

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 10728 OF 2011

MANGANI LAL MANDAL

Appellant (s)

VERSUS

BISHNU DEO BHANDARI

Respondent(s)

J U D G M E N T

R.M. Lodha, J.

The returned candidate - Mangani Lal Mandal - is in appeal under Section 116A of the Representation of the People Act, 1951 (for short, '1951 Act') aggrieved by the judgment dated November 25, 2011 of the Patna High Court whereby his election to the 15th Lok Sabha has been set aside.

2. The appellant - the returned candidate - contested the general Parliament election to the 15th Lok Sabha from 7, Jhanjharpur Parliamentary Constituency held on April 23, 2009. Altogether 12 candidates filed their nomination papers, including the appellant, as per the schedule fixed for conducting the said election. On May 16, 2009, the result of the above election was announced and the appellant was declared elected.

3. The respondent - Bishnu Deo Bhandari, a voter (hereinafter referred to as the 'election petitioner') - challenged the election of the returned candidate by filing the election petition before the Patna High Court. The election petitioner alleged that the returned candidate suppressed the facts in the affidavit that he filed alongwith his nomination papers that he had two wives and the dependent children by marriage with his first wife. He did not disclose the assets and liabilities of his first wife and the dependent children born out of that wedlock. The challenge to the election of the returned candidate was brought under Section 100(1)(d)(iv) of the 1951 Act and it was prayed that the election of the returned candidate be declared to be void.

4. The returned candidate traversed the averments made by the election petitioner and also raised diverse objections, *inter alia*, that the election petition did not disclose any cause of action nor it contained the concise statement of material facts.

5. The High Court, on the basis of the pleadings of the parties, framed as many as seven issues and, after recording the evidence, held that the returned candidate failed to furnish information about his first wife and the dependents in the affidavit filed along with his nomination

papers. The High Court heavily relied upon the two decisions of this Court in Union of India Vs. Association for Democratic Reforms & Anr.¹ and People's Union for Civil Liberties (PUCL) & Anr. Vs. Union of India & Anr.² and held that the suppression of facts by the returned candidate with regard to the assets and liabilities of his first wife and the dependent children born out of that wedlock was breach of the Constitution viz. Article 19(1)(a) and for such breach and non-compliance, the candidate who has not complied with and breached the right to information of electors and has won the election has to suffer the consequence of such non-compliance and the breach. The High Court, in view of the above, set aside the election of the returned candidate from Jhanjharpur Parliamentary Constituency being void under Section 100(1)(d)(iv) of the 1951 Act.

6. We have heard Mr. A. Sharan, learned senior counsel for the appellant, and Mr. S.B.K. Manglam, learned counsel for the respondent.

7. The Appeal deserves to be allowed on the short ground which we indicate immediately hereinafter.

8. Section 100 of the 1951 Act provides for grounds for declaring election to be void. As we are concerned with Section 100(1)(d)(iv), the same is

1 (2002) 5 SCC 294

2 (2003) 4 SCC 399

reproduced which reads as under :-

"100. Grounds for declaring election to be void.-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) x x x x
(b) x x x x
(c) x x x x

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) x x x
(ii) x x x
(iii) x x x

(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) x x x x"

9. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-

compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The *sine qua non* for declaring election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance of the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz., Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially

affected. The view that we have taken finds support from the three decisions of this Court in (1) Jabar Singh Vs. Genda Lal³; (2) L.R. Shivaramagowda and Others Vs. T.M. Chandrashekhar (dead) by LRs. and Others.⁴ and (3) Uma Ballav Rath (Smt.) Vs. Maheshwar Mohanty (Smt) and others⁵.

10. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born out of that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor there is any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect. We are surprised that in the absence of any consideration on the above aspect, the High

3 (1964) 6 SCR 54

4 (1999) 1 SCC 666

5 (1999) 3 SCC 357

Court has declared the election of the returned candidate to the 15th Lok Sabha from the Jhanjharpur Parliamentary Constituency to the void. The impugned judgment of the High Court is gravely flawed and legally unsustainable. As a matter of law, the election petition filed by the election petitioner deserved dismissal at threshold yet it went into the whole trial consuming Court's precious time and putting the returned candidate to unnecessary trouble and inconvenience.

11. Civil Appeal is, accordingly, allowed. The impugned judgment dated November 25, 2011 is set aside. The election petition filed by the respondent is dismissed with costs which we quantify at ₹ 1,00,000/- (Rupees One Lakh).

.....J.
(R.M. LODHA)

NEW DELHI;
FEBRUARY 1, 2012

JUDGMENT
.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)