

Mohan

Vs

Bhairon Singh Shekhawat

Civil Appeal No. 5717 of 1994

(J. S. Verma, N. P. Singh, Faizanuddin JJ)

14.12.1995

ORDER

1. This appeal under Section 116-A of the Representation of the People Act, 1951 is against the judgment dated 25-5-1994 of the Rajasthan High Court in Election Petition No. 2 of 1994 rejecting the election petition under Order VII Rule 11 CPC on the ground that no triable issue arises therein. The relevant pleadings are contained in paragraphs 7 and 8 of the election petition with reference to which, primarily, the correctness of the High Court's view has to be tested.

2. The allegations in the election petition are of corrupt practices defined in sub-sections (3) and (3-A) of Section 123 of the Act. The averments in the election petition have to be read along with Annexure 'A' and Annexure 1 to the petition, the contents of which are incorporated by reference in the petition. Annexure 'A' is a transcript of the speech alleged to have been made by the respondent - the returned candidate at Falna on 27-10-1993 at about 9.15 p.m. The contention of the learned counsel for the appellant is that the contents of paragraph 8 of the election petition are to be read together with Annexure 'A' text of the Falna speech and the news item marked Annexure 1 wherein the report of the contents of the speech of the respondent are mentioned. The submission of the learned counsel for the appellant is that the averments made in paragraphs 7 and 8 of the election petition read with the aforesaid Annexure 'A' and Annexure 1 raise triable issues of the corrupt practices defined in sub-sections (3) and (3-A) of Section 123 of the Act. On this basis, it is urged that there was no ground for rejection of the election petition under Order VII Rule 11 CPC or even of striking out any part of the pleading in the election petition under Order VI Rule 16 CPC. It was argued that the application made under Order VI Rule 16 CPC by the respondent in the High Court is, therefore, liable to be rejected and the impugned judgment allowing that application as well as rejecting the election petition under Order VII Rule 11 CPC is liable to be set aside.

3. In reply, the learned counsel for the respondent submitted that if the court forms the opinion that more than one construction is possible of the pleadings contained in paragraph 8(d) and one view is that the material facts constituting the cause of action for these corrupt practices is pleaded in paragraph 8(d), then it may be possible to hold that a triable issue arises out of the pleading contained in paragraph 8(d) of the election petition. Learned counsel for the respondent submitted that even though the respondent would be able to explain him his Falna speech and contend that no such corrupt practice was committed by him, yet at this stage it may not be possible for him to contend that no triable issue arises at least to this extent. Learned counsel for the respondent, therefore, submitted that it is only to this limited extent relating to the pleading contained in paragraph 8(d) read with Annexure 'A' and Annexure 1 that the election petition could be remanded for trial but the pleading contained in paragraph 8(a) has to be struck out under Order VI Rule 16 CPC since no trial issue arises therefrom. Learned counsel for the respondent submitted that the

pleading in paragraph 7 of the election petition is only reiteration of the law on the subject and it does not contain any material fact therein. Obviously, at this stage the matter has to be decided on a plea of demurer and at the trial it would be open to the respondent to dispute the averments even to facts and to also explain the meaning of the speeches attributed to him.

4. Having heard both sides, and on consideration of the rival contentions we are satisfied that the entire order of the High Court has to be set aside.

5. There can be no serious dispute that the averments in the election petition relating to the Falna speech contained in paragraph 8(d) of the election petition read with the aforesaid Annexure 'A' and Annexure 1 do clearly raise certain triable issues and, therefore, rejection of the entire election petition under Order VII Rule 11 CPC by the High Court is contrary to law and is unsustainable. The only surviving question for consideration, therefore, is whether any part of the election petition is liable to be struck out under Order VI Rule 16 CPC and, therefore, on that basis the averments contained in paragraph 8(a) can be struck out as held by the High Court. In our considered opinion, the averments contained in paragraph 8(a) of the election petition also are not liable to be struck out under Order VI Rule 16 CPC. Obviously, these averments also have to be read together with the aforesaid Annexure 'A' and Annexure 1 since one of the speeches pleaded in paragraph 8(a) is in the meeting of 27-10-1993 at Falna as mentioned therein. This being so, the respondent's application made under Order VI Rule 16 CPC is also liable to be rejected and the High Court's order allowing the same too has to be set aside. The result is that the entire judgment of the High Court challenged in this appeal, has to be set aside.

6. In view of the fact that the matter has to be trial in the High Court on merits, it is appropriate, and this is also the common request of learned counsel for the parties, that we refrain from making any further observation about the averments and the nature of pleadings contained in the election petition.

7. For the aforesaid reasons, the appeal is allowed with costs and the impugned judgment of the High Court is set aside. The High Court would now proceed to try the election petition in accordance with law.