

SUPREME COURT OF INDIA

Navjot Singh Sidhu

Vs.

Om Parkash Soni & Ors.

C.A.No.10353 of 2016

(Ranjan Gogoi and Abhay Manohar Sapre, JJ.,)

26.10.2016

JUDGMENT

Ranjan Gogoi, J.,

SLP(Civil)No.14912 of 2011

1. Leave granted.

2. The appellant before this Court is the returned candidate in the election held on 13th May, 2009 for the 02-Amritsar Parliamentary Constituency. The election was challenged in E.P. No.3 of 2009 before the High Court of Punjab and Haryana at Chandigarh. The appellant, as the respondent in the Election Petition, had filed an application under Order VI rule 16 and Order VII rule 11 of the Code of Civil Procedure, 1908 for dismissal of the election petition contending that on account of deficiencies in the pleadings no triable issue(s) is disclosed to justify a regular trial of the allegations made. According to the appellant the election petition, in its entirety, had failed to disclose any cause of action whatsoever. Though some relief (details of which need not be noticed) was granted to the appellant by the High Court, three broad categories of allegations contained in the election petition were held to disclose triable issues. Hence a regular trial of the same was ordered by the High Court by the order under challenge. Aggrieved, this appeal has been filed.

3. We have heard the learned counsels for the parties.

4. The three broad categories of allegations which, according to the High Court, gave rise to the triable issues may now be dealt with in seriatim.

5. The first is with regard to incurring of expenditure in contravention of the limit prescribed under Section 77(3) of the Representation of the People Act, 1951 (hereinafter referred to as "R.P. Act"). The gravamen of the allegation on the aforesaid score is as follows:

“According to the election petitioner, the appellant had, in his return of election expenses, shown a total expenditure of Rs.17,03,665/-. He had shown expenditure of Rs.3,31,054/- on account of campaign through electronic/print media (including cable network). The election petitioner has contended that the said return of expenditure is not correct.”

6. In paragraph 9 of the Election Petition the rates of advertisement in different newspapers like 'The Daily Ajit', 'Punjab Kesari', 'Dainik Bhaskar', 'Jag Bani' have been shown along with a statement that during election time the said charges are 25% more. In paragraph 10 of the election petition, the details of the advertisements published/issued by the appellant in different newspapers during the period between 22nd April, 2009 to 13th May, 2009 are mentioned along with the details of expenditure incurred. On the basis of the figures mentioned in paragraph 10 of the Election Petition, it is contended that the actual expenses incurred by the returned candidate on advertisements alone is Rs.32,88,845/- which is in excess of the total prescribed limit of Rs.25,00,000/- (Rupees Twenty Five lakh). In paragraph 11 of the Election Petition, the details of the expenditure incurred by the returned candidate/appellant on advertisements on local T.V. channels, etc. are also mentioned. The specific pleadings in this regard as contained in paragraph 10 and 11 may set out herein below for clarity:

”10. That the details of advertisements by Respondent No.1, the returned candidate, in different newspapers and their expenses, during the period from the date of his nomination i.e. 22.4.2009 to 13.5.2009 i.e. the date of polling are as under:

S.No.	Date of Publication	Name of the Newspapers	Page No.	Size of Advertisement	Rate	Amount (In Rupees)
1.	22.04.2009	Ajit	7	22 x 12 = 204	180	47,520
2.	22.04.2009	Dainik Bhaskar	2	16.5 x 18.5 = 305.25	664	2,02,686
3.	22.04.2009	Dainik Jagran	1	24 x 12 = 288	166	47,808
4.	22.04.2009	Tribune	3	10 x 12 = 120	852	1,02,240
5.	23.04.2009	Ajit	7	a) 33 x 10 = 330 (B/w)	90	29,700
				b) 20 x 14 = 280	180	50,400
6.	23.04.2009	Dainik Bhaskar	3	25 x 32 = 800	747	5,97,600
7.	23.04.2009	Punjab Kesari Amr.	1	16 x 24.5 = 302	225	88,200
8.	24.04.2009	Jag Bani	2	10 x 16 (B/w) = 160	87.5	14,000
9.	25.04.2009	Ajit	7	12 x 9 = 108	180	19,440

10.	25.04.2009	Punjab Kesari	2	12 x 5 (B/w) = 60	125	7,500
11.	26.04.2009	Ajit	7	16.5 x 20 = 330	180	59 , 400
12.	26.04.2009	Jag Bani	1	17 x 16 = 272	150	40,800
13.	27.04.2009	Jag Bani	2	8 x 3 (B) = 24	87.5	2,100
14.	28.04.2009	Ajit	7	29 x 10 = 290	180	52,200
15.	28.04.2009	Dainik Bhaskar	2	20 x 10 = 20	664	1,32,800
16.	30.04.2009	Ajit	7	15 x 8 (B) = 120	180	21,600
17.	30.04.2009	Jag Bani (Local)	1	10 x 12 = 120	150	18,000
			2	a) 8 x 5 = 40	125	5,000
				b) 16 x 6 = 96	125	12,000
				c) 16 x 6 = 96	125	12,000
18.	01.05.2009	Jag Bani	1	20.5 x 9 = 184.5	150	27,675
			2	a) 8 x 5 (B) = 40	87.5	3,500
				b) 16 x 6.5 (B) = 104	87.5	9,100
19.	01.05.2009	Punjab Kesari	1	20 x 9 = 180	225	40,500
20.	02.05.2009	Ajit	7	4 x 4 (B/w) = 16	90	1,440
				16.5. x 12 = 198	90	17,820
21.	02.05.2009	Jag Bani	2	a) 8 x 5 (B) = 40	87.5	3,500
				b) 8 x 5 (B) = 40	87.5	3,500
22.	03.05.2009	Jag Bani	2	8 x 5 (B) = 40	87.5	3,500
23.	04.05.2009	Ajit	11	a) 8 x 6(B) = 48	90	4,320
				b) 8 x 6.5(B) = 52	90	4,680
				c) 8 x 6.5 (B) = 52	90	4680

				d) $8 \times 7(B) = 56$	90	5,040
				e) $8 \times 9(B) = 72$	90	6,480
				f) $8 \times 6(B) = 48$	90	4,320
				g) $8 \times 7(B) = 56$	90	5,040
24.	04.05.2009	Jag Bani	1	$33 \times 5 = 165$	150	24,750
				$12 \times 8.5(B) = 102$	87.5	8,925
25.	04.05.2009	Amr. Kesari	1	$33 \times 5 = 165$	225	37,125
			2	Party $8 \times 5 = 40$	162.5	6,500
26.	05.05.2009	Ajit	7	$33 \times 8(B) = 264$	90	23,760
27.	05.05.2009	Jag Bani	2	a) $8 \times 5(B) = 40$	87.5	3,500
				b) $12 \times 6.5(B) = 78$	87.5	6,825
28.	06.05.2009	Ajit	7	a) $33 \times 13(B) = 429$	90	38,610
29.	06.05.2009	Jag Bani	2	a) $8 \times 5(B) = 40$	87.5	3,500
				b) $8 \times 6(B) = 48$	87.5	4,200
30.	07.05.2009	Ajit	7	a) $12 \times 7(B) = 84$	90	7,560
				b) $12 \times 9(B) = 108$	90	9,720
31.	08.05.2009	Ajit	7	$33 \times 13(B) = 429$	90	68,610
			8	$8 \times 10(B) = 80$	90	7,200
32.	08.05.2009	Jag Bani	1	$33 \times 9(P) = 297$	150	44,550
			2	a) $8 \times 7(B) = 56$	125	7,000

				b) 8 x 10 (B) = 80	87.5	7,000
				c) 8 x 5 (B) = 40	87.5	3,500
				d) 8 x 5.5 (B) = 44	87.5	3,500
33.	09.05.2009	Ajit	7	a) 8 x 9 (B) = 72	90	6,480
				b) 8 x 5 (B) = 40	90	3,600
				c) 8 x 10 (B) = 80	90	7,200
				d) 33 x 8 (P) = 264	90	23,760
34.	09.05.2009	Jag Bani	3	12 x 10(B) = 120	100	12,100
35.	10.05.2009	Ajit	1	a) 12 x 9 (B) = 108	90	9,720
			7	b) 8 x 10 (B) = 80	90	7,200
				c) 16 x 12 (B) = 192	90	17,280
36.	10.05.2009	Jag Bani	3	12 x 10 (B) = 120	100	12,000
37.	11.05.2009	Ajit	8	a) 12 x 8 = 96	180	17,280
				b) 20 x 10 = 200	180	36,000
38.	11.05.2009	Jag Bani	2	a) 16 x 6 (B) = 96	87.5	8,400
				b) 24.5 x 8(B) = 196	87.5	17,150
39.	12.05.2009	Ajit	7	a) 16 x 19 = 304	180	54,720
40.	12.05.2009	Jag Bani	1	33 x 9 = 297	150	44,550
			2	a) 8 x 4 (B) = 32	125	4,000
				b) 8 x 4.5 (B) = 36	87.5	3,150

				c) 12 x 9 (B) = 108	87.5	9,450
41.	13.05.2009	Ajit	7	a) 8 x 5 (B) = 40	90	3,600
				b) 20.5 x 16 (B) = 328	90	29,520
42.				a) 16 x 25 = 400	150	60,000
				b) 12 x 12 = 144 (Hang)	300(H)	43,200
				c) 4 x 5 = 20	150	3,000
				d) 16 x 13 = 208	150	31,200
				8 x 6 (B) = 48	87.5	4,200
				Total		19,16,234

”11. The Respondent No.1, the returned candidate, also displayed an advertisement of 70 seconds on Metro/Filmy channel and Movies channel of Siti Cable/Digi Cable in Amritsar. The charges are Rs.825 for 30 seconds on Metro/Filmy channel and Rs.900/- per 30 seconds on Movie Channel during the period 22.4.2009 to 13.5.2009 between 8 AM to 10 P.M. The Advertisement was displaced for 18 times on each channel. The details of the same are as under:

S.No.	Name of Channel	Duration of Clip (Sec.)	Rate / Sec. of Broadcast (Rs.)	Total No. of days	No. times of broadcast per day	Amount
1.	Metro / Filmy	70	27.5	22	18	762300
2.	Movie	70	30	22	18	831600
	Total					15,93900

7. Shri Vikas Singh, learned Senior Counsel appearing for the appellant has submitted that under the provisions of Rules of Procedure and Guidance in the matter of Trial of Election Petitions Under Part VI of the Representation of the People Act, 1951, as amended (Clause 12) and specifically Form 'B' and Form 'BB' prescribed thereunder, it is necessary for the election petitioner to enclose along with the Election Petition all relied upon documents in

the form(s) prescribed. In the present case, the required information as per the forms prescribed had not been furnished by the election petitioner. Shri Vikas Singh has further argued that under Section 83 of the R.P. Act an Election Petition founded on allegations of corrupt practice has to contain a concise statement of the material facts and is also required to set forth full particulars of any Corrupt practice that the election petitioner alleges. In addition, an affidavit in the prescribed form in support of the allegations of corrupt practice and the particulars thereof is also required to be furnished. Relying on two decisions of this Court i.e. *Azhar Hussain vs. Rajiv Gandhi*¹ and *Ramakant Mayekar vs. Celine D'Silva*² it is argued that in the present case it was incumbent upon the election petitioner to enclose with the Election Petition photocopies of the relevant newspapers containing the advertisements mentioned in paragraph 10 of the Election Petition. The foundation of the Election Petition being the advertisements contained in the said newspapers in the absence thereof the necessary cause of action to justify a full-fledged trial would be absent and, therefore, the Election Petition is liable to be dismissed at the threshold.

8. We have considered the aforesaid submission made on behalf of the appellant. What is the meaning of the expression 'material facts' and 'material particulars' need not engage any further attention of the Court in view of the long line of decisions/precedents available on the point out of which illustratively reference can be made to the decision of this Court in the case of *Virender Nath Gautam vs. Satpal Singh and Ors*³. . Paragraph 50 of the said decision in *Virender Nath* (supra) , which is extracted below, would highlight the distinction between the two expressions.

”50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.”

9. *Virender Nath Gautam* (supra) dealt with an Election Petition that did not have any allegation of corrupt practice and therefore the contents thereof were examined in the context of the requirement under Section 83 (1) (a) and not Section 83 (1) (b) of the Act of 1951. In case of an Election Petition founded on allegations of corrupt practice not only the 'material facts' have to be pleaded but even the full particulars thereof have to be furnished at the stage of filing of the Election Petition itself. This is specifically provided for in Section 83(1)(b) of the R.P. Act.

10. Reading the averments made by the election petitioner in paragraphs 10 and 11 of the Election Petition, extracted above, in our considered view, it cannot be said that full particulars of the allegation of corrupt practice have not been set out by the election petitioner. The dates on which the advertisements had appeared; the particulars of the newspapers in which such advertisements were published; the cost incurred for each type of

advertisement in each newspaper, have all been mentioned. When details to the above extent have been mentioned in the Election Petition, it cannot be said that full particulars as required under Section 83(1)(b) of the R.P. Act have not been furnished by the election petitioner.

11. The insistence on furnishing photocopies of the newspapers alongwith the Election Petition on the strength of the decisions of this Court in Azhar Hussain (supra) and Ramakant Mayekar (supra) will now have to be dealt with. In Azhar Hussain(supra), the posters in question which were not furnished along with the Election Petition, itself, contained the ingredients of the corrupt practice alleged. Hence the failure of the election petitioner to include the said posters as a part of the Election Petition was held to be fatal. Similarly, in Ramakant Mayekar (supra) the pleaded case of the election petitioner was that the returned candidate had used posters, banners and wall-paintings canvassing for votes in the name of Hindu religion. The election petitioner specifically averred that he had taken photographs of the wall-paintings which, however, were not enclosed to the Election Petition. The Election petitioner in the said case had prayed for leave to produce the same at a later stage of the case. It is in the above situation, namely, where the wall-paintings itself contained the ingredients of the commission of corrupt practice alleged that the non-furnishing of the same along with the Election Petition was held to be fatal. The above is not the situation in the present case. We, therefore, hold that the averments made with regard to election expenses in paragraph 10 and 11 of the Election Petition require to go for a full-fledged trial and the appeal insofar as the aforesaid part of the decision of the High Court has to fail.

12. In paragraphs 12 to 15 of the Election Petition, the respondent-election petitioner, by giving details of expenditure incurred by the appellant in connection with public meetings held on different dates and in different venues, has contended that the expenses incurred on these public meetings is much more than what has been shown in the return of election expenses under the said head (Rs.1,83,466/-). While the details of the meetings i.e. the time, date and venue are mentioned and so is the number of persons who are claimed to have attended the meetings, we do not find any basis as to how the election petitioner had arrived at the quantum of expenses which he alleges to have been incurred by the returned candidate in holding each of the said meetings. What are the source(s) of information of the election petitioner with regard to the details furnished; whether he has personal knowledge of any of the said meetings; who are the persons who informed him of the details of such meetings; what is the basis of the estimate of the number of persons present and the facilities (chairs etc.) that were hired and the particulars of the refreshments served are nowhere pleaded. All such particulars that are an integral part of the allegation of corrupt practice alleged are absent. In the absence of the aforesaid particulars, there can be no doubt that insofar as the allegations made in paragraphs 12 to 15 of the Election Petition is concerned, the same do not disclose any triable issue so as to justify a regular trial of the said allegations. The allegations mentioned in paragraphs 12 to 15, so far as commission of corrupt practice of submission of false/incorrect return of election expenses is concerned, are, therefore, struck off.

13. This will take the Court to the second category of allegations on which the Election Petition is founded. The same is with regard to the assistance allegedly received by the appellant, as the returned candidate, from one Jagjit Singh Suchu. The specific case of the respondent-election petitioner in the Election Petition filed is that Jagjit Singh Suchu was posted as the Grid Executive Engineer, Amritsar and he is a gazetted officer in the Punjab State Electricity Board. Shri Suchu was transferred, at the instance of the appellant, as Additional Superintending Engineer, East Division, Verka Circle, Amritsar which is a gazetted post in the State of Punjab. It is also alleged that the returned candidate i.e. the appellant had taken the help of Shri Suchu while he was working in the said capacity so as to further the appellant's election prospects. The detailed pleadings in this regard are contained in paragraphs 17, 18, 19 and 20 of the Election Petition. We have perused the said pleadings.

14. The contention advanced on behalf of the appellant is that the aforesaid Jagjit Singh Suchu, on the pleadings of the election petitioner himself, is admittedly a gazetted officer of the Punjab State Electricity Board and, therefore, under the provisions of Section 123(7) of the R.P. Act, prior to its amendment by Act 41 of 2009 with effect from 1st February, 2010, the assistance of Jagjit Singh Suchu, even if obtained, did not amount to corrupt practice inasmuch as the said person was not in service of the Government.

15. The pleadings contained in paragraphs 17 to 20 of the Election Petition makes it clear that it is alleged that while Jagjit Singh Suchu was an officer of the Punjab State Electricity Board the appellant had got him transferred to the post of Additional Superintending Engineer, East Division, Verka Circle, Amritsar under the State of Punjab and that the appellant had received assistance from him so as to further his election prospects. The allegation in the Election Petition is that the post to which Jagjit Singh Suchu was transferred from the Punjab State Electricity Board was under the State Government and the assistance received by the returned candidate from the said person is while he was rendering service as Additional Superintending Engineer, namely, while he was performing the duties in the State Government. If that be so, the aforesaid issue also will have to go for a full trial as ordered by the High Court. The appeal to the aforesaid extent will, therefore, have to be dismissed.

16. Insofar as the third allegation of the election petitioner is concerned, we are of the view that it would not be necessary for us to deal with the said question. The said allegation pertains to the action taken by the Returning Officer on the complaint filed by the election petitioner with regard to counting of votes. The election took place in the year 2009. The life of the House for which the election took place has long expired. The third allegation is not one with regard to commission of any corrupt practice. Hence by efflux of time the said issue has become academic rendering it unnecessary for us to enter into any discussion on the said question.

17. Consequently and in the light of the above, the appeal is partly allowed to the extent indicated above. The trial of the election petition on the issues/allegations that survive in terms of the present order will have to recommence. We order accordingly.

¹(1986) (Supp) SCC 0315
²(1996) 1 SCC 0399
³(2007) 3 SCC 0617