

H. D. Revanna

Vs

G. Puttaswamy Gowda

Civil Appeal Nos. 14211-13 of 1996

(M. Srinivasan, U. C. Banerjee JJ)

21.01.1999

JUDGMENT

M. Srinivasan J

1. The appellant was declared elected on 11.12.1994 in the election held on 26.11.1994 for the 133 Holenarasipura Assembly Constituency in Karnataka State. The first respondent filed Election Petition No. 16 of 1995 in the High Court of Karnataka on the following grounds :-

(a) Non compliance with Rule 63 of the conduct of Election Rules, 1961 (hereinafter referred to as 'the Rules') attracting the provisions of Section 100(1)(d)(iv) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act').

(b) Commission of corrupt practices by the appellant and his father with the consent of the appellant falling within the scope of Section 100(1)(b) and Section 100(1)(d)(ii) and read with Section 123(2), 123(7)(f), and 123(8) of the Act.

2. The allegations in the Election Petition were mainly that after completion of counting by the Returning Officer, without announcing the result and recording the same in the prescribed form, a request made by the appellant for recount was entertained by the said official who was unduly influenced by the father of the appellant, H.D. Devegowda who later became the Prime Minister of the Country. It was alleged that the first respondent was leading by four votes and the father of the appellant who was by then declared elected to the Assembly, told the Returning Officer through telephonic communication that a recount should be ordered and the appellant should be helped to win the election by hook or crook. According to the petition, recount was ordered without compliance of Rule 63 brushing aside the objections raised by the first respondent arbitrarily and whimsically. Such recounting ordered by the Returning Officer who was unduly influenced by the father of the appellant was in utter disobedience of the mandate of law and vitiated the election. Secondly it was alleged that the vociferous and threatening conduct of the first respondent coerced and influenced the voters to vote for him as they were threatened with dire consequences otherwise. There was an atmosphere of terrorism in several places which prevented the voters from exercising their franchise freely according to their will and choice. The agents of Janata Dal party to which the appellant belonged were in total control of some polling booths and they were interfering in every election affair. It was also alleged that quite a number of invalid votes were counted in favour of the appellant as if they were valid. On such allegations, the first respondent prayed for declaring the election of the appellant to be void and declaring himself to be duly elected while holding that the order of recount was void and the result of such recount was non-est.

3. After entering appearance, the appellant filed three applications for summary dismissal of the Election Petition for non-compliance with certain statutory provisions which are mandatory. I.A. No. IX, was on the ground that the petition did not disclose a cause of action as the allegations of undue influence and recounting were not followed by any averment that the result of the election was materially affected; nor was there any averment in the petition as to any defect or malpractice in the course of recounting. I.A. No. X was for rejection of the affidavit filed by the petitioner along with the Election Petition as it did not fulfil the requirements of law and consequent dismissal of the petition. I.A. No. XV was for dismissal of the petition on the ground that allegations of corrupt practices were vague and not supported by material facts or particulars.

4. There were some other applications filed by the first respondent and respondents 7 & 8 for other reliefs. The High Court disposed them all by a common order dated 21.3.1996. The applications I.A. Nos. IX, X and XV filed as aforesaid by the appellant were dismissed. Aggrieved thereby, the appellant has obtained special leave and preferred these appeals.

5. Learned counsel for the appellant has drawn our attention to the verification in the Election Petition and the affidavit filed by the petitioner therein in support thereof and pointed out that it is not in conformity with Rule 94A of the Rules or Form 25. It was argued that the first respondent had not specifically set out which allegations were to his personal knowledge and which were stated on information. The failure to do so vitiated the entire Election Petition and made it liable to be dismissed. Secondly, he argued that recounting by the Returning Officer at the instance of the appellant was not the one contemplated by Rule 63 did not require to fulfil the conditions set forth in the rule. In any event, according to him, there was no allegation in the Election Petition as to the commission of any illegality or irregularity in the course of any illegality or irregularity in the course of such recounting; nor was there any allegation that the result of the election was materially affected on account of such illegality or irregularity in recounting. Thirdly, he contended that the allegations of corrupt practices were very vague and did not contain material facts or particulars. Thus, according to him, the Election Petition deserved to be dismissed in limine in the light of the law laid down by this court in several decisions.

6. As against this, learned counsel for the first respondent argued as follows :-

The Election Petition mentioned clearly the matters of which the petitioner therein had knowledge of his own and the matters of which he got information from others and believed them. The fact that the affidavit or the verification in the petition did not set out the numbers of the paragraphs separately did not affect the validity of the petition. Secondly, the recounting ordered by the Returning Officer was in violation of the provisions of Rule 63 and the said Officer was unduly influenced by the father of the appellant. According to him, the first respondent was leading by four votes and in order to make the appellant win the election, recounting was ordered without even providing a copy of the application given by the appellant to the Returning Officer for recounting. The passing of the said order was itself sufficient to vitiate the election. Thirdly, it was argued that the Election Petition described in detail the corrupt practices committed by the appellant and his father as defined by Section 123(2), 123(7)(f) and 123(8). It was further argued that the fact that the appellant had filed petitions for recrimination showed that he admitted the allegations contained in the Election Petition and it was not open to him to file an appeal in this court against the order of the High Court.

7. We can straightaway dispose of the last contention of the first respondent's counsel as one without any substance. The petitions for recrimination filed at the threshold of the proceedings were only on the footing that even if the averments made in the Election Petition were taken to be correct, the petition was liable to be dismissed as it did not satisfy the requirements of the Election Law. That does not mean, the appellant had admitted the truth of the allegations made in the petition.

8. The verification at the end of the Election Petition reads as follows :-

"I, Sri G. Puttaswamy Gowda, the election petitioner in the above petition do hereby solemnly affirm and declare that what is stated above in paras 1 to 6 are true to the best of my knowledge and belief and accordingly I have signed the above election petition on this 23rd day of January 1995 at Bangalore."

The affidavit filed in support of the petition states thus :-

"That the statements made in paragraphs 1 to 6 of the accompanying election petition about the commission of the corrupt practice of the Respondent-1, the returned candidate, and the returned candidate, and the particulars of such corrupt practice, mentioned in paragraphs 1 to 6 of the same petition and in paragraphs ----- to -- ----- of the Annexure-A to R appended thereto are true to my knowledge and information as set out in the body of the petition".

9. Neither the verification nor the affidavit is in the prescribed form. No doubt, this Court has repeatedly stressed the importance and necessity of the affidavit being in the prescribed form. It will be sufficient to refer to the two rulings cited by learned counsel for the appellant.

10. In *Dr. Shipra (Smt.) and others v. Shantilal Khoiwal and others*, 1996(5) SCC 181, it was observed :-

"Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the court is required to go into the question and decide the preliminary objection. In case the court does not uphold the same, the need to conduct trial would arise. If the court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the court is left with no option except to dismiss the same."

11. Very recently in *L.R. Shivaramagowda, v. T.M. Chandrashekar*, 1998(6) Scale 361, the matter was dealt with at some length. The court referred to *Virendra Kumar Saklecha v. Jagjiwan and others*, 1972(1) SCC 826 and quoted a passage in which the importance of disclosing the source of information in the affidavit was stressed. After referring to the later decisions taking a similar view, the Bench said as follows :-

"16. If the above well settled principles are applied in this case there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same."

"16A. We have already extracted paragraphs (f) & (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paragraphs (a) to (e) of the affidavit state that the averments therein are true to his information. Paragraph (f) is silent on this aspect of the matter. Paragraph (g) refers all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Election Rules. It is a very serious defect which has been overlooked by the High Court."

12. Learned counsel for the appellant relied on the provisions in O.XI of the High Court of Karnataka Rules, 1959 pertaining to affidavits used in the High Court. Rule 4 of O.XI reads as follows :-

"When an affidavit contains statements of facts not within the declarant's personal knowledge but based on the information received by the declarant, he shall state so and that he believes them to be true and also give the source of such information whenever possible and the grounds of his belief if any."

13. It is therefore argued by learned counsel for the appellant that the Election Petition should be dismissed in limine.

14. The argument is no doubt attractive. But, the relevant provisions in the Act are very specific. Section 86 provides for dismissal of election petition in limine for non-compliance of Sections 81, 82 and 117. Section 81 relates to presentation of election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with though in the High Court a contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section 81 were not complied. Sections 82 and 117 are not relevant in this case. Significantly Section 86 does not refer to Section 83 and non-compliance of Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance of Section 83 may lead to dismissal of the petition if the matter falls within the scope of O.6.R. 16 or O.7R.11 CPC. Defect in verification of the election petition or the affidavit accompanying election petition has been held to be curable and not fatal.

15. In *Murarka Radheshyam Ram Kumar v. Roop Singh Rathore and others*, 1964(3) SCR 573, Constitution Bench has held in unmistakable terms that a defect in the verification of an election petition as required by Section 83(1)(c) of the Act was not fatal to the maintainability of the petition and that a defect in the affidavit was not a sufficient ground for dismissal of the petition. Another Constitution Bench held in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, 1964(6) SCR 213, that even with regard to Section 81(3), substantial compliance with the requirement thereof was sufficient and only in cases of total or complete non-compliance with the provisions of Section 81(3), it could be said that the election petition was not one presented in accordance with the provisions of that part of the Act.

16. It is the said principle of substantial compliance which was adopted in *K.M. Mani v. P.J. Antony and others*, 1979(2) SCC 221. Reliance has rightly been placed thereon by learned counsel for the respondent.

17. In *F.A. Sapa and others v. Singora and other*, 1991(3) SCC 375, this Court held that a defect in the verification of the petition as well as a defect in the affidavit can be cured and it is not fatal to the maintainability of the petition. Neither in *Virendra Kumar Saklecha v. Jagjiwan and others*, 1972(1) SCC 826, nor in *L.R. Shivaramagowda v. T.M. Chandrashekar*, 1998(6) Scale 361 this Court went to the extent of holding that the election petition should be dismissed in limine for a deficiency in the affidavit or verification. In fact the question was expressly left open in the former case and it did not arise in the latter.

18. The decision in *Dr. Shipra (Smt.) and others v. Shantilal Khoiwal and others*, 1996(5) SCC 181 was based on the facts found therein. The observations made by the learned Judges in that case were found to be wide and the matter has been referred to a larger Bench by a Bench of three Judges in *T.M. Jacob v. C. Poulouse and others*, 1998(2) SCC 31. In any event, the ruling in *Dr. Shipra's* case does not apply to the present case as the facts are different.

19. As regards the second contention of learned counsel for the appellant, the question whether the Returning Officer was justified in ordering recounting in the circumstances of the case and whether such recounting fell within the scope of Rule 63 has to be decided at the trial. No opinion can be expressed at this stage on that question before the parties adduce evidence in that regard.

20. There is no merit in the contention that the Election Petition does not set out any illegality committed at the time of recounting. The various averments in the petition are to the effect that the order directing recount was itself an illegality vitiating the result of the election and also that in the course of such recounting, several illegalities were committed whereby the result of the election was materially effected. It is specifically averred in the petition that a large number of ballot papers which were invalid and were liable to be rejected were counted as valid votes in favour of the appellant. The attempt of the learned counsel for the appellant is to divide the Election Petition into two separate compartments, one dealing with recounting and the other with corrupt practices. It is not possible to dissect the Election Petition in that manner. The allegations regarding invalid votes no doubt find a place in paragraph 3 but they have to be read together with averments relating to recounting.

21. Learned counsel for the appellant has drawn our attention to *Chanda Singh v. Choudhary Shshiv Ram Verma and others*, 1975(4) SCC 393. It was held in that case that victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. But the Court had cautioned the Returning Officer to be very careful, objective and sensitive in assessing the legitimacy of the plea for re-running the course of counting. The other ruling referred to by the learned counsel on this aspect of the matter is *S. Baldev Singh v. Teja Singh Swatantar (dead) and others*, 1975(4) SCC 406. The same Bench which dealt with *Chanda Singh's* case held that the mandate of Rule 63 is that allowance of recount is not the exception and the refusal was restricted to cases where the demand itself was frivolous or unreasonable and that circumstances of each case decide the matter. The Bench also observed that where the margin of difference was minimal, the claim for a fresh count could not be summarily brushed aside as futile or trumpety. Both these rulings do not help the appellant at this stage. As pointed out earlier the matter depends upon the facts and circumstances which have to be established by evidence at the trial.

22. The third contention of learned counsel for the appellant relates to the allegations of corrupt practices. We are unable to accept his contention that they are vague and do not contain material facts. The High Court has extracted the relevant portions of the Election Petition which deal with corrupt practices. After perusing the entire petition, the High Court has observed as follows :-

"Therefore, from the perusal of these and other paragraphs of the election petition it appears that the petitioner has stated about the corrupt practices alleged to have been committed or practiced by the first respondent. After a perusal of the grounds taken in the election petition, I find force in the contention of the learned Counsel for the petitioner that necessary facts constituting the cause of action for invalidating the election and the corrupt practices committed by respondent-1 have been substantially pleaded. The allegations made in the election petition may be true or false, but, it is not possible to hold that the election petition does not disclose any material fact or give the material particulars of any of the corrupt practices. It is required to be stated that even if the court is satisfied that in respect of one of the corrupt practices alleged material facts and full particulars thereof have not been stated, still the election petition cannot be thrown out at the threshold, if in respect of other corrupt practice, the material facts and full particulars have been given in accordance with the requirement of Section 83(1) of the Act. As rightly argued by the learned counsel for the petitioner, the contents of the election petition are to be read as a whole and not to disjoint them from the context. They cannot be read in a truncated manner. If this test is applied, to the averments made in paragraphs-2 and 3, of the election petition, it will be quite clear that these paragraphs taken as a whole relates to the allegations regarding the commission of the corrupt practice under Section 123 of the Act and also with regard to the other irregularities which invalidates the election of the respondent-1."

We are entirely in agreement with the aforesaid view expressed by the High Court.

23. This Court has repeatedly pointed out the distinction between 'material facts' and 'particulars'. In so far as 'material facts' are concerned, this Court has held that they should be fully set out in the Election Petition and if any fact is not set out, the petitioner cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an Election Petition. As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars and if the Court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in *Shri Balwan Singh v. Shri Lakshmi Narain and others, 1960(3) SCR 91* held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the Tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out.

24. In *Raj Narain v. Smt. Indira Nehru Gandhi and another, 1972(3) SCC 850* the question was discussed in detail and it was held that pleadings need not be construed strictly. It is advantageous to extract the following passage :-

"While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds. The

charge of corrupt practice is a very serious charge. Purity of election is very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations ? Should the court refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative. The implications of the rule of law are manifold." (Para 16)

"19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it."

25. Applying the aforesaid rules in the present case the High Court has rightly observed in the judgment under appeal as follows :

"Therefore, in my view, the averments made in Paragraphs 2 and 3 of the election petition read as a whole in its entirety would clearly satisfy the requirement of Section 83(1) of the Act, in as much as the material facts, on which reliance was placed, for alleging the corrupt practice and other illegalities invalidating the election, to enable the respondent no. 1 meet the allegations made against him. In fact, having clearly understood the scope and ambit of the allegations made against him in the election petition, the respondent no. 11 has been able to file a recrimination petition filed along with the notice of recrimination submitted to the Court. Thus, there is no deficiency in the pleading of the corrupt practice under Section 123 of the Act and the other illegalities invalidating the election."

26. Learned counsel for the appellant has drawn our attention to *Dharamvir v. Amar Singh and others, 1996(3) SCC 158*. A Bench of two Judges held that sub-sections (2) and (7) of Section 123 of the Act are applicable only to cases of corrupt practices indulged at the state prior to the casting practices indulged at the stage prior to the casting of the votes and not at the post-voting stage. The facts in the case were entirely different. It was also pointed out in the judgment that the election and counting were over in that case prior to insertion of Section 128(8) and 135A(d) of the Act and those provisions were not retrospective in operation and therefore not applicable to the facts of the case. In the present case the election was itself held in 1994 long after the insertion of said provisions and the ruling has therefore no applicability in this case.

27. The test in all cases of preliminary objection is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in the affirmative, the maintainability of the petition has to be upheld. In the present case we have no doubt that if the allegations contained in the election petition are proved to be true by the petitioner therein, he will be entitled to get the relief set out in the prayer portion. Hence, we do not find any merit in the appeals and they are hereby dismissed with costs. Counsel's fee Rs. 5,000/-.