

Jagat Kishore Prasad Narain Singh

Vs

Rajendra Kumar Poddar and Others

Civil Appeal No. 1925 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

14.08.1970

JUDGMENT

HEGDE, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act) from the judgment and order dated July 14, 1969 of the Patna High Court in Elections Petition No. 1 of 1968.
2. A biennial election to the Rajya Sabha was held in March, 1968. In that election, Bihar Legislative Assembly had to elect seven members to the Rajya Sabha. Twenty persons contested for those seven seats. The appellant is one of them. The appellant failed to get the required number of votes. By means of an election petition which has given rise to this appeal, he challenged the validity of the election of the 1st respondent on the grounds viz. - (1) that the nomination of respondent No. 1 was improperly accepted inasmuch as he was not qualified to be enrolled as an elector in the electoral roll of West Patna Assembly constituency for the time being in force on the ground that he was then not ordinarily resident in the said constituency, but was on the other hand ordinarily resident in Alipur constituency of the West Bengal Legislative Assembly and (2) that he was guilty of corrupt practice within the meaning of sub-section (1) of Section 123 of the Act, inasmuch as he had not only made offers but also payments of money to various electors as motive or reward for voting in his favour.
3. The election petition was resisted by the 1st respondent on various grounds. One of the contentions taken by him was that the petition was not in accordance with the provisions of Sections 81, 82 and 117 of the Act and therefore it was not maintainable. The High Court has accepted that contention. It has also rejected the other pleas taken by the appellant. As we are in agreement with the High Court that the election petition is liable to be dismissed under Section 86 of the Act, we do not think it necessary to go into the merits of the case.

Section 86(1) of the Act provides :

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

4. Section 81(3) requires (i) that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and (ii) that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The contention of the 1st respondent is that the copy served on him which is marked Ext. 'O' in the Trial Court is not

the true copy of the election petition filed in court. In the High Court it was contended that Ext. 'O' is not a genuine document but that contention was not pressed before us. Therefore we have to proceed on the basis that Ext. 'O' is a copy served on the 1st respondent.

5. The discrepancies between the election petition filed in court and Ext. 'O' are set out by the High Court in Paragraph 15 of its judgment. That paragraph to the extent material for our present purpose reads :

##"X X X##

(a) In Paragraph 12, as also in Paragraph 13 of the original, it has been stated that the total number of elected members of the Bihar Legislative Assembly at the time of the impugned election was 316, whereas in Ext. 'O' this figure has been stated to be 317 in both these paragraphs.

(b) In Paragraph 16 of the original it has been stated that Respondent 2 and 3 had been set up as candidates in the election by the Samyukta Socialist Party, and as to Respondents 6 and 5, it was stated that they had been set up by the Communist Party of India and the Jana Sangh respectively. But in Ext. 'O' it has been stated that the candidates who were set up by the Samyukta Socialist Party were Respondents 2 and 6, while Respondents 3 and 5 had been set up by the Communist Party of India and the Jana Sangh respectively.

(c) In Paragraph 28 of the original, the following passage occurs :

"Particulars of the gifts and gratifications in the form of bribe offered by respondent No. 8 and his election agent and his agent with the connivance and consent of the said respondent No. 8 and his election agent are set out in Annexure 'D' hereto annexed."

6. But the passage in Ext. 'O' reads :

"Particulars of the gifts and gratifications in the form of bribe offered by respondent No. 8 and his election agent and his agent with the connivance and consent of the said respondent No. 1 and his election agent are set out in Annexure 'D' hereto annexed."

(d) In Paragraph 3 of the verification at Page 25 of the original, it has been stated, inter alia that the statements made in Paragraph 3 of the election petition are true to the petitioner's information, but in Ext. 'O' no verification has been made with respect to the statements made in Paragraph 3 of the election petition, and instead verification has been made twice with respect to the statements made in Paragraph 2, once as true to the petitioner's knowledge and again as true to his information.

(e) In Paragraph 3 of Annexure 'B' a list of 20 persons has been given, one of which is Shri Brindaban Swana, M.L.A., in the original and Shri Brindaban Swansi, M.L.A. in Ext. 'O'.

(f) In Annexure 'C' relating to the particulars of corrupt practice mentioned in Paragraph 25 of the election petition, it has been stated in the original that Shri

Munshi Hansda, M.L.A. had offered money and promised to pay money to Shri Jetha Kiski, M.L.A. for casting his first preference vote in favour of respondent No. 1 at the M.L.A. Flat on 19-3-1968, but in Ext. 'O' mention has been made of the name of Paul Hansda, M.L.A., as the alleged offerer of money to Shri Jethu Kisku, M.L.A., and

(g) In Annexure 'C' again, the original reads that the offer of money and promise of payment of money was made to Shri Mahabir Paswan by respondent No. 1 and Shri Balwant Nath Singh, M. L.A. on 26-3-1968 but in Ext. 'O' this date has been stated as 28-3-1968."

7. Mr. M. C. Chagla, learned Counsel for the appellant contended that Section 81(3) is merely directory and not mandatory. We do not think it necessary to go into that question, as in our opinion that has not even been substantially complied with. The requirements of Section 81(3) have been laid down by this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Others*. ((1964) 3 SCR 573) In that case this Court ruled that the word 'copy' in Section 81(3) of the Act did not mean an absolute exact copy but a copy so true that nobody could by any possibility misunderstand it, and that the test whether a copy was a true one was whether any variation from the original was calculated to mislead an ordinary person. The same view was taken by this Court in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*. ((1964) 6 SCR 213) In our opinion, it is not necessary to refer to the discrepancies between the original petition and the copy served excepting that referred to in clause (f) of Paragraph 15 of the Trial Court's judgment. Admittedly Shri Munshi Hansda and Paul Hansda are members of the Patna Legislative Assembly. In the election petition it was stated that money was offered to Shri Jetha Kishku, M.L.A. by Munshi Hansda but in Ext. 'O' it was stated that money was offered to the said Jetha Kisku by Paul Hansda. This divergence was bound to mislead the contesting respondents and prejudice their defence. Pleadings in a case has great importance and that is more so in election petitions particularly when the returned candidate is charged with corrupt practice. He must know what the charge against him is so that he may prepare his defence. If relying on the allegations in the copy of the petition served on him that the money was paid to Jetha Kisku through Paul Hansda, the 1st respondent had collected evidence to show that that allegation is false then the entire basis of his defence would have fallen to the ground because at a later stage he had to meet a totally different case. The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act.

8. Mr. Chagla tried to extricate his client from the difficult position in which he had placed himself by urging that two copies of the election petition had been served on the Ist respondent as required by the rules of the Patna High Court, one through the court and another through registered post; the Ist respondent has produced only one of those copies; it is not known whether the other copy was also defective and therefore there is no ground to reject the election petition at the very threshold. We are unable to entertain this contention. If it was the case of the appellant that the Ist respondent was not prejudiced by the service of Ext. 'O' he should have got summoned the other copy said to have been served on him. No such attempt appears to have been made. No explanation was offered how several wrong statements came to be made in Ext. 'O'. There is hardly any doubt that the relevant papers filed in court on behalf of the appellant were prepared in a callous manner.

9. For the reasons mentioned above we agree with the Trial Court that the petition is liable to be dismissed under Section 86 of the Act. Hence this appeal is dismissed with costs.

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