

SUPREME COURT OF INDIA

G.V.Sreerama Reddy

Vs.

Returning Officer

C.A.No.6269 of 2008

(D.K. Jain and P. Sathasivam JJ.)

11.08.2009

JUDGMENT

P. Sathasivam, J.

1. This appeal, under Section 116A of the *Representation of the People Act, 1951*, is directed against the order dated 19.09.2008 of the High Court of Karnataka at Bangalore in Election Petition No. 4 of 2008 in and by which the High Court upheld the objection of the Registry that there was no proper presentation of the election petition in terms of Section 81 (1) of the *Representation of the People Act, 1951*, (hereinafter referred to as the Act), consequently dismissed the election petition.

2. Election to Constituency No. 140, Bagepalli, Karnataka Legislative Assembly was held in the General Elections conducted in the State in 2008. Appellant No.1 was the candidate of the CPM party. Appellant No.2 was his election agent. Respondent No.1 is the Returning Officer of Bagepalli Legislative Assembly Constituency. Respondent No.2 is the Congress candidate who has been declared elected in the election held on 10.05.2008. Respondent No.3 is the Observer appointed by the Election Commission of India.

3. According to the appellants, election was held on 10.05.2008 and counting took place on 25.05.2008. Initially, the Media Officer appointed by the Election Commission announced appellant No.1 as the successful candidate and declared him elected. When the election agents and counting agents of appellant No.1 had left the place of counting, an application for re-counting was submitted by the second respondent and thereafter, second respondent was declared elected. The appellants filed an election petition under Section 81 of the Act on various grounds pointing out large-scale irregularities and illegalities committed by respondent-authorities in the voting and the illegalities of allowing the recounting after announcing the declaration of appellant No.1 as elected.

4. On 06.07.2008, the first appellant, through his advocate, Shri Shiva Reddy presented the election petition before the Registrar (Judicial), High Court of Karnataka. The Registry of the High Court put up an office objection that as the appellants were not present at the time of

filing of the election petition, the presentation of the papers were not in accordance with Section 81 of the Act and as such there was no proper filing of the election petition. Based on the office objection, the matter was placed before the learned Single Judge of the High Court dealing with the election petition and arguments were heard. By the impugned order, the learned Single Judge based on the recorded statement of Registrar (Judicial) dated 07.07.2008 that petitioners were not present while presenting this petition and finding that it was not a proper presentation in terms of Section 81, dismissed the election petition. Aggrieved by the said order, the appellants have filed this appeal before this Court.

5. We have heard Mr. P.R. Ramasesh, learned counsel appearing for the appellants and Dr. Sushil Balwada, learned counsel appearing for the contesting second respondent.

6. Since the election petition was dismissed at the threshold on the alleged ground of improper filing, there is no need to traverse various averments made therein. The only question to be considered by this Court is whether the election petition as presented was in accordance with Section 81 (1) of the Act and whether the High Court was right in dismissing the same as it was not presented by the candidate or elector?

7. Part VI of the Act relates to disputes regarding elections. Chapter II therein speaks about presentation of election petitions to the High Court. Section 80 mandates that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. Section 81 relates to presentation of election petitions which reads thus:

“Presentation of petitions.-- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two date. Explanation.- In this sub-section, elector means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) Omitted by Act 47 of 1966 with effect from 14.12.1966.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

Sub-section (1) makes it clear that any challenge or dispute relating to an election may be presented in the form of an election petition highlighting the grounds specified in sub-section (1) of Sections 100 and 101. It further mandates that the election petition is to be filed only before the High Court having jurisdiction either by any candidate or any elector within the prescribed time. As per sub-section (1),

election petition is to be filed within 45 days from the date of election of the returned candidate.”

8. Sub-section (1) also makes it clear that the election can be challenged not only by any candidate of such election but also even an elector who was entitled to vote at the election to which the election petition relates irrespective of the fact that whether he has voted at such election or not. Sub-section (3) mandates that depending on the number of respondents mentioned in the petition, such required copies duly attested by the election petitioner under his own signature to be a true copy of the petition shall be furnished.

9. Learned counsel appearing for the appellants submitted that in the light of the language used in sub-section (1) there is no compulsion/obligation to present the election petition by the candidate himself. In other words, according to him, in view of the fact that the election petitioner had duly executed a vakalatnama, in favour of his advocate, he is empowered to present it to the authorized officer of the Registry. It is further contended that presentation of the election petition by a candidate or elector is not mandatory and if it is presented by his advocate duly authorized, the same is a proper presentation in terms of sub-section (1) of Section 81 of the Act. It is also contended that in cases of substantial compliance and where it is shown that absence was not to harm the respondent's case and certain exigencies existed which made the presence difficult, the court should not dismiss the petition merely for non-compliance with Section 81 (1) of the Act. On the other hand, learned counsel appearing for the contesting second respondent- successful candidate submitted that in view of the language used in sub-section (1), it is mandatory that the candidate or elector is to personally present it before the High Court. In view of the endorsement by the Registrar (Judicial) stating that the petitioners (appellants herein) were not present while presenting the election petition, the impugned order of the High Court dismissing the same cannot be faulted with.

10. A close look of Section 81 reveals that the two remaining Sub-sections after the amendment introduced by Act 47 of 1966, i.e. (1) and (3) deal with two distinct, but inter-related issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and Sub-section (3) deals with additional requirements as to the petition presented.

11. Sub-section (1) has five components, (i) the qualification of the petitioner, i.e. he/she must be either a candidate at such election or an elector; (ii) the petition must be presented `by' the petitioner; (iii) the petition must be based on one or more of the grounds specified in sub-section (1) of section 100 and section 101; (iv) it must be presented in the High Court; and (v) it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

12. Therefore, all these five requirements are extremely specific and clear. This inference is further strengthened by Section 86(1) which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81.

13. This Court, on previous occasions, had the chance to interpret Section 81(1). It must be noted that the Representation of the People Act is a special statute, and a self-contained regime. In *K. Venkateswara Rao and Anr. vs. Bekkam Narasimha Reddi and Ors.*¹, a question arose whether 45 days period provided under Section 81(1) could be condoned through the application of the Limitation Act? After examining the relevant provisions of the Act, this Court held: ...the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the *Indian Limitation Act*.

14. This has been reiterated in *Hukumdev Narain Yadav vs. Lalit Narain Mishra*², wherein this Court has again read the requirements under Section 81 strictly, while stating that the Act is a self- contained special statute.

15. While interpreting a special statute, which is a self- contained code, the Court must consider the intention of the Legislature. The reason for this fidelity towards the Legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed. The preamble of the Representation of the People Act makes it clear that for the conduct of elections of the Houses of Parliament or the Legislature of each State, the qualification and dis- qualification for membership of those Houses, the corrupt practice and other offences in connection with such allegations the Act was enacted by the Parliament. In spite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trial of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.

16. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented by the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

17. In this context, earlier decisions of this Court regarding the interpretation of Section 81(1) must be understood. In *Sheo Sadan Singh vs. Mohan Lal Gautam*³, in paragraph 4, this court held that:

“The High Court has found as a fact that the election petition was presented to the registry by an advocate's clerk in the immediate presence of the petitioner. Therefore,

in substance though not in form, it was presented by the petitioner himself. Hence the requirement of the law was fully satisfied.

Learned counsel for the appellant submitted that even though the form of the provision was not followed, i.e. the petition was not presented by the petitioner personally, in substance, it was followed. It is to be noted that in *Sadan Singh's* case, it is not in dispute that the petition was presented to the Registry in the immediate presence of the petitioner. In other words, the officer authorized by the High Court had an opportunity to verify him but in the case on hand, admittedly, it was presented only by the advocate and the petitioners were not present before the Registrar (Judicial). In view of the same, the said decision is not helpful to the appellant's case. This is because the petitioner therein had, in substance, complied with the provision as strictly construed.”

18. Learned counsel appearing for the appellants relied on a decision of the High Court of *Rajasthan (Jaipur Bench) in Bhanwar Singh vs. Navrang Singh*⁴. In the case before the learned Single Judge, the election petition had been presented by one Rajendra Prasad, Advocate and not by the petitioner himself. It was argued by learned counsel for the petitioner therein that election petition had been validly presented under Section 81 (1) of the Act because Section 81 (1) of the Act only makes a provision as to who can file an election petition and does not deal with as to who should actually present it before the Registry. It is further submitted that Section 81 of the Act nowhere provides that the petitioner should be physically present at the time of presentation of the election petition. The learned Single Judge, after adverting to the words - by, presented concluded that these words used in Section 81(1) of the Act have to be given wide meaning and found that election petition filed through an advocate without the presence of candidate or elector is valid. We are unable to accept the said conclusion.

19. We have already pointed out that in spite of provisions in CPC and Evidence Act relating to institution of suit and recording of evidence etc. this Act provides all the details starting from the presentation of the election petition ending with the decision of the High Court. In such circumstances, it is but proper to interpret the language used by the Legislature and implement the same accordingly. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

20. In view of the endorsement by the Registrar (Judicial) on 07.07.2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub- section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. Since, the High

Court has correctly dismissed the election petition, the civil appeal fails and the same is dismissed with no order as to costs.

¹(1969) 1 SCR 679

²(1974) 2 SCC 133

³1969 (1) SCC 408

⁴AIR 1987 Raj 63