While public interest lies in ensuring that suits or causes which are plainly barred by law, ought to be summarily rejected, equally the court should not be over zealous in the enforcement of provisions which are procedural, though aimed at expeditious trial, require substantial compliance. The larger Bench ruling in Murarka points to this, and the court is inclined to follow the adage that procedure is only a handmaiden, and not mistress of justice."

13. In the second part of the eighteenth objection (in para 5 of the I.A.), the appellant herein pleaded vaguely that the Registry of the High Court gave an opportunity "to the petitioner to rectify the mistakes/remove objections, which could not have been given". The High Court by the impugned Judgment records that **"the fact that the Registrar of this Court had initially notified some deficiencies which were cured, after which the matter was placed before the Court, which took cognizance of the petition, would mean that the election petitioner was absolved of any fault"**.

14. Both, the pleading as well as the finding of the High Court, are as vague as the vagueness could be. Exposition of law without first identifying the relevant "facts in issue", in my opinion, does not promote the cause of justice. The Appeal, insofar as the first issue identified by us in para 5 of the Judgment, is required to be allowed and remanded to

the High Court for an appropriate consideration of the objections raised by the appellant herein, in accordance with law.

15. I shall now deal with the third issue argued before us. Though elaborate submissions were made before us on this issue by the learned senior counsel appearing on either side, the relevant pleading in the petition is very sketchy and is to be found in para 14 of the Interlocutory Application which reads as follows:

"That in annexures 1 of the petition, the petitioner has annexed a complaint made by the Youth for Equality to the Hon'ble Chief Election Commissioner of India by alleging various irregularities by BJP & Congress Candidates namely Sh. Vijay Goel & Sh. Ajay Maken in New Delhi Parliamentary constituency and in para B sub para (i) at page 15 of the petition a mention of the said complaint is made. The present election petition is apparently a proxy litigation by presenting the present election petition at the instance of the said BJP candidate whose other complaints etc. have been annexed along with the petition.

As per the provisions of section 82 of the Representation of People Act 1951 a petitioner shall join as respondents to his petition. (b) any other candidate against whom allegations of any corrupt practice are made in the petition.

It is not out of place to mention here that in the alleged complaint annexed as Annexure I similar allegations are made against Sh. Vijay Goel, a candidate at the said election which is under challenge and he is a necessary party as per the provisions of Section 82 of the Act."

16. A reading of the above paragraphs leaves us with the impression that the emphasis of the paragraphs is on the belief of the appellant that the election petition is a proxy litigation undertaken by the election petitioner on behalf of the unsuccessful BJP candidate. It is only in the

last sub-paragraph extracted above, a cryptic legal objection is raised that in view of the fact that Annexure-I of the election petition not only contains allegations of commission of corrupt practice by the appellant herein, but also by Vijay Goel (BJP candidate). In view of the requirement of Section 82(b) of the Act, Vijay Goel must also have been made a respondent to the election petition and failure to so implead is fatal to the **election petition**.

17. No doubt, Section 82(b) on a plain reading or on the principle of literal construction, seems to require that all the candidates against whom allegations of commission of corrupt practice are MADE IN THE PETITION must be made parties / respondents to the election petition. The ISSUE in the case is whether such allegations are MADE against Vijay Goel in the election petition and if MADE, is Vijay Goel required to be made a respondent to the election petition.

18. It is pointed out by this Court in *Reserve Bank of India v. Peerless General Finance and Investment Company Limited and others* [(1987) 1 SCC 424]:

"Interpretation must depend on the text and the context..... Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

Adopting the principle of literal construction of the Statute alone, in all circumstances without examining the context and scheme of the Statute, may not sub-serve the purpose of the Statute. In the words of Justice Iyer, such an approach would be - - **"to see the skin and miss the soul"**. Whereas, **"The judicial key to construction is the composite perception of the *deha* and the *dehi* of the provision"** (*Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee* AIR 1977 SC 965).

19. This Court in *Tirath Singh v. Bachittar Singh and others* (AIR 1955 SC 830) dealing with a question of interpretation of Section 99 of the Act, declined to follow the rule of literal construction of the Statute on the ground that it would lead to absurdity, presumably, not intended by the Statute having regard to the scheme and the purpose of the Act.

20. The election petitioner made the allegations of commission of various corrupt practices falling under various sub-sections of Section 123 of the Act, by either the appellant herein or the election agent of the appellant herein. The election petition particularly contains extensive details of the corrupt practice falling under Section 123(6) r/w Section 77 of the Act, running to 18 typed pages. The material facts and particulars of the abovementioned corrupt practice are set out in great

detail. It is in the process of the abovementioned narration, the election petitioner made a reference to two annexures viz., Annexure-H and Annexure-I. That portion of the election petition reads as follows:

"The petitioner submits that in this regard complaint was filed before the Returning Officer on 5th May, 2009 by Shri Mantu, Independent candidate, New Delhi Parliamentary Constituency. The Complaint specifically states that the respondent No.2 has incurred a huge expenditure on hoardings and had exceeded the prescribed expenditure limit of Rs.25 lakhs. The copy of the complaint dated 5th May, 2009 is marked and annexed herewith as ANNEXURE-H.

Youth for equality had also filed similar complaint with the Election Commissioner of India to take action that all hoarding put up at private places be pulled down and add the market cost on the these site be added to the expenditure account of the candidate. The copy of the complaint to the Election Commissioner of India is marked and annexed herewith as ANNEXURE-I."

21. It is the said Annexure-I, which makes a reference to the name of Vijay Goel. I may make it clear that except a mention in the said annexure, the name of Vijay Goel is not mentioned anywhere in the body of the election petition. It can be seen from the above extracted pleading of the election petitioner that he referred to the abovementioned Annexure-I in the context of the commission of a corrupt practice falling under Section 123(7) r/w Section 77 of the Act **by the appellant herein**. The substance of the allegation, where a reference to Annexure-I is made, is that the complaint, such as the one made by the election petitioner, had also been made by another body

called "Youth for equality" to the Election Commission of India and a copy of the complaint, allegedly, made by the said "Youth for equality" is filed as Annexure-I to the election petition, obviously, for the purpose of deriving support for the allegation made by the election petitioner.

22. Learned senior counsel Shri K. Parasaran appearing for the appellant submitted that in view of the decisions of this Court in *Sahodrabai Rai v. Ram Singh Aharwar*, (1968) 3 SCR 13, *M. Karunanidhi v. H.V. Hande*, (1983) 2 SCC 473 and *Mulayam Singh Yadav v. Dharam Pal Yadav*, (2001) 7 SCC 98, if an election petition contains annexures or schedules attached to it, whose content is not elaborately described in the body of the election petition, but only referred to as containing the factual basis for seeking declaration of nullity of the election of the returned candidate, such annexures or schedules become an integral part of the election petition and, therefore, all the allegations contained in such schedules or annexures become allegations in the election petition. If such allegations pertain to commission of any corrupt practice by any one of the candidates at the election other than the returned candidate, such other candidates are also required to be made parties-respondents to the election petition in view of the law laid down by this Court in *Har Swarup & another v. Brij Bhushan Saran & others* [1967 (1) SCR 342],

Mohan Rai v. Surendra Kumar Taparia & others [1969 (1) SCR 630], *Kashi Nath v. Smt. Kudisa Begum and others* [(1970) 3 SCC 554] and *Gadnis Bhawani Shankar V v. Faleiro Eduardo Martinho* [(2000) 7 SCC 472].

23. It is argued by Shri Parasaran that since the election petitioner referred to Annexure I in the body of the election petition without fully describing the content of the same, Annexure I becomes an integral part of the election petition. Since in the said annexure allegations of commission of corrupt practice, similar to the one alleged against the appellant herein, are made against Vijay Goel, the said Vijay Goel also ought to have been impleaded as party-respondent to the election petition in view of the mandate contained in Section 82(b) of the Act. Since, Vijay Goel is not made a party-respondent to the election petition, there is a failure to comply with the requirements of Section 82, which is declared to be fatal to the election petition under Section 86 of the Act.

24. On the other hand, learned senior counsel Shri Ranjit Kumar appearing for the respondent-election petitioner argued that the proposition of law settled by this Court that an annexure or schedule to the election petition becomes an integral part of the election petition only in certain circumstances, but it is also recognised by this Court that in certain other circumstances annexures are only evidence of the

allegation contained in the election petition, but not an integral part of the pleading of the election petition. Shri Ranjit Kumar submitted that the purpose of the election petition with reference to the annexure-I is only to derive support to his allegation of the commission of corrupt practice by the appellant herein by demonstrating that such allegation against the appellant is not only made by the election petitioner but also by others during the course of the election. It is neither the intention of the election petitioner to make any allegation of corrupt practice nor seek any relief against Vijay Goel. Therefore, the election petitioner is not legally obliged to implead Vijay Goel as a party-respondent to the election petition.

25. If the complaint made by the "Youth for equality" to the Election Commission of India contains allegations of commission of corrupt practice not only by the appellant herein, but also by some other candidate at the election, can such allegations against the candidate other than the appellant herein **be read as allegations made in the election petition** by the extension of fiction judicially created on the interpretation of Section 81(3) of the Act, is the question to be examined.

26. To decide the issue, it is necessary to examine; (1) who can file an election petition; (2) what are the grounds that can be taken; (3) what is the relief that can be claimed and granted; (4) who are required to be made parties; and (5) what is the procedure to be followed in presenting an election petition; and also the scheme of the Act insofar as it is relevant apart from the ratio of the above-referred decisions of this Court.

27. Article 329[¥] of the Constitution prohibits the calling in question any election to either the House of the Parliament or the Legislature of a State except by an election petition in such manner as may be provided for by or under any law by the appropriate legislature. The Representation of the People Act, 1951 is such a law made by the Parliament. It deals with the method and manner of conduct of the elections including the resolution of disputes regarding the elections. This court has repeatedly held that an election petition is not a common law proceeding, but a creature of the statute.

[¥] 329. Bar to interference by courts in electoral matters. - [Notwithstanding anything in this Constitution]

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

28. Part VI of the Act deals with disputes regarding elections. Section 80 stipulates that "no election shall be called in question except by an election petition presented in accordance with the provisions of this part".

29. Section 80A invests the power to try election petitions in the High Court. Section 79(e) defines the High Court to mean, the High Court within the local limits of whose jurisdiction the disputed election took place.

30. Section 81 deals with the presentation of election petitions:

"81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) ... (Omitted by Act 47 of 1966, sec.39 (w.e.f. 14.12.1966))

(3) 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."

It stipulates:

- (i) The grounds on which an election can be challenged;

- (ii) The person who are entitled to challenge any election;
- (iii) The period of limitation within which the election petition is to be presented;
- that (iv) Every election petition shall be accompanied by a many copies thereof as there are respondents to the petition; and
- (v) Any such copy shall be attested by the election petitioner to be a true copy of the petition.

31. Section 82 prescribes as to who shall be joined as the respondents to an election petition, the contents of which shall be examined later.

32. Section 83* stipulates that; (a) an election petition shall contain a concise statement of material facts on which the petitioner relies; (b) that the election petition shall set forth full particulars of any corrupt practices, which the petitioner alleges in the election petition; and (c) the method and manner of verification of election petition. It further stipulates that wherever an allegation of corrupt practice is made in an election petition, the election petition shall be accompanied by an

□ **Section 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 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.

affidavit in the prescribed form and also every annexure or schedule to the petition be signed and verified in the same manner as the petition.

33. Section 84 stipulates the reliefs that can be sought in an election petition. It reads:

"84. Relief that may be claimed by the petitioner: A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

It can be seen from the above that in an election petition the petitioner can claim declaration that; (1) the election of a returned candidate is void; and (2) a further declaration that either the petitioner himself or any other candidate has been duly elected.

34. We have already noticed that section 81 stipulates that an election can be challenged **only** on one or more of the grounds specified under

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sections 100¹ and 101² of the Act. Section 100 stipulates various grounds on which election of a returned candidate can be declared to be void, while Section 101 stipulates circumstances under which a further declaration contemplated under Section 84, can be given by the High Court (after declaring the election of a returned candidate to be void)

¹ **Section 100** - Grounds for declaring election to be void

[(1) Subject to the provisions of sub-section (2) if [the High court] is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

² **Section 101** - Grounds for which a candidate other than the returned candidate may be declared to have been elected

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and [the High Court] is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

that some candidate other than the returned candidate is duly elected in the said election.

35. What should be the prayer in an election petition is a matter of the petitioner's choice. It is for the petitioner to decide whether he would be satisfied with a declaration of nullity of the election of the returned candidate or a further declaration such as one contemplated under section 101 is to be sought.

36. However, as to who should be made parties/respondents to an election petition is stipulated under section 82 and not left to the choice of an election petitioner. Section 82 reads thus:

"82. Parties to the petition.—A petitioner shall join as respondents to his petition—

- (a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly election, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

37. It can be seen from section 82 as to who should be made parties to an election petition depends upon two factors.

38. The first factor is the nature of the relief sought by the petitioner. Where a further declaration as contemplated under section

101 is sought, the petitioner is bound to make all the contesting candidates parties respondents to the election petition. Where no such declaration is sought, the section stipulates that it is enough to make all the returned candidates at the election, parties to the election petition. The employment of the expression "all the returned candidates" is obviously meant to cover disputes relating to elections to Rajya Sabha or Legislative Councils where more than one candidate is declared elected at the same election.

39. The second factor is the ground on which declaration of nullity of the election of the returned candidate is sought. It must be remembered that the election of any returned candidate can be questioned on various grounds specified under section 100(1) of the Act, such as, lack of qualification or disqualification on the part of the candidate, the commission of corrupt practices by the returned candidate or his election agent etc. or the improper rejection of the nomination of any candidate at the election etc.

40. The following propositions emerge from the above analysis. An election to the Parliament or the State Legislature can be called in question only in accordance with the provisions of the Act. Such a question can be raised only before the High Court. The High Court, in an

election dispute, can declare the election of the returned candidate to be void. It may also give a further declaration in an appropriate case and subject to compliance with the procedural requirements that either the election petitioner or any other candidate at the questioned election, has been duly elected. The first of the abovementioned declarations can be made only on one or some of the various grounds enumerated under Section 100 of the Act.

41. In the present case, the relief sought by the election petitioner is only the declaration of nullity of the election of the appellant herein on the ground of commission of corrupt practices, but a further declaration contemplated under Section 84 read with Section 101 of the Act is not sought. Therefore, I examine the relevant provisions. Section 100 prescribes that if the High Court is of the opinion that any corrupt practice has been committed by **a returned candidate or his election agent or by any other person with the consent of either the returned candidate or his election agent**, "the High Court shall declare the election of the returned candidate to be void".

"Section 100. Grounds for declaring election to be void: (1)
Subject to the provisions of sub-section (2) if [the High Court] is
of opinion -
(a)

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;....."

The said section also stipulates that if it is established before the High Court that a corrupt practice has been committed in the interest of the returned candidate **by an agent other than his election agent**, then, the High Court is also required to form an opinion that "the result of the election, insofar as it concerns returned candidate, has been materially effected", before declaring the election of the returned candidate void.

"Section 100. (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i)

(ii) by any corrupt practice committed in the interests of the returned candidate [**by an agent other than his election agent**],"

[Emphasis supplied]

The clause "by an agent other than his election agent" occurring in Section 100(1)(d)(ii), must be understood in the light of Section 99 (2), which reads as follows:

"In this section and in section 100, the expression "agent" has the same meaning as in Section 123."

And Section 123(8) explanation, which reads as follows:

"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....."

The Act enables the appointment, by every contesting candidate - of an election agent, polling agents and counting agents (Sections 40, 46 and 47^z respectively).

42. If the commission of a corrupt practice by a candidate other than the returned candidate or his election agent, etc., indicated above, is wholly immaterial for determining the validity of the election of the returned candidate, I am at a loss to understand as to why would any election petitioner MAKE allegations of the commission of corrupt practices by candidates other than the returned candidate, particularly in an election petition, where further relief contemplated under Section 84 is not sought for, such as the one on hand.

43. Section 83(1)(b) requires that an election petition shall set forth "as full a statement as possible of the names of the **parties** alleged to have committed such corrupt practice". In my opinion the employment of the expression "Parties" in the abovementioned clause is to compendiously cover the returned candidate, his election agent or any other person

^z 40. Election agents.- A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.

46. Appointment of polling agents.- A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll.

47. Appointment of counter agents.- A contesting candidate or his election may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to the present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

committing a corrupt practice with the consent of either the returned candidate or his election agent or any other agent committing a corrupt practice falling within the scope of Section 100(d)(ii).

44. Section 98 stipulates that at the conclusion of the trial of an election petition, the High Court is obliged to make an order either dismissing the election petition or declaring the election of a returned candidate void apart from giving a declaration that another candidate to have been duly elected in an appropriate case, where such a relief is sought successfully. Section 99 of the Act stipulates that the High Court is also obliged to make an order in an election petition where a charge of corrupt practice is made; (1) whether such a charge is proved or not; (2) the nature of the corrupt practice, i.e., under which one of the Sub-sections of Section 123 of the Act the corrupt practice falls; and (3) the names of all **persons**, who are proved at the trial to have been guilty of any corrupt practice.

45. The question of proof of the commission of a corrupt practice arises only if there is an appropriate pleading in that regard in the election petition. I have already noticed that Section 83 stipulates that an election petition, which contains allegations of corrupt practice, must contain full particulars of the "**names of the parties**" alleged to have

committed a corrupt practice. I am of the opinion that the Legislature chose to use the expression 'PARTIES' for the reason that there are various categories of persons, who are capable of committing a corrupt practice in connection with the election of a returned candidate - (i) the returned candidate; or (ii) his election agent, or (iii) any other person with the consent of either the returned candidate or his election agent; or (iv) any other agent, as explained earlier. The difference in the language of Section 82 and 83(1)(b), in my opinion, is significant. While Section 82 speaks of **candidates**, Section 83(1)(b) speaks of **parties**.

46. I shall now examine the question whether the election petitioner MADE allegations against Vijay Goel in the ELECTION PETITION. To examine the correctness of the submission made by Sri Parasaran in this regard, I must examine the 3 Judgments relied upon by Sri Parasaran.

47. The facts of *Sahodrabai case* are as follows:

48. Ram Singh was declared elected to the Lok Sabha from Sagar constituency of Madhya Pradesh. His election was questioned by Sahodrabai on various grounds including the commission of a corrupt practice falling under Section 123(3) of the Act. According to Sahodrabai, the content of a pamphlet (in Hindi) - a copy of which is annexed to the election petition, allegedly circulated by the returned

candidate, constitutes the abovementioned corrupt practice. The content of the said pamphlet was translated into English and incorporated in the election petition itself. A preliminary objection was raised by Ram Singh that the election petition should be dismissed on the ground of contravention of Section 81(3) of the Act because it was alleged by Ram Singh that a copy of the election petition served on him was not accompanied by a copy of the pamphlet referred to above. The High Court found, as a matter of fact, that a copy of the election petition served on Ram Singh was not accompanied by a copy of the pamphlet.

49. Dealing with **the question whether such a copy served on Ram Singh was a true copy** within the meaning of Section 81(3) of the Act, this Court held as follows:

"we would say that since the election petition itself reproduced the whole of the pamphlet in a translation in English, it could be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore the pamphlet was served upon the respondents although in a translation and not in a original. Even if this be not the case, we are quite clear that sub-s. (2) of s.83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures."

It was further held by this Court:

"But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. xxx xxx xxx It would be stretching the words of sub-s. (2) of s. 83 too far to think that every

document produced as evidence in the election petition becomes a part of the election petition proper."

50. From the above, it can be seen that two propositions of law are settled by this Court. Firstly, when an election petition is accompanied by annexures, whose content is completely described in the election petition, failure to serve a copy of such an annexure along with the copy of the election petition on a respondent to the election petition does not render the copy served on the respondent anything other than a true copy of the election petition. Secondly, even in a case where the content of the annexure is not fully described in the election petition, the non-supply of such annexure along with the copy of the election petition to the respondent does not violate the mandate of Section 81(3) in those cases where annexure is only sought to be used as evidence of some allegation contained in the election petition.

51. In *M. Karunanidhi v. Dr. H.V. Hande & Ors.*, (1983) 2 SCC 473, the facts are as follows:

52. M. Karunanidhi was declared elected to the Legislative Assembly of Tamil Nadu from Anna Nagar Assembly Constituency. Hande filed an election petition challenging the election of Karunanidhi on various grounds. One of them was that Karunanidhi incurred expenditure in

connection with the election in excess of the expenditure permitted under Section 77 of the Act. Such contravention by itself is declared to be a corrupt practice under Section 123(6) of the Act. According to Dr. Hande, such excessive expenditure was incurred on account of the erection of about 50 fancy banners throughout the constituency at a cost of Rs.50,000/-. The photograph of one such banner was filed as annexure along with the petition. Admittedly, a copy of the election petition served on Karunanidhi was not accompanied by a copy of the said photograph. This Court opined that the photograph was not a mere evidence of the allegations contained in the election petition of Dr. Hande and it is an integral part of the election petition as without a copy of the photograph, the election petition would be "incomplete". It is only a case where the principle laid down in *Sahodrabai case* was applied to the facts.

53. In *Mulayam Singh case*, Mulayam Singh was declared elected to the Lok Sabha from Sambhal Parliamentary Constituency. Dharam Pal Yadav, one of the other candidates, filed an election petition on various grounds. One of the grounds is commission of the corrupt practice of booth capturing falling under Section 123(8) of the Act. There were 15 respondents to the election petition and 25 schedules. Schedule 14 pertains to the allegation of corrupt practice. In the election petition, it

was averred that there was booth capturing, arson, violence in large scale which was captured in videograph under the orders of the Election Commission. A copy of the said videograph was averred to had been attached to the election petition as Schedule 14. On the facts, this Court recorded at para 12 and 13 as follows:

"12. xxx xxx xxx As to booth-capturing, there are particulars contained in the other schedules but even in that regard the later paragraphs of the election petition make reference to Schedule 14 so that even in regard to booth-capturing the particulars shown in the video cassette mentioned and verified in Schedule 14 are relied upon. So far as the allegations of violence and arson are concerned, there are no **particulars in the election** petition absent the video cassette mentioned and verified in Schedule 14.

13. We are, therefore, satisfied that the video cassette mentioned and verified in Schedule 14 is an integral part of the election petition and that it should have been filed in court along with copies thereof for service upon the respondents to the election petition. Whereas 15 copies thereof were filed for service upon the respondents, the video cassette itself was not filed. The election petition as filed was, therefore, **not complete.**"

[Emphasis supplied]

and held that in the absence of any particulars in the body of the election petition, the videograph becomes an integral part of the election petition and failure to attach a copy to the election petition is fatal to the election petition. Once again, a case where the principle laid down in *Sahodrabai case* is applied to the facts.

54. In *Sahodrabai case*, the specific allegation in the election petition was that circulation of the annexure in issue by the returned candidate

tantamounted to the commission of corrupt practice described in Section 123(3) of the Act, because of its content. I must hasten to add whether the content of the said annexure, would fall within the definition of corrupt practice contained under Section 123(3) was not examined by this Court as it was not called upon. This Court assumed the correctness of the allegation for the limited purpose of examining the issue before it. Even in such a case, this Court held since the content, in its entirety, of the annexure was fully described in the body of the election petition, non-supply of such an annexure is not fatal - on the ground, it is violative of Section 81(3) of the Act.

55. The purpose of the stipulation under Section 81(3) is to put the returned candidate on notice of the various allegations made against him in order to enable him to defend himself effectively in the election petition - a stipulation flowing from the requirement of one of the basic postulates of the principles of natural justice. Once the content of the annexure, the whole of which pertains to the commission of the corrupt practice alleged in the election petition, is described in the body of the election petition with sufficient clarity, the returned candidate cannot complain that he was denied a reasonable opportunity of defending himself or that he was taken by surprise at the trial. Therefore, non-

supply of the annexure in such cases was held to be immaterial and the copy of the election petition supplied to the returned candidate sans the annexure would still be a true copy within the meaning of the expression under Section 81(3). It is in this context the Court observed in *Sahodrabai case* that the annexure became part of the election petition.

56. In my opinion, none of the abovementioned three cases laid down as an absolute principle that an annexure to an election petition, whose content is not described in the election petition, would become the **integral part** of the election petition **for all the purposes**. It is only for a limited purpose of deciding the question whether a copy of the election petition, served on the respondent in the election petition, is a true copy of the original filed into the Court within the meaning of Section 81(3) of the Act, annexures are treated as integral part of the election petition, that too, only in the situation, where the content of the annexure is not fully described in the body of the main petition.

57. Now, I shall examine the question whether the allegations of commission of corrupt practice are **MADE** in the election petition within the meaning of the expression under Section 82(b).

58. Obviously the allegations must be **MADE** by the election petitioner. In a case like the one on hand where the election petitioner does not

make any such allegation in the body of the election petition, but such allegations are found in some document annexed to the election petition - of which the election petitioner is not the author - can it be said that the allegations are MADE in the petition ?

59. In my opinion the answer to the question must be in the negative. Because, *firstly*, the document annexure is not authored by the election petitioner; *secondly*, in the entire body of the election petition there is no reference to any corrupt practice committed by Vijay Goel. Making such an allegation against Vijay Goel would in no way help the election petitioner to obtain the relief sought by him in the election petition. Even at the cost of the repetition I must state that the election petition does not seek a further declaration contemplated under Section 84 of the Act. As rightly, argued by Shri Ranjit Kumar, the purpose of the annexure is only to derive support to the allegation of the commission of corrupt practice alleged against the appellant only. Therefore, only that much of the content of the annexure as is relevant to the allegations made in the election petition proper must be considered to have become integral part of the election petition.

60. To stretch the principle laid down in *Sahodrabai case*, to say, that an annexure becomes an integral part of the election petition for all

purposes and, therefore, hold that the allegations made against Vijay Goel in the annexure by somebody other than the election petitioner would become allegations MADE in the election petition, would lead to absurd results; that is what exactly sought to be done by the appellant herein. I reject the submission.

61. In view of my above conclusion, I do not wish to examine the purport and interpretation of Section 82(b). I must also place it on record that we gave our anxious consideration to the four judgments i.e., *Murarka Radhey Shyam Ram Kumar case*, *Satya Narain case*, *Rajendra Singh case* and *Chandrakanth Uttam Chodankar case*, which dealt with the interpretation of Section 82(b) and I am of the *prima facie* opinion that those judgments may require reconsideration in an appropriate case. Since, the same is not necessary for the present in view of my conclusion recorded above, I refrain from examining the correctness of the said decisions.

62. In the result, I hold that the election petition cannot be dismissed on the ground that Vijay Goel is not made a party. But, in so far as the question whether the election petition is required to be dismissed on the ground that the copy served on the appellant is not the true copy of the original within the meaning of Section 81(3), I remit the matter to the

High Court for disposal in accordance with law and in the light of this judgement.

.....J.
(J. CHELAMESWAR)

New Delhi;
December 11, 2012



JUDGMENT

REPORTABLE**IN THE SUPREME COURT OF INDIA*****CIVIL APPELLATE JURISDICTION*****CIVIL APPEAL NO.8919 OF 2012****[@SPECIAL LEAVE PETITION(CIVIL) NO.24716 OF 2011]****Ajay Maken****... Appellant****versus****Adesh Kumar Gupta & Anr.****... Respondents****J U D G M E N T****ALTAMAS KABIR, CJI.**

1. Having had the privilege of going through the draft judgment of my learned Brother, Jasti Chelameswar, J., I am in agreement with the conclusions arrived at by him as also the directions to remit the matter to the High Court

for disposal in accordance with law in the light of the views expressed in the judgment. I, however, wish to add a few words in addition to what has been stated by my learned Brother.

2. In dealing with the provisions of Sections 82 and 83 of the Representation of the People Act, 1951, my learned Brother has very dexterously pointed out the differences contained therein. However, the provisions of Sections 82 and 83 of the 1951 Act have to be read harmoniously. While Section 82 relates to who should be made parties in the Election Petition, Section 83 relates to the contents of the Petition. As far as Section 82 is concerned, while Clause (a) provides that when in addition to claiming a declaration that the election of all or any of the returned candidates is void, the Petitioner claims a further declaration that he himself or any other candidate has been duly elected, all the contesting

candidates, other than the Petitioner, and where no such further declaration is claimed, all the returned candidates have to be made parties. Clause (b) in addition requires that any other candidate against whom allegations of corrupt practice are made in the Petition, has to be made a party to the Election Petition. As pointed out by my learned Brother, the emphasis is on the use of the expression "allegations of any corrupt practice are made in the Petition". In other words, in order for any other candidate to be made a party to the Election Petition, allegations of corrupt practice would have to be made against him in the Election Petition itself.

3. The question with which we are concerned is whether an annexure to the Petition in which allegations of corrupt practice are made against a candidate, without any allegation being made against him in the Election Petition itself, can be

said to be an integral part of the Election Petition.

4. Considering the fact that Section 83(1)(b) requires an Election Petition to contain full particulars of any corrupt practice alleged by the Petitioner, can a document which contains allegations of corrupt practice against a candidate against whom no allegation is made in the Election Petition itself, be deemed to be a part of the Election Petition. In order to apply the decisions of this Court, referred to in my learned Brother's judgment, to the facts of this case, it would be necessary that some allegation of corrupt practice would have to be made in the Election Petition itself against a person against whom allegations of corrupt practice may separately have been made. In my view, in the absence of any such allegation in the Petition, the provisions of clause (b) of Section 82 will not be attracted.

5. Accordingly, while agreeing with my learned Brother that the allegations made against Mr. Vijay Goel, contained in annexure to the Election Petition, can have no bearing on the facts at issue in the Election Petition itself, in my estimation Shri Vijay Goel is not required to be made a party to the Election Petition. As also indicated by my learned Brother, the matter may require further examination in an appropriate case. However, in the facts of this case, the non-impleadment of Shri Vijay Goel against whom there were no allegations in the Election Petition is not fatal to the Election Petition and the matter is required to be re-examined by the High Court, as indicated by my learned Brother.

.....CJI.

(ALTAMAS KABIR)

New Delhi

Dated: December 11, 2012.

CORRIGENDUM

No.F.3/Ed.B.J./02/2013 dated 11.01.2013 issued (in judgment delivered by Hon'ble Mr. Justice J.Chelameswar). In Para No.55, 2nd last line of para, FOR 'It is in this context the Court observed that the' READ:'It is in this context the Court observed in *Sahodrabai case* that the'



JUDGMENT