

Ashwani Kumar Sharma

Vs

Yaduvansh Singh

(Sujata V. Manohar, M. Jagannadha Rao JJ)

01.12.1997

JUDGMENT

MRS SUJATA V. MANOHAR.J.

1.The appellant and the respondents contested the Lok Sabha Election held in March, 1995 from the 190 Lakhisarai Constituency in the State of Bihar. Respondent no.1 was declared as the returned candidate. The appellant challenged the election of respondent no.1 before the Patna High Court by filing an election petition. In this petition he challenged the election under Section 100(1)(d)(iii) of the Representation of the People Act, 1951, alleging that the result of the election had been materially affected by the improper reception of votes and by mixing the votes of the appellant with the votes of other contesting candidates.

2.Respondent no.1 filed a petition before the High Court under Order 7 Rule 11 of the Civil Procedure Code read with Order 6 Rule 16 of the Civil Procedure Code raising a preliminary objection about the maintainability of the election petition. The High Court by its impugned judgment and order dated 13.1.1997 rejected the election petition of the appellant under Section 83(1)(a) of The Representation of People Act read with Order 7 Rule 11 on the ground that the petition did not disclose a complete cause of action and was, therefore, not maintainable.

3.The relevant provisions of Section 83(1) of The Representation of the People Act, 1951 are as follows:

83:Contents of petition:-

(1)An election petition: -

(a)shall contain a concise statement of the material facts on which the petitioner relies;

(b)shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c).....".

4.The election petition of the appellant does not allege any corrupt practice. Therefore, in the present case, the question of application of Section 83(1)(b) does not arise. The only relevant provision, therefore, in Section 83(1)(a) which requires the petition to contain a concise statement of

material facts on which the petitioner relies. The language of Section 83(1)(a) is similar to the language of Order VI Rule 2(1) which provides that "Every pleading shall contain, and contain only, a statement in a concise form of material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved". By contrast under Section 83(1)(b) not only is it necessary to set out full (as opposed to concise) particulars, but also a full statement of the names of parties who have allegedly committed a corrupt practice, and the date and place of its commission.

5. We have, therefore, to see whether the election petition contains a concise statement of material facts i.e. cause of action. The election petition of the appellant, from paragraph 10 onwards deals with the counting of ballot papers and why according to the appellant, such counting was unfair, improper or not in accordance with law. He has alleged that the Returning Officer did not comply with Rule 56 of the Conduct of Election Rules, 1961 and the instructions contained in the Hand-Book for Returning Officers. He has given particulars of some of the irregularities. In paragraph 15, for example, he has alleged that on counting table nos 11 and 12, ballot papers marked on "Hand" symbol were mixed with those of other party candidates; and in the process ballot papers which were marked on "Hand" were not being counted in favour of the appellant. The appellant has stated that his counting agents specifically stated to him when he visited the counting hall that hundreds of such ballot papers had already been mixed with the ballot papers in favour of an independent candidate, respondent no.9. He has alleged that 3,530 votes which should have been counted in his favour were wrongly counted in favour of respondent no.9. He has also referred to the contemporaneous written complaints lodged by him in this connection. In paragraph 16, detailed tables are given showing the wrong counting of votes cast in favour of the appellant which were counted as the votes of respondent no.9. The numbers of such votes so counted on each counting table have been separately set out in a tabular form in detail. The appellant has also sought leave to refer to and rely upon the various fax messages and complaints to the Returning Officer as well as to the General Observer made in this behalf by him. Amongst the other objections, he has alleged that at the stage of the fourth round of counting onwards, ballot papers of two different colours were seen. Despite the appellant complaining to the Returning Officer about the different colours of ballot papers on the counting tables, no proper attention was paid to his complaint. He has also set out that his counting agents were not given a reasonable opportunity of inspecting ballot papers before they were rejected. There are various other particulars set out in the election petition in support of the appellant's contention regarding irregularities and illegality in the counting of votes.

6. Whatever be the merit of such contentions, one thing at least is clear. The election petition cannot be rejected at a preliminary stage on the ground that it does not contain a concise statement of material facts.

7. The High Court has held that the allegations regarding irregularities in the counting of ballot papers are not supported by adequate material or by material particulars. The High Court has further held that some imaginary figures are given in respect of alleged irregularities. The appellant has, in his verification affidavit, stated that the statements are based on information derived from his counting agents and election agents. The High Court holds that because the names of these persons are not disclosed, the allegations must be considered as vague. The High Court has further said that the basis on which the counting agents or election agents of the appellant had furnished information regarding rejection of 2,500 ballot papers on the ground that the same did not bear the distinguishing mark or the signature of the Presiding Officer, has also not been furnished. However, evidence in support of the pleas which have been taken or facts which have been pleaded, cannot be confused with the concise statement of material facts which an election petition is required to set out

under Section 83(1)(a). In the case of *Shri Udhav Singh Vs. Madhav Rao Scindia* [(1977) 1 SCC 511], this Court made a distinction between material facts and material particulars. The Court said that this distinction was important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact would lead to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off. But if material particulars are lacking, they may be supplied at a later date. Respondent no.1 relies upon this distinction in support of his plea that the election petition is liable to be dismissed for non-disclosure of material facts. The election petition, however, is required to contain a concise statement of material facts, this being equivalent to a cause of action. The entire evidence in support of such material facts is not required to be set out. From the contents of the election petition, it is not possible to hold that a concise statement of material facts is not to be found in the petition. In the case of *Arun Kumar Bose Vs. Mond. Furkan Ansari & Ors.* (AIR 1983 SC 1311 at page 1314) this Court distinguished the provision of section 83(1)(a) from 83(1)(b). "The scheme in Section 83(1) of the Act makes the position clear. Clause (a) refers to general allegations and requires a concise statement of material facts to be furnished, while clause (b) referring to corrupt practice requires all details to be given". In that case, the number of wrongly rejected ballot papers and the counting table numbers were given Booth numbers were also given Particulars of ballot papers, however, were not given as not available It was held that pleadings set out material facts as per Section 83(1)(a) No corrupt practice was involved and Section 83(1)(b) was not attracted Pleading was held to be adequate.

8 Two other judgments which have been cited before us deal with the power of the High Court to order a recount. These are *Jitendra Bahadur Singh Vs Krishna Behari & Ors* [1970 (1) SCR 852] and *Satyanarain Dudhani Vs Uday Kumar Singh & Ors* 1993 Supp (2) SCC 82] In the latter case, it was pleaded in the election petition that 339 valid ballot papers in favour of the petitioner were not taken into account Thirty five valid votes were not counted in favour of the petitioner on the plea that the ballot papers were missing Irregularities were also pleaded materially affecting the result of the election This Court, in this context, dealt with the question whether the High Court should have ordered a recount It has come to the conclusion that before the Returning Officer, only a three-line application was filed No objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer The Court also felt that the material in the election petition was pleaded with the object of having a fishing enquiry and did not inspire confidence It, therefore, did not order a recount These two cases do not help the first respondent because neither of these cases deals with the dismissal of the election petition in limine on the ground of non-compliance with the provisions of Section 83(1)(a).

9 We do not propose to pronounce upon the merits or otherwise of the pleas raised in the election petition But the election petition, in the present case, cannot be considered as not disclosing any cause of action or not containing a concise statement of material facts.

10 The impugned order of the High Court is, therefore, set aside and the election petition is restored on the file of the High Court for disposal on merits The appeal is accordingly allowed with no order as to costs