

D. Ramachandran

Vs

R. V. Janakiraman and Others

Civil Appeal No. 5354 of 1997

(CJI Dr. A. S Anand, M. Srivivasan, R. P. Sethi JJ)

11.03.1999

JUDGMENT

SRINIVASAN, J. -

1. Aggrieved by the dismissal of his election petition EP No. 3 of 1996 on a preliminary issue, the appellant has approached this Court.
2. In the general elections held in 1996 to the Legislative Assembly of Pondicherry, the first respondent was elected from 7, Nellithope Constituency with 8803 votes. The appellant secured 7354 votes while the votes polled by Respondents 2 to 7 are not worthy of mentioning. The 8th respondent in this appeal is the Returning Officer. The appeal is contested by the first respondent whose application OA No. 36 of 1987 for striking out paras 6 to 10, 11 to 18, 19, 20, 26, 31 and 32 of the election petition and consequent rejection of the said petition at the threshold without going to trial was allowed by the High Court.
3. In the election petition, the appellant made the following allegations. The first respondent and his family were not residents of 7, Nellithope Assembly Constituency but the first respondent managed to get the names recorded as voters in the Constituency. The first respondent indulged in character assassination against the appellant personally attacking him in TV interview, in printed pamphlets distributed through his agents and workers with his consent and Knowledge and in the election campaign meetings. The 1st respondent deliberately and purposely violated the relevant rules and regulations. The 1st respondent incurred expenditure in excess of the a permitted limit of Rs. 30,000 and did not disclose all the expenses in the accounts. The first respondent utilised the services of government servants who canvassed for him in the elections. There were 3216 names in the voters' list who could not have polled at all as 1455 were not available at the addresses mentioned, 1554 had gone out of Pondicherry and some of them were even out of India while 207 were dead. Though it was brought to the notice of the Returning Officer who had informed the polling officers concerned of the polling booths, 2000 of them had been shown to have polled their votes. The first respondent had indulged in several corrupt practices as a result of which the results of the election were materially affected. The appellant prayed for declaring the election of the first respondent to be void and declaring himself to be validly elected to the Assembly from the Constituency in question.
4. The first respondent filed a detailed counter-affidavit denying each one of the allegations made in the election petition in December 1996. There was no whisper therein that any of the allegations in the petition was vague or made in such a way that the respondent was not in a position to understand and meet the same. Nor was there any averment that any part of the election petition was unnecessary, scandalous, frivolous or vexatious or would tend to prejudice, embarrass or delay the

fair trial of the suit. There was also no averment to the effect that the election petition was otherwise an abuse of the process of the court. With regard to some of the allegations made in the petition, a plea was raised by the first respondent that they did not disclose a cause of action.

5. Sometime after filing such a counter-affidavit, the first respondent filed on 22-1-1997 Original Application No. 36 of 1997 praying for striking out paras 6 to 20, 26, 31 and 32 of the election petition and consequently rejecting the entire election petition in limine. In the said application, the first respondent averred that the various allegations in the election petition did not project any material facts and thereby any triable issue. A perusal of the said application shows that the only basis on which the prayer therein was made was that the allegations contained in the election petition did not disclose a cause of action and no triable issue arose thereon. The appellant filed a counter-affidavit to the said application opposing the same. Apart from that, the appellant filed OA No. 186 of 1997 on 12-3-1997 praying for permission to file original documents filed along with the reply statement as Annexures 21 to 29. That application was also opposed by the first respondent and a counter-affidavit was filed.

6. The High Court heard the two applications. The High Court framed three points for consideration as follows :

"(1) whether the original documents filed along with the reply statement, as Enclosures 21 to 29 more fully described in the Schedule are relevant, as necessary and receivable at this stage, on the facts and in the circumstances of the case;

(2) whether preliminary objections taken as to the maintainability to the election petition is sustainable in law, on the facts and in the circumstances of the case; and

(3) what is the consequence to flow from the sustainability or otherwise of the objections so taken."

Point 1 was answered against the appellant and his application OA No. 186 of 1997 was dismissed. Point 2 was answered in favour of the first respondent and his application OA No. 36 of 1997 was allowed. Consequently, under Point 3, the Court rejected the main EP No. 3 of 1996.

7. It is that judgment of the High Court which is challenged before us. As rightly contended by the learned counsel for the appellant, the judgment of the learned Judge is obviously based upon a confusion of ideas and failure to appreciate the distinction between the provisions in Sections 81, 83 and 85 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") on the one hand and Order 6 Rule 16 and Order 7 Rule 11 of the Civil Procedure Code on the other. The learned Judge has chosen to test the veracity and sufficiency of the allegations in the election petition by taking note of the facts pleaded by the first respondent in his counter-affidavit. In the circumstances, the learned Senior Counsel appearing for the first respondent has rightly concentrated on supporting the conclusion of the High Court rejecting the election petition and did not make any serious effort to support the reasoning contained in the judgment.

8. We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection,

the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

9. Under Order 6 Rule 16, the court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious; or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the Rule. Hence striking out parts of the pleading in this case was not at all justified.

10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *Roop Lal Sathi v. Nachhattar Singh Gill* ((1982) 3 SCC 487). We are satisfied that the election petition in this case could not have been rejected in limine without a trial.

11. Designedly, we are refraining from advert to the arguments pertaining to each allegation of corrupt practice, lest any observation by us might affect the views of the trial Judge. Suffice it to point out that this Court has repeatedly clarified the difference between "material facts" and "full particulars" and the different consequences of failure to set out either of them. In *L. R. Shivaramagowda v. T. M. Chandrashekar* ((1999) 1 SCC 666 : (1998) 6 Scale 361) cited by counsel on both sides, the case-law has been traced and the propositions are reiterated.

12. The following rulings relied on by learned Senior Counsel for the first respondent have no application here as they were all rendered in election petitions disposed of after trial :

(a) *Surinder Singh v. Hardial Singh* ((1985) 1 SCC 91).

(b) *Manohar Joshi v. Nitin Bhaurao Patil* ((1996) 1 SCC 169).

(c) *Moreshwar Save v. Dwarkadas Yashwantrao Pathrikar* ((1996) 1 SCC 394).

(d) *Ramakant Mayekar v. Celine D'Silva* ((1996) 1 SCC 399).

13. The decision in *Ram Chand Bhatia v. Hardyal* ((1986) 2 SCC 121) making a distinction between statements assailing personal character and those assailing public or political character of a candidate is not relevant at this stage. As pointed out by the Bench in that case, the question would depend on the facts of each case. Such facts can be determined only at the trial. The decision in *Azhar Hussain v. Rajiv Gandhi* 1986 Supp SCC 315) relied on by learned Senior Counsel turned on

the facts of the case and has no relevance in this case.

14. In the view we have expressed, it is not necessary for us to refer in detail to the rulings relied upon by learned counsel for the appellant.

15. As regards OA No. 186 of 1997, the approach of the learned Judge totally erroneous as he has not kept in mind the distinction between "material facts" and "full particulars". Nor has he correctly appreciated the decisions of this Court referred to by him. We do not want to express any opinion at this stage on the additional documents produced by the appellant. The trial court may decide the application in the light of the relevant judgments of this Court, in particular, those laying down the difference between "material facts" and "full particulars". Hence the order in OA No. 186 of 1997 is set aside and the application is remanded for fresh disposal in accordance with law.

16. In the result, we hold that the judgment of the High Court unsustainable and it is hereby set aside. The appeal is allowed and EP No. 3 of 1996 is restored to file. OA No. 36 of 1997 stands dismissed. We request the High Court to expeditiously dispose of the election petition on merits. There will be no order as to costs.