

Hardwari Lal

Vs

Kanwal Singh

Civil Appeal No. 129 of 1971

(K.S. Hegde, A.N. Grover, A.N. Ray JJ)

07.12.1971

JUDGMENT

RAY, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act (hereinafter referred to as the Act) from the Judgment and Order, dated December 24, 1970, of the High Court of Punjab and Haryana setting aside the election of the appellant.
2. The appellant was declared elected to the Haryana Legislative Assembly from Bahadurgarh Constituency. The polling took place on June 7, 1970. The result was declared on June 8, 1970. The appellant obtained 22,436 votes. The respondent obtained 17,760 votes.
3. The respondent challenged the appellant's election on numerous grounds.
4. The election petition was filed on July 23, 1970. The written statement was filed on September 2, 1970. Seven issues were framed at the trial on various allegations as to corrupt practice. After the conclusion of evidence the petitioner gave up pleas giving rise to issues Nos. 1 and 2. Issues Nos. 3(i), (iv) and (vi) were also given up. Issues Nos. 3(ii), 3(iii), 3(v) and 3(vii) were pressed and the court decided the entire issued No. 3 against the election petitioner. Issues No. 4(a) and (b) were decided against the election petitioners. Issue No. 5 was held to be proved only relating to Chand Ram Rathi and the remaining issues were found not to be proved. Issue No. 6 was consequential on issue No. 5 and inasmuch as the election petitioner called in question any the election of the appellant and did not claim any declaration either that the petitioner or any other candidate had been elected, no question of declaration under Section 101 of the Act arose. Issue No. 7 was answered by holding that the appellant was guilty of commission of corrupt practice under Section 123(7) of the Act. The High Court, therefore, declared the election of the appellant to be void and held the appellant guilty of the commission of corrupt practice under Section 123(7) of the Act and awarded costs amounting to Rs. 2,000/-.
5. The election petition succeeded only on issue No. 5. Issue No. 7 was the consequential relief. Issue No. 5 related to Paragraph 16 of the petition and allegations as to corrupt practice within the meaning of Section 123(7) of the Act.
6. The only question for determination in this appeal is whether the election petition was maintainable in regard to allegation against the appellant under Section 123(7) of the Act which were comprised in issue No. 5.

7. The allegations in Paragraph 16 of the petition were as follows :

"That the respondent committed the corrupt practice of obtaining and procuring or attempting to obtain and procure the assistance for the furtherance of the prospects of his election from the following persons who are in the service of the Government and belonging to the prohibited classes within the meaning of Section 123(7) of the Act -

(1) Shri Chand Ram Rathi, Lecturer in Political Science, Government College, Gurgaon.

(2) Shri Gulab Singh, B.A., B.ED., Government High School, Jaharsa (Gurgaon).

(3) Pt. Bhim Singh, Assistant Sub-Inspector, Police Security Lines, Lytton Road, New Delhi.

(4) Ch. Chhattar Singh, M.A., B.T., Teacher, V. and P.O. Bharai via Bahadurgarh, District Rohtak.

(5) Ch. Mukhtiar Singh, Inspector of Police, Delhi.

(6) Ch. Raghbir Singh, M.A., B.T., Bahadurgarh.

The respondent has written letters under his own signatures to the above Government servants soliciting their help and assistance in furtherance of the prospects of his election."

8. The appellant submitted preliminary objections. There were inter alia that Paragraph 16 of the petition was liable to expunction "for it does not give the necessary particulars about the nature of assistance and the place and the date where and when such assistance was sought or received from the persons named in the petition". The appellant further dealt with Paragraph 16 by denying the allegations.

9. The High Court by an order, dated September 11, 1970, dealt with the preliminary objection. As to allegations in Paragraph 16 of the election petition the High Court said that in Form BB filed by the election petitioner particulars of letters written by the appellant to the various person mentioned therein had been given at Serial Numbers 3 to 8. Dates of the letters and the script in which they were written and the persons to whom they were addressed had been mentioned in those items. Counsel on behalf of the appellant contended before the High Court that the letters should either be produced or details of their contents should be disclosed so as to enable the appellant to find out whether or not the assistance alleged to have been sought from the addresses of those letters was or was not sought for the furtherance of the prospects of the appellant in election. The High Court said that the election petitioner could not be expected to be in possession of letters and in the nature of things it would not be possible for the election petitioner to change the contents of letters and if and when the letters were produced or admitted or proved, it would be mere matter of argument whether the writing of the letters did or did not fall within the corrupt practice defined in Section 123(7) of the Act. The High Court declined to allow further or better particulars asked for by the appellant.

10. At the trial Chand Ram Rathi whose name was mentioned in item No. 8 in Form BB annexed to the petition as one of the persons to whom the appellant had written a letter was examined on behalf of the election petitioner on December 3, 1970. The election petitioner was also examined on

December 3, 1970. The oral evidence of the election petitioner was concluded on December 4, 1970. On the same day, the appellant was examined, by the court under Order 12, Rule 3(a) of the Code of Civil Procedure as to whether the appellant had written the letter marked Ext. P.W. 34/1 to Chand Ram Rathi. On the same day, the appellant asked for an order to recall Chand Ram Rathi. One of the grounds given by the appellant to recall the witness was to put a letter, dated May 27, 1970, written by Chand Ram Rathi to the appellant. The High Court declined to accede to the prayer of the appellant on the ground that recalling the witness for proving the letter, dated May 27, 1970, written by Chand Ram Rathi to the appellant would be to contradict the statement of Chand Ram Rathi and to show that he was not a truthful witness.

11. The High Court relied on the total evidence of Chand Ram Rathi to whom the appellant had written a letter and held that the appellant was guilty of corrupt practice within the meaning of Section 123(7) of the Act.

12. The appellant appeared in person in this Court. The appellant raised these contentions. Paragraph 16 of the election petition did not contain statement of material facts to amount to any allegation of corrupt practice against the appellant. The High Court declined to order particulars. The High Court allowed oral evidence to be adduced by the election petitioner in the absence of any pleading of material facts alleging corrupt practice within the meaning of Section 123(7) of the Act. Therefore, the appellant contended that first there was no pleading, secondly, particulars were not allowed to give the appellant an opportunity of knowing the case; and, thirdly, the High Court allowed proof of matters of which there was no foundation in the pleadings.

13. Counsel on behalf of the election petitioner on the other hand contended that the allegations were that the appellant had sought assistance from Government servants for the furtherance of the prospects of the appellant's election and particulars of letters were given and therefore the election petitioner alleged material facts and proved the same in support of the allegations.

14. Under Section 83 of the Act 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. It is manifest that the election petition shall not only contain material facts but also set forth particulars of corrupt practice.

15. Section 123(7) of the Act is as follows :

"The obtaining or procuring or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government and belonging to any of the following classes, namely :

Clauses (a) to (g) which need not be set out here."

16. It has to be noticed that different expressions obtaining, procuring, abetting or attempting to obtain or procure are various forms of corrupt practices. It has to be found as to whether the allegation of obtaining assistance amounts to an allegation of fact. It will be well settled that general expressions like 'fraudulently', 'negligently' or 'maliciously' in pleadings do not amount to any

allegation of fact. A fact is after all not a mere word.

17. The provisions of the aforesaid section indicate these heads of corrupt practices. First, the obtaining by a candidate or his agent or by any other person any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government as mentioned in the section. Second, the procuring by a candidate or his agent or by any other person with the consent of the election petitioner any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election. Third, the abetting by a candidate or his agent or by any other person with the consent of the candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election as mentioned. Fourth, the attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election. Fifth, the assistance that is forbidden or prohibited by the statute is any assistance other than the giving of vote. It is clear that the four different heads of corrupt practices are (a) obtaining, (b) procuring, (c) abetting, and (d) attempting to obtain or procure assistance.

18. Therefore material facts are to be alleged as to whether the candidate obtained or procured or abetted or attempted to obtain or procure any assistance other than the giving of vote. In Paragraph 16 of the election petition it is alleged that the appellant committed and corrupt practice of obtaining and procuring or attempting to obtain and procure assistance for the furtherance of the prospects of his election from the persons mentioned there. Reading Paragraph 16 of the election petition one will search in vain to find out as to whether the allegations against the appellant are in regard to the assistance under both heads or either head from each of the six persons mentioned there. One will speculate as to whether the appellant obtained and procured or attempted to obtain and procure assistance from each or some of the persons mentioned there. Obtaining or procuring or attempting to obtain or procure assistance are separate and independent forms of corrupt practice. One will guess as to whether the allegations are that the appellant committed all or one or more of the correct practices of obtaining, procuring, attempting to obtain or procure assistance from each of the persons mentioned there. One will also conjecture and hazard as to what assistance was obtained or procured or attempted to obtain or procure from each of the persons mentioned there, for the furtherance of the prospects of that candidate's election. The giving of vote is not within the mischief of corrupt practice. It cannot be understood from the petitioner whether the giving of vote is the assistance alleged. It is, therefore, apparent that the appellant who was charged by the election petitioner with corrupt practice should be told in the election petition as to what assistance he sought. The type of assistance, the manner of assistance, the time of assistance, the person from whom assistance is sought are all to be set out in the petition. There is no allegation in the petition about the actual and the specific assistance with which the appellant can be charged in violation of the provisions of the Act. Nor is there any statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. The allegations against the appellant were in relation to six persons. Therefore, it was essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or produced from each person. The time, the date and the place of the assistance were also required to be set out in the particulars. Thus it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of the appellant's election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person.

19. The requirements in an election petition as to material facts and the consequences of lack of such allegation of material facts came up for consideration in this Court in the recent decision in *Samant N. Balakrishna, etc. v. George Fernandes and Others, etc.* [1969 (3) SCC 238 : (1969) 3 SCR 603]. In that case reference was made to Sections 81, 83 and 86 of the Act as the procedure provisions of election petition. Section 81 deals with presentation of petitions. Section 83 deals with contents of petitions. Section 86 deals with trial of petitions. Hidayatullah, C.J., speaking for the Court laid down these propositions. First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of person with the date, time and place. Fifth, 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. Sixth, in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material fact will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegations is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

20. The importance of material facts and the distinction between the material facts and particulars was also brought out in another recent decision of this Court in *Manubhai Nandlal Amer sey v. Popatlal Munilal Joshi and Others.* [1969 (1) SCC 372 : (1969) 3 SCR 217]. In that case a charge in the petition was that several persons with the consent of the appellant or his election agents induced or attempted to induce the electors to believe that if they voted for the Congress party candidate they would become the objects of divine displeasure and spiritual censure. At a late stage of the trial the High Court gave leave to the election petitioner to amend the petition by adding fresh particulars of the corrupt practice. Bachawat, J., speaking for the Court said that Section 83 of the Act was mandatory and particulars of corrupt practice were to be set out in full. It was said in that case that no amendment in the shape of particulars of corrupt practice was permissible if the corrupt practice was not previously alleged in the petition. The obvious need not be stressed. It is that an election petition has the effect of declaring an election void. It is a serious remedy. It is, therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words 'any assistance' were full statement of material fact. The submission is fallacious for the simple reason that the matter of assistance, the mode of assistance, the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared could the court have given a verdict in

favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action.

21. The necessity of clear and precise allegations to support a plea of corrupt practice was emphasised by this Court in *Harish Chandra Bajpai and Another v. Trilok Singh*. [12 ELR 461] Venkatarama Ayyar, J., speaking for the Court in dealing with the powers of the Court of allow amendment in respect of illegal or corrupt practice said that where the allegation in the election petition in regard to the corrupt practice was that the respondents could in furtherance of their election enlist the support of Government servants, the words 'could enlist' did not amount to an averment that in fact they enlisted their support. In other words, it was observed that the words 'could enlist' did not allege a fact which happened. Therefore, the happening of a fact as well as the fact itself is material. Judged by that test in the present case there is no allegation which will amount to any averments of any assistance as a fact in the absence of the kind of assistance being set out as a fact.

22. The allegations of Paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish cause of action.

23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.

24. In the present case, it is not necessary to go to the question as to whether the High Court was justified in disallowing the particulars and in refusing to recall the witnesses for the reasons given in the order, because Paragraph 16 of the election petition on which the High Court relied to declare the election of the appellant void does not amount to an election petition on the grounds mentioned in Section 123(7) of the Act.

25. For the reasons the judgment of the High Court is set aside. The appeal is allowed. The election petition shall stand dismissed. The parties will pay and bear their costs in this appeal.

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