

Mithilesh Kumar

Vs

R. Venkataraman and Others

Election Petition No. 1 of 1987

(E. S. Venkataramiah, Ranganath Misra, G. L. Oza, M. M. Dutt, K. N. Singh JJ)

16.10.1987

JUDGMENT

VENKATARAMIAH, J. –

1. The above the petition is filed by the petitioner, Shri Mithilesh Kumar under the provisions of the Presidential and Vice-Presidential Elections Act, 1952 (Act 31 of 1952) (hereinafter referred to as 'the Act') calling in question the validity of the election of Shri R. Venkataraman, respondent 1 herein as the President of India at the election held in July 1987 for electing the President of India and praying for a declaration that he is the successful candidate at that election. There were three candidates at the election, namely, Shri R. Venkataraman - respondent 1, Shri V. R. Krishna Iyer - respondent 2 and Shri Mithilesh Kumar - the petitioner. The result of the election was declared on July 16, 1987 by the Returning Officer for Presidential Election 1987 - respondent 4, declaring Shri R. Venkataraman respondent - 1 as the President of India.

2. The Act was passed in the year 1952 for the purpose of regulating certain matters relating to or connected with the elections to the offices of the President and the Vice-President of India. Part II of the Act contains the provisions relating to the conduct of Presidential and Vice-Presidential elections and Part III of the Act sets out the provisions relating to the settlement of disputes regarding elections to the offices of the President. Section 14 of the Act provides that no election should be called in question except by presenting an election petition to the authority specified in sub-section (2) and the authority having jurisdiction to try an election petition under the Act is specified as the Supreme Court of India by sub-section (2). Sub-section (3) of Section 14 of the Act requires that an election petition should be presented to the Supreme Court of India in accordance with the provisions Part III of the Act and of the ruled made by the Supreme Court of India under Article 145 of the Constitution of India under Article 145 of the Constitution of India. Order 39 of the Supreme Court Rules, 1966 (hereinafter referred to as 'the Rules') made under Article 145 of the Constitution of India and all other power enabling it in this behalf by the Supreme Court of India contains the provisions relating to the election petitions filed under Part III of the Act. Section 14-A of the Act provides that an election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of Section 18 and Section 19 to the Supreme Court by any candidate at such election or in the case of Presidential election, by twenty or more electors joined together as petitioners and in the case of Vice-Presidential election, by ten or more electors joined as petitioners. Such petition may be presented at any time after the date of the publication of the declaration containing the name of the elected candidate at the election under Section 12 of the Act but not later than thirty days from the date of such publication. Section 15 of the Act provides that subject to the provisions of Part III of the Act rules made by the Supreme Court of India under Article 145 of the Constitution of India may regulate the form of election

petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate and to be withdrawn and in which new petitioners may be substituted and may require security to be given for costs. Rule 3 of Order 39 of the Rules prescribes that a court-fee stamp of the value of rupees two hundred and fifty shall be paid on the election petition and the election petition will be signed by the petitioner or petitioners, if they are more than one or a duly authorised advocate-on-record on his or their behalf. Rule 4 of Order 39 of the Rules provides that the petition shall be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject, and shall be printed or typed legibly on one side of standard petition-paper, deny-foolscap size or of the size of 29.7 cm. x 21 cm. or on paper of equally superior quality. Rule 5 of Order 39 of the Rules requires that the petition shall state the right of the petitioner under the Act to petition the court and briefly set forth the facts and grounds relied on by him to sustain the reliefs claimed by him. The allegations of fact contained in the petition shall be verified by an affidavit to be made personally by the petitioner or by one or the petitioners, if there are more than one as provided under Rule 6 of Order 39 of the Rules. The grounds on which the election of the returned candidate at the Presidential or the Vice-Presidential election can be declared void are set out in Section 18 of the Act. Section 18 of the Act reads thus :

18(1). If the Supreme Court is of opinion, -

(a) that the offence of bribery or under influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

(b) that the result of the election has been materially affected -

(i) by the improper reception or refusal of vote; or

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

(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature, has been wrongly accepted; or

(c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted;

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

(2) For the purpose of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the India Penal Code (45 of 1860).

3. Section 19 of the Act sets out the grounds for which a candidate other than the returned candidate may be declared to have been elected. Section 19 of the Act reads thus :

19. Grounds for which a candidate other than the returned candidate may be declared to have been elected. - If any person who has lodged an election 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 Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme 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 :

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

4. Section 18 of the Act is exhaustive of the grounds on which the election of the President or the Vice-President can be declared void. Under Section 18(1)(a) an election of the President or of the Vice-President may be set aside if it is established that the offence of bribery or undue influence, as explained in Chapter IX-A of the Indian Penal Code had been committed by the returned candidate or by any person with the consent of the returned candidate. In order to succeed on the grounds mentioned in Section 18(1)(a) of the Act it has to be established that the offence of bribery or undue influence had been committed at the election by the returned candidate himself; or by any person with his consent. Originally when the Act was enacted Section 18(1)(a) of the Act read thus :

18(1) If the Supreme Court is of opinion -

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

5. The word 'connivance' in Section 18(1)(a) of the Act was substituted later on by Parliament when the former Part III of the Act was substituted by the present Part III of the Act by the Presidential and the Vice-Presidential Elections (Amendment) Act, 1977 to bring it in line with the provisions of Section 123(1) and (2) of the Representation of the People Act, 1951, which contain the grounds of bribery and undue influence which would vitiate the election to either House of Parliament or to the House or Houses of the State legislatures as the case may be. Clause (b) of Section 18(1) of the Act contains three grounds the proof of any of which would result in the election being declared void provided it is established that the result in the election has been materially affected thereby, namely, (i) the improper reception or refusal of a vote; or (ii) any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act; or (iii) wrongful acceptance of the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature. Clause (c) of Section 18(1) of the Act provides that if the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted, the election of the returned candidate is to be declared void. These are the only grounds on which the election of the returned candidate can be declared void under the Act. Section 19 of the Act as stated already contains grounds for declaring a candidate other than the returned candidate as duly elected.

6. It should be stated at the outset that the manner in which the present petition has been drafted is not in accordance with the Rules. Ordinarily the petition should state in a narrative form succinctly and clearly all the facts as may be necessary to enable the respondents and the court to understand the case of the petitioner. This is not the case here. The first part of the petition contains 13 questions and the answers given by the petitioner to those questions. A reading of all these 13 questions and answers given thereto by the petitioner shows that the only ground on which the

petitioner wished to call in question the election of respondent 1, is that the issue of a whip by the Congress (1) party to its legislators on the eve of the election asking them to cast their votes in favour of respondent 1, was in the nature of a threat amounting to undue influence which is one of the two grounds set out in Section 18(1)(a) of the Act. The allegations made in this part of the petition suggest that the specific case of the petitioner is that the said act of undue influence had been committed by the members of the Congress (1) party. There is no allegation that any act amounting to undue influence was committed either by respondent 1, himself, or by any other person with his consent. Even in the second part of the petition which is entitled 'Notable points' and the third part of the petition containing grounds to declare the election of the returned candidate as void, there is no averment that either the returned candidate himself had committed any act of undue influence or any other person had committed any act of undue influence with his consent. The fourth part of the petition contains grounds to declare the petitioner as duly elected. It is alleged in this part that by reason of the issue of the whip by the Congress (I) party and/or by other parties the votes which would have been cast in his favour had been grabbed by the other candidates. The fifth part of the petition contains the reliefs sought by the petitioner and the last part contains the prayer for an interim order directing the staying of the oath ceremony of the returned candidate which had been fixed to take place on July 25, 1987. There is no reference to any other ground mentioned in Section 18 of the Act on the basis of which the election can be set aside.

7. After the petition was presented to this Court notice was issued to the respondents and also to the Attorney-General of India as provided in Rule 14 of Order 39 of the Rules. After the service of the notices on the respondents, respondent 1 filed before this Court a statement containing the preliminary objections to the petition. The Attorney-General of India also filed his statement of preliminary submissions to the petition. The preliminary objections of respondent 1 and the preliminary submissions of the Attorney-General of India cover almost the same grounds. It is contended by them that the petition is liable to be rejected at this stage itself since it does not disclose any cause of action. Rule 34 of Order 39 of the Rules provides that subject to the provisions of Order 39 of the Rules or any special order or directions of the court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the court in the exercise of its original jurisdiction. Order 23 of the Rules contains the rules of pleadings in cases filed under the original jurisdiction of this Court. Rule 6 of Order 23 of the Rules states that the plaint shall be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law. It is stated in the preliminary objections of respondent 1 and the preliminary submissions of the Attorney-General of India that since nowhere in the election petition the petitioner has stated that the offence of undue influence had been committed by respondent 1 or by any other person with his consent and since no other ground specified in Section 18 of the Act has been pleaded, the petition is liable to be rejected under Rule 6 of Order 23 of the Rules even assuming that all that the petitioner has stated in his petition is true.

8. After the preliminary objections of respondent 1 and the preliminary submissions of the Attorney-General of India were filed, the case was taken up for hearing on the said preliminary objections and preliminary submissions. The petitioner Shri Mithilesh Kumar (in person), Shri T. S. Krishnamurthy Iyer, learned counsel for respondent 1 and Shri K. Parasaran, learned Attorney-General of India were heard.

9. The issue which arises for consideration in this case is whether the election petition is liable to be rejected under Rule 6 of Order 23 of the Rules on the ground that it does not disclose any cause of action.

10. The question of law involved in this case is no longer *res integra*. In *Charan Lal Sahu v. Neelam Sanjeeva Reddy* [(1978) 3 SCR 1 : (1978) 2 SCC 500 : AIR 1978 SC 499] the petitioner in that petition had questioned the election of Shri Neelam Sanjeeva Reddy as the President of India. In that decision this Court held that it was obligatory upon the court to reject a petition outright and not to waste any more time upon a plaint or petition if the provisions of law bar or are shown to bar or are shown to bar the proceedings. The court proceeded to hold that it was not even necessary to issue notice to any opposite party or parties in such a case. The next decision in *Charan Lal Sahu v. Giani Zail Singh* [(1984) 2 SCR 6 : (1984) 1 SCC 390 : AIR 1984 SC 309] deals with facts which are very close to the facts of the present case. In the said case two issues arose for consideration : (i) can the election of a candidate to the office of the President of India be challenged on the ground that he is not a suitable person for holding that office; and (ii) whether the averments in that election petition, assuming them to be true and correct, disclose any cause of action for setting aside the election of the returned candidate on the ground stated in Section 18(1)(a) of the Act. This Court observed in that case that the rights arising out of elections, including the right to contest or challenge an election, were not common law rights, but they were creatures of the statutes which created, conferred or limited those rights. Therefore, for deciding the question whether an election can be set aside on any alleged ground, the court has to consult the provisions of law governing the particular election. The court has to function within the frame-work of that law and cannot travel beyond it. The court proceeded to observe in the above decision thus at pages 22 to 24 of the Reports : (SCC pp. 404-06, paras 29-33)

Nor is it alleged that the offence of undue influence was committed by the returned candidate himself. The allegation of the petitioners is that the offence of undue influence was committed by certain supporters and close associates of respondent 1 with his connivance. It is patent that this allegation, even if it is true, is not enough to fulfill the requirements of Section 18(1)(a). What that section, to the extent relevant, requires is that the offence of undue influence must be committed by some other person with the 'consent' of the returned candidate. There is no plea whatsoever in the petition that undue influence was exercised by those other persons with the consent of respondent 1.

It is contended by Shri Shujatullah Khan who appears on behalf of the petitioners, that connivance and consent are one and the same thing and that, there is no legal distinction between the two concepts. In support of this contention, learned counsel relies upon the meaning of the word 'connivance' as given in Webster's Dictionary (Third Edition, Volume 1, p. 481); Random House Dictionary (p. 311); Black's Law Dictionary (p. 274); Words and Phrases (Permanent Edition, Volume 8-A, p. 173); and Corpus Juris Secundum (Volume 15-A, p. 567). The reliance on these dictionaries and texts cannot carry the point at issue any further. The relevant question for consideration for the decision of the issue is whether there is any pleading in the petition to the effect that the offence of undue influence was committed with the consent of the returned candidate. Admittedly, there is no pleading of consent. It is then no answer to say that the petitioners have pleaded connivance and, according to dictionaries, connivance means consent. The plea of consent is one thing : the fact that connivance means consent (assuming that it does) is quite another. It is not open to a petitioner in an election petition to plead in terms of synonyms. In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that facts constituting the cause of action must be specifically pleaded is as fundamental as it is elementary. 'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are *ad idem*. Connivance does not necessarily imply that parties are of

one mind. They may or may not be, depending upon the facts of the situation. That is why, in the absence of a pleading that the offence of undue influence was committed with the consent of the returned candidate, one of the main ingredients of Section 18(1)(a) remains unsatisfied.

The importance of a specific pleading in these matters can be appreciated only if it is realised that the absence of a specific plea puts the respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says, 'connivance' here, or whether the petitioner has used that expression as meaning 'consent'. It is remarkable that, in their petition, the petitioners have furnished no particulars of the alleged consent, if what is meant by the use of the word connivance is consent. They cannot be allowed to keep their options open until the trial and adduce such evidence of consent as seems convenient and comes handy. That is the importance of precision in pleadings, particularly in election petitions. Accordingly, it is impermissible to substitute the word 'consent' for the word 'connivance' which occurs in the pleadings of the petitioners.

The legislative history of the statute lends support to our view that for the purposes of Section 18(1)(a), connivance is not the same thing as consent. Originally, when the Act was passed in 1952, Section 18(1)(a) provided that the Supreme Court shall declare the election of the returned candidate void if it is of opinion that the offence of bribery or undue influence has been committed by the returned candidate or by any person "with the connivance" of the returned candidate. This sub-section was amended by Section 7 of the Presidential and Vice-President Elections (Amendment) Act, 5 of 1974, which came into force on March 23, 1974. The word 'connivance' was substituted by the word 'consent' by the Amendment Act. If connivance carried the same meaning as consent and if one was the same as the other, Parliament would not have taken the deliberate step of deleting the word 'connivance' and substituting it by the word 'consent'. The amendment made by the Amendment Act of 1974 shows that connivance and consent connote distinct concepts for the purpose of Section 18(1)(a) of the Act.

Since, admittedly, there is no pleading in the election petition that the offence of undue influence was committed with the consent of the returned candidate, the petition must be held to disclose no cause of action for setting aside the election of the returned candidate under Section 18(1)(a) of the Act.

11. We have given above a fairly long quotation from the above decision because it contains all the reasons necessary to decide this case too. We do not propose to repeat them. They are applicable to this case also. In the petition before us there is not even an allegation that the act of undue influence had been committed by some persons with the connivance of respondent 1. The petition is as bald as it could be. At the hearing after getting the entire petition read out the court asked the petitioner to point out whether there was any allegation that respondent 1 had himself committed any undue influence or any other person with the consent of respondent 1 had committed such an act or any allegation which required to be tried and the petitioner was not able to point out any part of the petition in which such an allegation had been made. In view of this infirmity we have not found it necessary to examine whether the issuing of the whip by any political party amounts to undue influence vitiating an election even when such an act is committed by the returned candidate or with his consent by some other persons.

12. In the circumstances, the court has no choice except to reject the petition as required under Rule 6 of Order 23 of the Rules as it does not disclose any cause of action.

13. Before concluding we should observe that the petitioner did not appear to be quite serious about his case. At one stage he contended having himself filed the petition before the court that this Court had no competence to hear the case and at another stage he wanted 51 judges to hear his petition when the maximum permissible strength of this Court is about one-half of that number and the existing strength of this Court is less than one-third of that number. Rule 20 of Order 39 of the Rules requires that every petition calling in question an election to the offices of the President and the Vice-President shall be posted before and be heard and disposed of by a bench of this Court consisting of not less, than five judges. While we expect every conscientious citizen eligible to file an election petition to question an election on the grounds prescribed by the Act, we do not wish that any petitioner should make use of this Court as a forum to file a petition without giving adequate thought to its contents and also to the provisions of law governing the same merely to seek some cheap publicity. We regret to say that seeing one's name in newspapers everyday has lately become the worst intoxicant and the number of people who have become victims of it is increasing day by day. We, however, refrain from referring to some other irrelevant and unwarranted statements made by him before this court orally and in writing. Perhaps the petitioner who desired to become the President of India did not understand the effect of what he was saying. We shall leave it at that.

14. The petition is, therefore, rejected.

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