

Harcharan Singh Josh

Vs

Hari Kishan

Civil Appeal No. 7936 of 1995

(K. Ramaswamy, B. L. Hansaria, S.B. Majmudar JJ)

23.04.1996

ORDER

1. This appeal arises against the order of the Delhi High Court made on 26-5-1995 in Election Petition No. 6 of 1994. The appellant is an unsuccessful candidate in respect of one of the Assembly Constituencies known as No. 64, Sadar Bazar, to the National Capital Territory of Delhi Assembly. The elections were held on 6-11-1993. The respondent secured 27,126 votes while the appellant secured 25,786 votes. The latter filed an election petition on diverse grounds including corrupt practices under Section 123 of the Representation of the People Act, 1951. The High Court dismissed his election petition under Section 86 of the Act on its findings on four issues framed in that case. While upholding the findings in favour of the appellant on Issues 1 to 3, it held that the requisite number of true copies of the election petition were not supplied to the respondent in compliance with Section 81(3) of the Act. Reasons in support thereof are some grave mistakes including omission to supply full text of page No. 18 of the election petition. Another contention raised by the respondent was that the affidavit is not a true copy of the affidavit which was filed in the court along with the election petition. Though it was rejected by the High Court as one of the grounds against the rejection of the election petition, the respondent has filed cross-objections.

2. It is not necessary for us to go into the grounds on which the election petition was dismissed by the High Court. Suffice it to state that the objections raised by the respondent regarding non-supply of the true copy of the affidavit is a formidable objection which merits acceptance in view of the recent judgment of this Court in *Shipra (Dr) v. Shanti Lal Khoiwal* ((1996) 5 SCC 181 : JT (1996) 4 SCC 67). Therein the copy of the affidavit supplied to the respondent was not attested by the Oath Commissioner. This Court, after considering the entire case-law, held that the affirmation before the prescribed authority in the affidavit and the supply of its true copy is mandatory so that the returned candidate would not be misled in his understanding that imputation of the corrupt practices were solemnly affirmed and duly verified before the prescribed authority. For that purpose, Form 25 prescribed by Section 83 requires verification before the prescribed authority. The concept of substantial compliance has no application in such a case. It is seen that the copy of the affidavit supplied to the respondent does not contain the affirmation by the Oath Commissioner. Under these circumstances, the defect is not a curable defect. Therefore, the dismissal of the election petition on this ground is sustainable in law.

3. Learned counsel for the appellant placed reliance on an order of this Court in *Boota Singh v. Sher Singh* ((1997) 10 SCC 292). It would be seen that a Bench of two Judges of this Court has not expressed any conclusive opinion on the controversy. On the other hand, this Court remitted the matter to the High Court for reconsideration in accordance with law. Under these circumstances, the ratio therein is of no assistance to the appellant.

4. The appeal is dismissed. But, in the circumstances, without costs.