

Mithilesh Kumar Pandey

Vs

Baidyanath Yadav and Others

Civil Appeal No. 5307 (NCE) of 1983

(Syed M. Fazal Ali, O. Chinnappa Reddy, E. S. Venkataramiah JJ)

02.01.1984

JUDGMENT

FAZAL ALI, J. -

1. By our Order dated November 29, 1983 we had allowed the appeal. We now proceed to give the reasons for the said Order.
2. This election appeal is directed against an interlocutory Order dated January 7, 1983 passed by the Patna High Court overruling a preliminary objection taken by the appellant (elected candidate) that the election petition of the respondent (election petitioner) should be dismissed straightaway under the provisions of Section 86 of the Representation of the People Act, 1951 - as amended up-to-date - (hereinafter referred to as the 'Act').
3. The appellant's case is that in the general election held in June 1980 he fought as a Congress (I) candidate from Harlakhi Assembly Constituency in Bihar in which he was declared elected, defeating the respondent who filed the election petition in the High Court. He further submitted that the copy of the election petition served on him contained a large number of mistakes in respect of persons through whom corrupt practices were alleged to have been practiced by the appellant during the election. He contended that in view of the very large number of mistakes, which were of a very vital character, the mandatory provisions of Section 81(3) of the Act were not complied with at all, which infirmity by itself would be sufficient to dismiss the election petition in limine without going into the merits of the case.
4. The stand taken by the respondent was that the mistakes were undoubtedly there but they were of a minor and insignificant nature and did not affect his case on merit.
5. The learned Judge of the High Court found as a fact that a large number of mistakes were there in the copy of the election petition supplied to the appellant but as they were of a superficial and insignificant nature bordering on clerical or typing mistakes, on the whole there was a substantial compliance of the provisions of Section 81(3) of the Act. The learned Judge has entered into a detailed discussion of the various decisions of this High Court and also of High Courts and has correctly held that the provisions of Section 81(3) are mandatory and if the court finds that they have not been complied with it has no alternative but to dismiss the election petition straightaway. Unfortunately, however, in the process of applying the principles laid down by this Court he has completely glossed over the nature of the mistakes by describing them as merely clerical or typing ones. On a perusal of the aforesaid mistakes (listed at pp. 64-65 of the Paperback) they do not appear to be so. Section 81(3) of the Act runs thus :

81. Presentation of petitions. - (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.

6. The consequence of non-compliance with this section has been mentioned in Section 86(1) which may be extracted thus :

86. Trial of election petitions. - (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

7. A perusal of the above reveals that the statute intended that before an election petition can be entertained, the copy sent to the elected candidate must be a true copy, failing which there would be a serious disobedience of the mandate contained in Section 81(3) which would be fatal to the maintainability of the said petition.

8. It is now well settled by a large catena of authorities of this Court that the electoral process by which the verdict of the people has been given is a sacrosanct one and cannot be lightly set at naught unless the grounds mentioned in the Act for setting aside an election are held to be proved. In these circumstances, it is manifest that the provisions of Section 81(3) of the Act should be construed to the letter and spirit of the law because if the election petitioner does not give full and complete notice of the allegations made against the returned candidate, he runs the risk of his petition being dismissed in limine.

9. In the instant case, it is admitted case of the parties that the mistakes in the copy supplied to the appellant related to corrupt practices indulged in by him through various persons who have been named at pages 64-65 of the Paperbook. In *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* ((1964) 3 SCR 573, 587 : AIR 1964 SC 1545) this Court made the following observations :

Having regard to the provisions of Part of VI of the Act, we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person.

10. In other words, this Court merely meant to indicate that where the variation is so minimal and insignificant that it is incapable of misleading any person as to the true purport of the allegation, it would be a substantial compliance of the provisions of Section 81(3) of the Act. The High Court has largely relied on the ratio of the particular case.

11. There can be no dispute regarding the principle laid down by this Court by the main difficulty arises when we approach the facts of a particular case in order to find out whether the copy supplied to the returned candidate is really a true copy or not.

12. In *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar* ((1971) 1 SCR 821 : (1970) 2 SCC 411 : AIR 1971 SC 342) the same principle was laid down. In this case, the mistake was that in the election petition it was stated that money was offered to one Jetha Kisku by Munshi Hansda but in the copy served on the returned candidate instead of Munshi Hansda the name of Paul Hansda was mentioned. Apparently, the mistake was a verbal one but this Court held that it was sufficient to

prejudice the defence and accordingly came to the conclusion that the petition was liable to be dismissed under Section 86 of the Act.

13. We shall presently should that in the instant case the mistakes were of a greater nature than those with which this Court was dealing with in the aforesaid case. In *Satya Narain v. Dhuja Ram* ((1974) 3 SCR 20 : (1974) 4 SCC 237 : AIR 1974 SC 1185) this Court clearly pointed out that where the first part of Section 81(3) was not complied with, the provision being a peremptory one, total non-compliance with the same would entail dismissal of the election petition under Section 86 of the Act. In a later case in *Sharif-ud-Din v. Abdul Gani Lone* ((1980) 1 SCR 1177 : (1980) 1 SCC 403 : AIR 1980 SC 303) this Court observed thus : (SCC P. 410, para 18)

It is true that Section 89(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if in a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequences should follow if the act is not done in that manner, courts have no option but to enforce the law as it is.

14. In a latest decision of this Court in *M. Karunanidhi v. H. V. Hande* ((1983) 2 SCC 473 : AIR 1983 SC 558), the following observations were made : (SCC p. 502, para 42)

It is obvious that the photograph was a part of the averment contained in paragraph 18(b). In the absence of the photograph the averment contained in paragraph 18(b) would be incomplete. The photograph referred to in paragraph 18(b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-section (3) of Section 81 of the Act by failure to serve the appellant with a copy of the election petition.

15. On a careful consideration and scrutiny of the law on the subject, the following principles are well established :

(1) that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway under Section 86 of the Act,

(2) a true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court the court may not take notice thereof,

(3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance with the provisions of Section 81(3) of the Act,

(4) prima facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Section 81(3) of the Act, and

(5) as Section 81(3) is meant to protect and safeguard the sacrosanct electoral process

so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation of the provisions of the said section.

16. We might mention here that in the instant case, the mistake in the copy supplied to the returned candidate related to corrupt practices which, as has been held by this Court in a large number of cases, have to be proved to the hilt just like a criminal charge and any mistake which contains an element of vagueness would immediately vitiate the election petition and merit its dismissal under Section 86 of the Act.

17. In the view that we take, it is not necessary for us to wade through a detailed discussion of the mistakes because a few mistake pointed out by the Judge himself clearly reveal that they were of a very vital and material nature so as to mislead the returned candidate and prejudice him in his defence. Schedule I to the election petition contained the list of persons through whom the corrupt practices were alleged to have been committed. An analysis of these mistakes may be placed in three categories - (1) where there is complete omission of some names which have been mentioned in the election petition but not in the copy supplied to the returned candidate, (2) giving absolutely wrong names which are bound to mislead the appellant in his defence as the persons bearing the wrong names could not be traced out, and (3) some names given in the petition appear to be males but in the copy given to the appellant they appear to be females.

18. Coming to the first category, a few examples will suffice to illustrate our point :

#-----  
Sl. No. in Name in the original Name in theSchedule I petition copy-----  
----- 17 Yogendra Jha Omitted 37 Bulari Devi Omitted188 Bal  
Bhogia Omitted445 Ramdeo Paswan Omitted486 Jugeshwari Devi Omitted-----  
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19. The omission of names cannot be said to be a typing mistake but a very vital and serious one which is sufficient to entail the dismissal of the election petition. Under the second category (giving wrong names), the following names may be mentioned.

#-----Sl. No. in Name in original Name in  
theSchedule I copy----- 42 Nanpuran Mitra  
Mahpuran Mitra 62 Bilas Jha Bimal Jha105 Dukhi Devi Sudama Devi179 Bhekai Paswan  
Mokai Paswan385 Mauki Tetri440 Kalasiya Kalya466 Kalish Jandra Jha Kali Janwa Jha479  
Gayatri Devi Sati Devi498 Udit Mishra Udit Mitra579 Yashodara Mishra Yashoda Devi679  
Jhularia Devi Kaushilya DeviThird Category29 Kiran Jha Kiran Devi (May be a male or  
(Must be a a female) female)444 Dularia Ramdeo Paswan675 Rajsunair Yadav Rajsunari  
Yadav-----##

20. There are many more mistakes given in Schedule I but we have selected only those which are vital and may seriously prejudice the defence of the appellant because it will be very difficult for him to find out the persons, named in the copy supplied to him, who are said to have indulged in corrupt practices at his instance.

21. Thus, on an overall consideration of the facts and circumstances of this case, we are unable to agree with the High Court that the mistakes in the copy were either verbal, typographical or clerical. The present case appears to be a much worse case than Murarka Radhey Shyam Kumar case ((1964)

3 SCR 573, 587 : AIR 1964 SC 1545) where only a slight difference in the title led this Court to hold that the mistake was a vital one.

22. We are, therefore, of the opinion that the High Court committed a serious error of law in holding that there had been a substantial compliance of the provisions of Section 81(3) of the Act so as to exclude the application of Section 86 of the Act.

23. For the reasons given above, we allow the appeal and dismiss the election petition filed in the High Court but in the circumstances without any order as to costs. As a result of our judgment, nothing now survives in the High Court.

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