

A. Madan Mohan

Vs

Kalavakunta Chandrasekhara

Special Leave Petition (Civil) No. 11868 of 1983

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

14.02.1984

JUDGMENT

FAZAL ALI, J. -

1. This petition for special leave is directed against an interlocutory Order dated July 16, 1983 of the Andhra Pradesh High Court rejecting the application of the petitioner for dismissing the election petition of the respondent in limine under Section 86 of the representation of the People Act (hereinafter referred to as the 'Act').

2. The petition arises out of an election to the Siddipets Assembly Constituency in Andhra Pradesh which took place on January 5, 1983. The petitioner was declared elected to the said Assembly. The respondent filed an election petition in the High Court alleging certain corrupt practices.

3. The short point for consideration before us is as to whether or not the election petition was liable to be dismissed in limine under Section 86 of the act as the copies of the documents and schedules, which formed an integral part of the election petition, were not supplied to the petitioner which amounted to a clear breach of the mandatory provisions contained in Section 81(3) of the Act.

4. The High Court after hearing both the parties dismissed the application of the petitioner for throwing out the election petition of the respondent in limine. We have heard counsel for the parties at length and it seems to us that the matter is no longer res integra and is covered by a decision of this Court in Sahodrabai Rai v. Ram Singh Aharwar ((1968) 3 SCR 13 : AIR 1968 SC 1079 : 1968 Mah LJ 697 : 36 ELR 52) to which we shall refer hereafter

5. On the findings of the High Court three facts are clearly proved :

(a) that when the election petition was filed, it was accompanied by as many copies as were the respondents,

(b) that the election petition was duly verified and the copies thereof were accompanied by the necessary schedules containing the details of corrupt practices, and

(c) that the schedules or the annexures to the petition were also signed by the election petitioner (respondent).

6. The only complaint of the petitioner was that the copy of the election petition served on him was not accompanied by copies of the schedules and hence there was a clear breach of the provisions of

Section 81(3) of the Act. Section 81(3) may be extracted thus :

81. Presentation of petitions. -

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(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.

7. An analysis of the above reveals -

(a) that the petition should be accompanied by as many copies as there are respondents,

(b) that every such copy should be attested by the petitioner under his own signature to be a true copy of the petition.

8. It is not disputed in this case that both these conditions were fully satisfied.

9. Section 83 of the Act contains four requirements, viz.,

(a) that the election petition shall continue concise statement of the material facts relied upon by the petitioner,

(b) that the petitioner should set forth the full particulars of the corrupt practices alleges,

(c) that the petition should be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure and where a corrupt practice is alleged the petition should also be accompanied by an affidavit in the prescribed form, giving the particulars of the corrupt practice, and

(d) any schedule or annexure to the petition should also be signed and verified by the petitioner.

10. These conditions have also been fulfilled in the present case.

11. The counsel for the petitioner vehemently contended that as the schedules and other documents formed an integral part of the petition, the same should have been served on the petitioner (respondent in the High Court) before it could be said that the provisions of Sections 81 and 82 of the Act had been complied with. It was further argued that in the absence of such a compliance, the petitions are, however, unable to agree with this contention which does not at all flow from the plain and simple requirements of Sections 81 and 82. As indicated above, all that was necessary was done in this case and there was no requirement that the documents or the schedules should also have been served on the petitioner because if they were file in the Court it was always open to the petitioners to inspect them and find out the allegations made in the petition. We are unable to hold that the documents or the schedules formed an integral part of the petition.

12. An identical question came up for consideration before this Court in Sahodrabai case ((1968) 3

SCR 13 : AIR 1968 SC 1079 : 1968 Mah LJ 697 : 36 ELR 52) where while repelling a similar argument the following observation were made; (SCR pp. 19, 20)

The only provision to which our attention has been drawn is sub-section (3) of Section 81 and sub-section (2) of Section 83, the first provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and that every such copy shall be an authenticated true copy. The words used here are only "the election petition". There is no mention of any document accompanying the election petition .... assistance is however taken from the provisions of sub-section (2) of section 83 which provides that any schedule or any annexure to the same manner as the petition. It is contended that since the pamphlet was an verify it, but that it should have been treated as a part of the election petition itself and a copy served upon the respondents. In this way, non-compliance with the provisions of section 86(1) is made out. In our opinion, this is too strict a reading of the provisions. We have already pointed out that Section 81(3) speaks only of the election petition ... Even if this be not the case, we are quite clear that sub-section (2) of Section 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 ... 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 elections petitions. They are in no sense integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition insofar as averments are concerned .... It would be stretching the words of sub-section (2) of Section 83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper .....

13. It is a well settled principle of interpretation of statute that wherever a statute contains stringent provisions they must be literally and strictly constructed so as to promote the object of the Act. As extracted above, this Court clearly held that if the argument of the appellant (in that case) were to be accepted, it would be stretching and straining the language of sections 81 and 82 and we are in complete agreement with the view taken by this Court which has decided the issue once for all.

14. The learned counsel relied on a later decision of this Court in the case of M. Karunanidhi v. H. V. Hande ((1983) 2 SCC 473) where a Division Bench while considering a similar question made the following observations : (SCC p. 496, para 32)

The preliminary issue and the appeal turn on a short point of construction. The question that arises is whether the words 'copies thereof' in sub-section (3) of Section 81 comprehend the election petition proper or do they also include a schedule or annexure annexed thereto. The controversy whether the photograph was a schedule or annexure in terms of sub-section (2) of Section 83 or merely a document only in proof of the allegation in paragraph 18(b) must turn on a construction of sub-section (3) of Section 81 read with sub-section (2) of Section 83. It now appears to be well settled by Sahodrabai case ((1968) 3 SCR 13 : AIR 1968 SC 1079 : 1968 Mah LJ 697 : 36 ELR 52), that sub-section (2) of Section 83 applies only to a schedule or annexure which is an integral part of the election petition and not to a document which is produced as evidence of the averments of the elections petition ....

15. This decision in no way departs from the ratio laid down in Sahodrabai case ((1968) 3 SCR 13 : AIR 1968 SC 1079 : 1968 Mah LJ 697 : 36 ELR 52). The aforesaid case, however, rested on the ground that the document (pamphlet) was expressly referred to in the election petition and thus

became an integral part of the same and though to have been served on the respondent. It is, therefore, manifest that the facts of the case cited above are clearly distinguishable from the facts of the present case. Furthermore, the decision in M. Karunanidhi case ((1983) 2 SCC 473) has noticed the previous decision and has fully endorsed the same.

16. For these reasons, therefore, we are clearly of the opinion that the view taken by the High Court was correct and no interference is called for with the judgment of the High Court. As the matter was clearly concluded by authorities of this Court we did not think it necessary to grant special leave and after hearing the parties at length we dispose of and dismiss the petition in terms of the aforesaid observations.

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