

# SUPREME COURT OF INDIA

Sudarsha Avasthi

Vs.

Shiv Pal Singh

C.A.No.6807 of 2005

(A.K.Mathur and Altamas Kabir JJ.)

16.05.2008

## JUDGMENT

### **A.K. Mathur, J.**

1. Both these appeals involve common question of fact and law, therefore, they are disposed of by this common order. For convenient disposal of both the case, the facts given in C.A.No.6807 of 2005 (Sudarsha Avasthi v. Shiv Pal Singh) are taken into consideration.

2. This civil appeal is directed against the order passed by learned Single Judge of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow by which three election petitions were disposed of one by the appellant, Jitendra Nath Pandey and Sharad Tiwari by the common order. The appellant before us, Sudarsha Avasthi filed an election petition being Election Petition No.3 of 2002 for declaration of Shiv Pal Singh's election to the Uttar Pradesh Legislative Council to be void on various grounds. The appellant was an elector in the Electoral Roll for election to the Legislative Council of Uttar Pradesh from Lucknow Division Graduates' Constituency and his name was mentioned at Serial No.1595 of Part No.190 Aliganj Ward Lucknow. The election was held on 2.5.2002 and the result was declared on 7.5.2002. The respondent - Shiv Pal Singh was declared elected. The election of the elected representative- respondent was challenged on the ground that the result of the election had been materially affected by improper acceptance of nomination paper of respondent. Respondent committed corrupt practice by giving money directly to Ram Pratap Singh and Pradeep Kumar with a view to induce them to contest as candidates in the said election. The respondent also committed corrupt practice by giving money to S.P.Singhal with the object of inducing him to withdraw his nomination. Lastly, the respondent committed corrupt practice of procuring assistance in furtherance of his prospects in the election from the Additional Commission (Administration), Lucknow Division who was the Assistant Returning Officer in the said election. A detailed affidavit was filed by the appellant disclosing the material facts of the corrupt practice. The Election petition was contested by the returned candidate- the respondent, Shiv Pal Singh. It was pleaded on behalf of the respondent that the election petition did not disclose any cause of action pleadings are vague, frivolous and vexatious. The concise statement of material facts and the full

particulars of the allegations of corrupt practices had not been disclosed. Therefore, the election petition was liable to be dismissed for non-compliance of the provisions of Sections 82 & 83 of the *Representation of the People Act, 1951* (hereinafter to be referred to as the Act). An application was also filed under Order VI Rule 16 read with Order VII Rule 11 of the *Code of Civil Procedure* ( hereinafter to be referred to as the C.P.C.) praying for dismissal of the election petition. The respondent moved an application and prayed that the preliminary issues pertaining to the maintainability of the election petition and the other that the election petition lacked material facts and disclosed no cause of action. Two issues were framed as preliminary issues which read as under:

"1. Whether the election petition preferred by the petitioner is liable to be dismissed as it was presented before the Registrar and not before the Judge of the High Court dealing with the election matter?

2. Whether the election petition deserves to be dismissed as it does not disclose any cause of action and material facts and the particulars are lacking as alleged at this stage?

It was also referred by learned Single Judge that during the course of the proceedings, only learned counsel for the respondent- Shiv Pal Singh in Election Petition No.3 of 2002 and the appellant in person submitted their arguments on the preliminary issues as reproduced above. No issues were framed nor were any arguments advanced in the other two election petitions. Therefore, learned Single Judge observed that the order passed in election petition No.3 of 2002 will have no bearing on the other two election petitions."

3. So far as the issue No.1 was concerned, learned Single Judge after review of the pleadings, held that it was wrong to say that the election petition was not properly represented. So far as issue No.2 was concerned learned Single Judge after review of pleadings and arguments made in the petition came to the following conclusion.

" The long and short of above discussions is that the petitioner suppressed the material facts which could disclose the cause of action and there being no cause of action, which might have accrued to him, I am of the decisive opinion that this election petition being devoid of merit deserves to be dismissed."

4. Incidentally, it may be mentioned that the tenure of the present office of Legislative Council has already expired and new election has already been ordered and they were held during the pendency of this petition and the results are awaited. Therefore, it was contended on behalf of the respondent that it is purely an academic issue as the fresh election has already been held and the term of the present office is already over. Therefore, no useful purpose will be served in going into the merit of the case. The appellant submitted that he has made serious allegations of corrupt practice and in case he succeeds in establishing that there was corrupt practice then the incumbent could be debarred from contesting the election. Therefore, the appellant insisted that the civil appeal should be decided on merits.

5. We have heard the appellant in person and learned counsel for the respondent and perused the record. So far as issue No.2 is concerned, whether the election petition deserves to be dismissed as it does not disclose any cause of action and material facts and the particulars are lacking. In order to appreciate the contention we may refer to necessary provisions of the Act pertaining to pleadings. Section 83 of the Act says what should be the contents of the election petition. Section 83 of the Act reads as under:

“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) shall be signed by the petitioner and verified in the manner laid down in the *Code of Civil Procedure, 1908* (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to be petition shall also be signed by the petitioner and verified in the same manner as the petition."

As per Section 83 of the Act, it is the duty of the person who files the election petition and levels the allegation of corrupt practice, he has to disclose the material facts on which he relies and that should set forth the full particulars of a corrupt practice that the petitioner alleges including the full statement as far as possible disclosing the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice and the same shall be filed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure. Apart from this, he has to file an affidavit in prescribed form in support of the allegation of such corrupt practice and he should disclose the particulars thereof. If he wants to rely on any document then it should be annexed to the petition signed by the petitioner and verified in the same manner as the petition. Section 123 of the Act deals with the corrupt practice. What shall be the corrupt practice have been enumerated in Section 123 of the Act, like; bribery which has been defined that any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of including a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an

election or an elector to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or an elector for having voted or refrained from voting. Therefore, the detailed particulars are required to be given that how a person is being bribed by various modes. All these particulars have to be given in the manner provided in Section 83 of the Act.”

6. Now, keeping in background these provisions we may advert to the facts that what were the pleadings made by the appellant in his election petition and disclosure made therein. So far as the question of nomination is concerned, the appellant in person has not seriously agitated because he submitted that the election was held and that the term has almost come to an end. Therefore, he concentrated primarily on the question of corrupt practice disclosed by him in his election petition. The appellant tried to persuade us that sufficient material particulars have been disclosed and the view taken by learned Single Judge that sufficient material particulars were not disclosed was not correct. Therefore, what are the material particulars disclosed by the appellant in his election petition had to be considered. So far as the allegation of corrupt practice is concerned, the same are contained in paragraph 5 B, C & D of the election which read as under:

"5 B Because the Returned Candidate Respondent No.1 committed the corrupt practice of Bribery for gratification ( i.e. giving money) directly to induce Respondent No.2 and 3 to stand as candidates in the aforesaid election.

C. Because the Returned candidate, Respondent No.1 committed the corrupt practice of Bribery by giving money to Respondent No.4 with object of inducing directly the Respondent No.4 to withdraw from the contest from the aforesaid election.

D. Because the Returned Candidate the Respondent No.1 committed the corrupt practice of procuring assistance for the furtherance of his prospects in the aforesaid election, from the Additional Commissioner (Administration), Lucknow Division, Shri A.K.Mishra, who was also the Assistant Returning Officer in the aforesaid election, and wrongly allowed an application of the Respondent No.1 for correction of his name on the ballot paper in violation of the applicable statutory provision and disallowed, with utter disregard to the directions given by the Election Commission of India to the Returning Officers for dealing with such applicants, a similar application of Km. Vibha Avasthi, another candidate to the aforesaid election, on the basis of extraneous material privately supplied by the Respondent No.1 to the said Assistant Returning Officer."

So far as the ground B is concerned, the allegations have been set out in paragraph 16 and the relevant allegations start from paragraphs 19 and 20 which read as under:

"19. The Respondent No.2 Ram Pratap Singh. S/o Late Ram Lal Singh is real brother of the Respondent No.1. The Respondent inducing directly Respondent No.2 to stand as a candidate in the aforesaid election, On 11.04.2002 at about 12.45 p.m. gave

Rupees Ten Thousand (Rs.10,000.00) to Respondent No.2 inside the Court room of the Commissioner Lucknow Division, for filing his (i.e. of Respondent No.2) nomination papers to become a candidate in the aforesaid election to U.P.Legislative Council from Lucknow Division Graduates' Constituency. The Respondent No.2 thereafter deposited the security money and filed his nomination papers before the Assistant Returning Officer in the Court room of the Commissioner, Lucknow, in presence of the Respondent No.1.

20. That Respondent No.1, while inducing Respondent No.3 directly to stand as a candidate in the aforesaid election, on 11.04.2002 at about 1.00 PM gave Rupees Ten Thousand (Rs.10,000.00) to Respondent No.3 Pradeep Kumar, S/o Late Behari Lal in the Verandah which is outside the court room of the Commissioner, Lucknow Division, for filing his (i.e. of Respondent No.3) nomination papers to become a candidate in the aforesaid election to the Uttar Pradesh Legislative Council from the Lucknow Division Graduates' Constituency. The Respondent No.1, thereafter, delivered the nomination papers to the Respondent No.3 and made him to put his signature on them at the table inside the court room of the Commissioner, Lucknow Division, while the Respondent No.1 was standing by his side indicating the places for putting the signatures. The Respondent No.3 thereafter deposited the security money and filed his nomination papers before the Assistant Returning Officer in the courtroom of Commissioner, Lucknow Division. "

So far as the allegations contained in Paragraph 5 C are concerned, those are contained in paragraph 21 onwards. Relevant allegations are in paragraphs 23 and 24 which read as under:

" 23. That Respondent No.4 S.P.Singhal S/o Ram Chandar Singhal had filed his nomination paper on 06.04.2002 in the aforesaid election and his nomination papers were found valid and accepted by the Returning Officer on 12.04.2002.

24. That Respondent No.1 gave Rupees Thirty Thousand (Rs.30,000.00) to Respondent No.4 inside the compound of the Commissioner's Office (Lucknow Division) near the exit gate, on 15.04.2002 at about 2.00 p.m. to withdraw from being a candidate at the aforesaid election. Thereafter, the Respondent No.4 withdraws his candidature by giving Notice in writing addressed to the Returning Officer on 15.4.2002."

So far as the allegations contained in Paragraph 5 D, those are set out at paragraph 25 onwards. Relevant portions contained in paragraphs 27 to 29 which read as under:

" 27. That on 15.04.2002 at 2.25 P.M. the petitioner had submitted an application from Km.Vibha Avasthi, a candidate in the aforesaid election, for addition of her popular name on the ballot paper, by also including her alias "Dr.Vibha Harikrishna Avasthi", and at that time the Respondent No.1 and his counsel were pleading before

the Assistant Returning Officer Shri A.K.Mishra for allowing to move a third application for correction of his name in a manner as to distance/distinguish it on the ballot paper from the other two candidates with similar name viz. Shiv Pal Singh and the Petitioner tried to object to such a request, which was improper and beyond the scope of the provision in this regard, but a visibly annoyed Assistant Returning Officer Shri A.K.Mishra advised the Petitioner to confine his submissions on the application moved by the petitioner, but when requested to inform the objection, if any, or the reasons of dissatisfaction of the Returning Officer as to the genuineness of the request, the said Assistant Returning Officer announced that time for withdrawing the nominations and making applications was over, and left the room without pronouncing any decision on the applications before him.

28. That at about 3.45 p.m. on the same day, the petitioner went to the chamber of the Assistant Returning Officer Shri A.K.Mishra, the doors of his room were half closed, and the petitioner was not allowed entry by the home guard on duty outside the room, informing that the Additional Commissioner was busy with another candidate and while the petitioner was waiting outside his room he could hear a conversation inside the room, with Mr.A.K.Mishra inquiring from Mr.Raes, the genuineness of a sample ballot paper given by S.P.Singh, and the reply was in affirmative.

29. That thereafter the doors of the room opened and the Petitioner saw the Respondent No.1 and his counsel coming out of room bowing and profusely thanking the ARO Shri A.K.Mishra; and then the petitioner was allowed entry inside the room of Shri A.K.Mishra and saw Mr.Raes Ahmad, the Senior Clerk of Lucknow District Election Office sitting inside the room and when the Petitioner asked the fate of the application moved by him on behalf of Km.Vibha Avasthi, Shri A.K.Mishra the ARO replied that the same was rejected, but refused to give reasons for his decision, even on asking by the Petitioner." Learned Single Judge has taken into consideration these grounds of corrupt practice along with the allegations contained in the election petition as reproduced above and came to the finding that these all appear to be cock and bull story. It was observed that it is not believable that Ram Pratap Singh who is the real brother of the respondent would accept illegal gratification in public view, that too inside the Court room of the Commissioner. It was further observed that the appellant did not disclose the name of any witness who was present inside the court room or outside when the money was handed over to the brother of the respondent. Similarly on the analogy that the theory of giving Rs.30,000/- as bribe to the Respondent No.4 in office of Commissioner appears to be nothing but figment of imagination. Lastly regarding ground D it was observed that Ku. Vibha Avasthi wanted some alteration in her name. She did not move any application for addition of surname of her father. But the copy of this application for alteration of the name was not filed and it was deliberately concealed that he was the agent of Kumari Vibha Avasthi and it was also found that it is difficult to understand when the Office of the Assistant Commissioner cum Returning Officer, Shri A.K.Mishra was cordoned off by the Home Guards how did he

enter inside the room of Shri A.K.Mishra and it is unbelievable that the respondent went inside the room of Shri A.K.Mishra and influenced him in one way or the other and secondly it was also held that it was not wrong on the part of the candidate to have entered the office of Shri A.K.Mishra and it is difficult to believe that other person standing outside could know what transpired between the Officer and the person inside. Therefore, learned Single Judge found that this is nothing but a cock and bull story. On the basis of these pleadings learned Single Judge ultimately concluded that there were no material facts disclosing the cause of action and consequently, dismissed the election petition.”

7. The election petition is a serious matter and it cannot be treated lightly or in fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose. The allegations made in the petition as disclosed in the election petition appear to us to be totally a cock and bull story. We are in agreement with the view taken by the learned Single Judge that a brother will give a sum of Rs.10,000/- in the office of the Returning Officer i.e. Assistant Commissioner for appearing in the election or contesting the election or a sum of Rs.30,000/- to another candidate for withdrawing in full public view of all and sundry. On the face of it appears to be unbelievable and these allegations have been alleged in order to make a ground for some how or the other to put pressure on the respondent. Learned Single Judge after review of the allegations contained therein has rightly concluded that these allegations are not precise allegations so as to show that these are serious allegations to be tried in the election petition. Learned Single Judge has gone through all these allegations and it also appears to us to be most unbelievable and impracticable sequence of events. It is easy to allege without giving the detail particulars whether the whole thing transpired in a hearing distance. We are in full agreement with the view taken by learned Single Judge and we are of opinion that the learned Single Judge has correctly appreciated that this case lacks in particularity any allegation of bribery as contained in Section 123 read with Section 83 of the Act.

8. The appellant in person has taken us through various decisions of this Court. The followings are the list of cases cited by the appellant.

“i) *Roop Lal Sathi v. Machhattar Singh*<sup>1</sup>

ii) *F.A.Sapa & Ors. v. Singora & Ors.*<sup>2</sup>

iii) *T.M.Jacob v. C.Poulose & Ors.*<sup>3</sup>

iv) *Sardar Harcharan Singh Brar v. Sukh Darshan Singh & Ors.*<sup>4</sup>

v) *Harkirat Singh v. Amrinder Singh*<sup>5</sup>”

9. No useful purpose will be served by referring to all these cases. The ratio of all these cases is the election petition should contain the allegation of bribery in a concise manner with material particulars. Material particulars disclosed in the present as

mentioned above, are not sufficient to be gone into for trial. We are in full agreement with the view taken by learned Single Judge. Therefore, we find no merit in the appeal and the same is dismissed. No order as to costs. Civil Appeal No.1108 of 2007

10. The election petition before the High Court was dismissed for want of prosecution as nobody appeared. The learned Judge has recorded in his order that the matter was adjourned number of times and nobody appeared. Therefore, it is not necessary to restore this petition as petitioner was not serious and present term has already expired. This appeal is dismissed with no order as to costs.

<sup>1</sup>*AIR 1982 SC 1559*

<sup>2</sup>*(1991) 3 SCC 375*

<sup>3</sup>*(1999) 4 SCC 274*

<sup>4</sup>*(2004) 11 SCC 196*

<sup>5</sup>*(2005) 13 SCC 511*