

SUPREME COURT OF INDIA

Abdulrasakh

Vs.

K.P.Mohammed

C.A.No.10863 of 2017

(J. Chelameswar and Sanjay Kishan Kaul, JJ.,)

08.03.2018

JUDGMENT

Sanjay Kishan Kaul, J.,

The facts:

1. The democratic process of holding State elections was carried out for the 14th Kerala Legislative Assembly on 16.5.2016 in which the appellant contested from the Koduvally Assembly Constituency as an independent candidate. The results were declared on 19.5.2016 and the appellant, having obtained the highest number of votes was declared as elected.

2. Respondent Nos.1 & 2 who were stated to be the voters from the same constituency filed election petitions on grounds of corrupt practices. The challenge to the election of the appellant was laid under Section 123(4) of the Representation of People Act, 1950 (hereinafter referred to as the 'said Act') alleging that the appellant made false allegations against respondent No.3, a candidate, knowing the same to be false. Section 123(4) of the said Act reads as under:

“123. Corrupt practices. - The following shall be deemed to be corrupt practices for the purposes of this Act: -

(4) The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.”

3. The election petition is stated to have been filed on 1.7.2016 in which certain defects are stated to have been pointed out. It is the case of the appellant that the petition was returned from the Registry and was re-presented only on 11.7.2016 by which time the prescribed

period of limitation of 45 days to file such an election petition had expired on 3.7.2016 and, thus, the election petition was time barred. It is also the say of the appellant that the Registry had no power to return the election petition or permitting curing of any defects. Even on re-representation, the petition is stated to have been defective and was placed before the learned single Judge of the Kerala High Court, who by the order dated 18.7.2017 granted one week's time to respondent Nos.1 & 2 to cure the defects. It is thereafter that notice was issued to all the respondents in the election petition including the appellant herein.

4. On account of the aforesaid two grounds and more the appellant moved an application for summary dismissal of the election petition under Section 86 of the said Act read with Section 151 and Order VI Rule 16, Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code'). The relevant provision, being Section 86 (1) of the said Act, reads as under:

“86. Trial of election petitions. - (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.”

5. The objections filed by the appellant were, however, dismissed vide impugned judgment dated 16.6.2017, by the learned single Judge of the Kerala High Court against which the present Special Leave Petition has been filed.

Appellant's contentions:

6. Mr. Rajeev Dhawan, learned Senior Advocate appearing for the appellant referred to the office notice sheets of the High Court to canvas his case of the petition being beyond time. He referred to the fact that while the election petition was stated to have been presented on 1.7.2016, it was also mentioned therein “E.P. filed: 11.07.16”. The date of issue of summons is 9.8.2016. He also referred to the noting where eight defects were enumerated and below that, there was an endorsement of the counsel appearing for the original petitioner to the effect that “defect cured” without any date and an endorsement of the Deputy Registrar dated 7.7.2016. The conclusion, he sought to derive from these endorsements was the presentation and re-representation of the petition before the Registry, without it being placed before the Court.

7. Learned Senior Advocate referred to the provisions relating to presentation of an election petition to a High Court contained in Chapter II of the said Act and the mandate for an election petition to meet with the same in the context of the objections filed by the appellant. The relevant provisions read as under:

“81. 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 the dates of their election are different, the later of those two dates].”

“[(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.]”

8. The defects pointed out by the Registry are as under:

“i. Sec 80A of the R.P. Act is not provision shown in the Election Petition.

ii. Pages 28 and 29 are not properly tagged in 1st set.

iii. Mobile phones produced as Annexure B, C, G and L and Compact Disks produced as Annexure H, M and O are in sealed covers, cannot be scrutinized.

iv. Mobile phones and CD’s which are material objects are marked as Annexures.

v. Annexure B, C, G and L (Mobile Phones), stated as “cannot be produced” in the verification made in copies.

vi. Page 57 which is English translation of Annexure K, produced as Annexure K-1 is stated as English translation of Annexure H.

vii. No English translation of last four lines appearing at P 35 (Annexure E/5) is seen reproduced at P.39, the English translation of Annexure E.

viii. In one of the additional copies of Election Petition Annexure Q is produced twice.”

9. Learned counsel took us through the written objections filed by the appellant to which no reply is stated to have been filed by respondent Nos.1 & 2. In substance what was sought to be canvassed before us by reference to the objections is as under:

i. The election petition is barred by time as it had to be presented free from all defects before 3.7.2016. The defects were cured and the petition was re-presented on 11.7.2016.

ii. That the process of returning and re-presentation of the election petition in the Registry is alien to the process of an election court.

iii. Production of documents in the sealed cover is impermissible in law and is not acceptable. The failure to hand over the entire contents of the items produced in sealed cover is violative of Section 81(3) of the said Act and is violative of the principles of natural justice. The appellant was entitled to the chip of the mobile

phone apart from the CD of the relevant portion, the latter having been handed over. Such deprivation would cause prejudice to the appellant as is deprived of the opportunity to know the entire contents.

iv. The defects have been cured by substituting the original page 57 filed with the election petition and it is ante dated as the papers have been signed subsequent to 1.7.2016.

v. Annexure E-1 was incomplete and not the true English translation of Annexure E.

10. To buttress the submissions made, learned counsel referred to the judicial pronouncements dealing with the aspects he was seeking to canvas. The same are dealt with as under:

i. *Satya Narain v. Dhuja Ram & Ors*¹. - it was observed that in the absence of any provisions under the said Act and the Rules made thereunder, the High Court Rules cannot confer upon the Registrar or the Deputy Registrar any power to permit correction or removal of defects in an election petition presented in the High Court beyond the period of limitation provided under the said Act.

ii. *Sahodrabai Rai v. Ram Singh Aharwar*² - In the given facts of the case the learned Judge trying the case ordered the attendance of the Reader of the Deputy Registrar of the High Court, who had dealt with the election petition and he was examined as a court witness. A similar course, the counsel contended, was liable to be followed in the present case when there were doubts and allegations about the presentation and re-presentation as was apparent from the office notes.

iii. *M. Karunanidhi v. Dr. H.V. Hande & Ors*³. (para 29) - The particular controversy related to the costing of the banners and it was stated that the same was mentioned wrongly as there were two election banners - one of them was a huge fancy banner or hoarding on the left side of the road and the other on the right was a smaller election banner. The appellant was present in the depiction of the two groups in both the banners. A photograph of the fancy banner was filed but the copy of the same was not supplied. This was held to be fatal to the petition.

To appreciate the contention of respondent Nos.1 & 2 herein, it was stated that they were required to supply to the appellant the proper photograph while only a black and white photocopy had been supplied.

iv. *U.S. Sasidharan v. K. Karunakaran & Anr*⁴. (paras 14 & 32) - The controversy relating to non-supply of the video cassette with the election petition was examined and the video cassette being an integral part of election petition, non-furnishing of the copy was held to be fatal.

v. *Mithilesh Kumar Pandey v. Baidyanath Yadav & Ors*⁵. (paras 11 & 15) - The Bench of three Judges of this Court examined the controversy emanating from the

allegation that the copy supplied to the returned candidate was not really a true copy. In the said context the principles were laid down in para 15 as under:

“15. On a careful consideration and scrutiny of the law on the subject, the following principles are well established:

(1) that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway under Section 86 of the Act,

(2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof,

(3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of Section 81(3) of the Act,

(4) Prima facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Section 81(3) of the Act, and

(5) As Section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as to not disturb the verdict of the voters, there is no room forgiving a liberal or broad interpretation to the provisions of the said section.”

In the aforesaid context, it was stated that the translations supplied by respondent Nos.1 & 2 did not make sense and the access to the original chip is necessary as the allegation against the appellant is of connivance in making of false allegations against one of the candidates.

Respondent Nos.1 & 2's contentions:

11. On the other hand, Mr. Kapil Sibal, learned Senior Advocate appearing for the first two respondents (Original petitioners in the High Court) at the threshold itself stated that he has no quibble with all the legal propositions advanced by the learned senior counsel for the appellant or with the judicial pronouncements referred to aforesaid, however, what was sought to be canvassed was an incorrect representation of what has actually transpired. In this behalf learned senior counsel, once again, drew our attention to the notings to contend that the mention of “E.P. filed: 11.07.16” is obviously a mistake as undisputedly the election petition was presented on 1.7.2016. The endorsement of the Deputy Registrar shows that the scrutiny took place on 5.7.2016. The eight defects noticed aforesaid were mentioned on 7.7.2016 whereupon the petition was placed before the learned Judge on 18.7.2016 as an unnumbered election petition. The learned Judge opined that the defects noted by the office are not material defects for rejecting the petition in limine under the said Act (the parameters

have been set out in Mithilesh Kumar Pandey). It is also noted that the question whether CD have to be marked as material objects or exhibits could be considered at the time of trial and since the mobile phone cannot be produced along with each copy, copies of contents in the phone which the petitioner wants to rely upon have been produced along with the copy of the election petition. Sufficiency of this could be considered later after appearance of the parties. One week's time was granted to cure the minor defects as prayed. Thereafter the defects were cured within the time specified and the endorsement made by the counsel for respondent Nos.1 & 2.

12. We have also examined the impugned judgment passed on 16.6.2017, which is a detailed one with supporting case law. Sixteen issues were framed out of which the appellant claimed preliminary hearing in respect of issue Nos.1 to 7. The preliminary issues are reproduced as under:

- “1. Whether the election petition is barred by limitation?
2. Can the defects in the election petition be permitted to be cured after the period of limitation prescribed under Section 81 of the Representation of People Act?
3. Can the election petition be returned to the petitioner for curing defects after the period of limitation prescribed under Section 81 of the Representation of People Act?
4. Is there power in this Court to permit representation delay to be condoned when the original delay in presenting election petition itself is not permissible to be condoned and when there is no provision for any delay condonation?
5. Whether the defects cured and corrections made in the election petition after the period of limitation will relate back to the date of its presentation?
6. Whether defects cured and corrections made in the election petition after presentation are permissible and in compliance with the mandatory requirements as provided in Sections 81 & 83 of the Representation of People Act and Rules framed there under?
7. Whether the election petition is maintainable for non-compliance of mandatory requirements as provided in Sections 81, 82, 83 & 117 of the Representation of People Act and Rules framed thereunder and other requirements of law?”

13. The learned single Judge then on examination of the record opined that the Registry, after presentation of the petition on 1.7.2016 had not returned the petition to the first two respondents but was posted before the Bench as per the correct practice, which passed the order dealing with the objections. On curing of the minor defects, notice was issued to the appellant.

14. The Kerala High Court Rules (Rule 210) itself provided for scrutiny by the Judge assigned to the case and not by the Registry. There was no violation of this Rule. The defects were also cured only after 18.7.2016. The contents of the conversation recorded in the mobile phone have been produced as annexures and CDs and the mobile phones were themselves produced. The question of admissibility of evidence would, thus, have to be examined at the stage of trial. Similarly the photocopy of a photograph could only be a copy taken from mobile phone and at this stage it could not be said that it did not truly represent the contents of what was recorded in the mobile phone, which was again a matter of evidence.

Conclusion:

15. We have examined the submissions of the learned counsel for the parties and do not find any merit in the appeal. The minor corrections permitted to be made vide order dated 18.7.2016 are by the Court. A mountain out of a molehill has been made without appreciating the office notings in the true perspective. The Registry was fully conscious that the eight defects pointed out by it could not be permitted to be cured by the Registry itself and that is why the matter was directed to be placed before the concerned Judge as an unnumbered election petition. On 18.7.2016, the learned Judge did not find merit in some of the objections pointed by the Registry and to the extent some minor corrections were required, which were not material, one week's time was granted to respondent Nos.1 & 2 to carry out the corrections. The needful was done within the stipulated time and it is thereafter that notices were issued to the appellant.

16. The whole premise of the plea of the appellant is based on the Registry permitting corrections to be made is, thus, fallacious and, thus, the presentation of the petition cannot be said to be beyond time stipulated in Section 81(1) of the said Act. There was, in fact, really no occasion in these facts for the Court to examine the Registry officer as was done in the case of Sahodrabai Rai .

17. The issue of supply of copies has also been appropriately dealt with as copies of a transcript and the CD were supplied as also the translation thereof. This is not the stage to verify as to whether the translation correctly reflects what was said. In any case it would be a doubtful proposition whether it was mandated that a translation should also be filed that being possibly a part of the requirement of the High Court Rules since the record had to be in English. It has rightly been observed that the phone has been filed and keeping the phone in a sealed cover or the allegation of non-supply of the chip alleged to be violative of Section 81(3) of the said Act is not a plea which can be accepted. At best these are all matters for trial.

18. We are conscious of the fact that the law relating to election is a technical one as it amounts to a challenge laid to the democratic process determining the will of the people. An eligible person whether a candidate or a voter coming to Court, seeking to set aside any election has to, thus, meet with the technical natures of the election petition and the provisions prescribed under the said Act as otherwise it would be fatal to the election petition

at the threshold itself. It is in these circumstances that the principles have been succinctly set out in *Mithilesh Kumar Pandey* . The observations in that case provide for clerical and typographical errors to be corrected. Thus, issues like mentioning of the correct number of annexures or tagging with the file, etc. would all fall within the said Section.

19. Similarly copies of the documents have been supplied to the appellant and multiple copies of the phone or the chip (which is kept in a sealed cover) are not mandated to be supplied when the material relied upon in the phone has been reproduced in CD and a transcription also provided. The defence of the appellant cannot be said to be impaired in any manner.

20. We are, thus, of the unequivocal view that the pleas advanced on behalf of the appellant are meritless and deserve to be rejected.

21. The appeal is accordingly dismissed leaving the parties to bear their own costs.

Judgment Referred.

¹(1974) 4 SCC 0237

²(1968) 3 SCR 0013

³(1983) 2 SCC 0473

⁴(1989) 4 SCC 0482

⁵(1984) 2 SCC 0001