

SUPREME COURT OF INDIA

Patel Ahmed Mohammad

Vs.

Balwant Singh Rajput

C.A.No. of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

26.09.2018

JUDGMENT

A.M. Khanwilkar,J.,

SLP(C) No.13040-13042 of 2018

1. Leave granted.

2. These appeals take exception to the judgment and order dated 20th April, 2018 passed by the High Court of Gujarat at Ahmedabad, in Election Application Nos.2, 3 and 6 of 2017 in Election Petition No.1 of 2017. By the said order, the High Court dismissed all the three applications preferred by the appellant seeking dismissal of Election Petition No. 1 of 2017 at the threshold.

3. Election Petition No.1 of 2017 has been filed by respondent No.1 challenging the election of the appellant to the Council of States (Rajya Sabha) held on 8th August, 2017, by the members of the Legislative Assembly of Gujarat, on the ground that the appellant had committed corrupt practices of 'bribery' and 'undue influence' within the meaning of sub-sections (1) and (2) of Section 123 of the Representation of the People Act, 1951 (for short "the Act") and also on the ground that two valid votes were illegally and improperly rejected by the Returning Officer and at the same time, two invalid votes were accepted by the said officer, which has materially affected the results of the election. The election petition came to be filed on 18th August, 2017 much before the last date of limitation.

4. The appellant was served with the summons on 7th September, 2017 to appear in the election petition, pursuant to the order of the High Court dated 21st August, 2017. The appellant filed his written statement on 4 th October, 2017 and also filed the stated three applications for dismissal of the election petition at the threshold. The first application was numbered as Election Application No.2 of 2017, wherein the appellant had prayed for dismissal of the election petition primarily on the ground of non-compliance of Rules 282 (ii) and (iii) of the Gujarat High Court Rules, 1993, as there was no order to rectify such non-

compliance as contemplated under Rule 284 and the time provided therefor in the later portion of Rule 283 had elapsed. In other words, the election petition was required to be dismissed for non-removal of office objections raised by the office/registry of the High Court, in exercise of power under Rule 284 after recalling the order dated 21st August, 2017. The second application was numbered as Election Application No.3 of 2017, praying for dismissal of the election petition on the ground of non-compliance of the provisions of the Act read with the Gujarat High Court Rules, 1993, as well as the provisions of Order XIX Rule 3 of the Code of Civil Procedure ("CPC"). The grounds urged in the application were ascribable to dismissal of the election petition under Section 86(1) read with Sections 81(3), 83(1)(c) and 83(2) of the Act as well as the provisions of CPC and the High Court Rules. The third application, being Election Application No.6 of 2017, was also for dismissal of the election petition at the threshold under Order VII Rules 11(a) and (d) of CPC, for non-disclosure of the cause of action in the election petition and the petition being barred by law. As aforesaid, all the three election applications have been rejected by the High Court vide common impugned judgment.

5. The appellant, being aggrieved by the said decision of the High Court, has filed these appeals by special leave. We shall deal with the challenge to the impugned judgment in reference to the concerned application in seriatim.

6. Reverting to the first application i.e. Election Application No.2 of 2017, the High Court, in substance, opined that the averments in the said application preferred by the appellant were vague and unsubstantiated. It found that the appellant was not sure as to whether the office objections had been removed or not, when the application was filed by him. Further, there was no specific averment in the application as to which objection raised by the office/registry of the High Court was not removed. All that had been stated in the application was that the objections which were raised by the office were not removed, as no noting was found in the official record to indicate that the same were duly removed before the expiry of the limitation period. The ground urged by the appellant did not commend to the High Court. For, the High Court found that the same was based on mere conjectures and surmises. The High Court instead found that as per Rule 284, the matter was required to be listed before the High Court only if the objections were not removed within the time fixed therefor or as per the order, if any, passed by the Court under Rule 283. On the other hand, the subject petition was placed before the Court under Rule 285 which presupposes that it was so done only after the office objections were duly cured. It noted that if the matter was placed before the Court under Rule 285 by the Office, it had to be presumed that the Office had done so after due scrutiny of the petition and on being satisfied that office objections had been duly removed. Further, it was only an administrative function of the High Court and could not be the basis to dismiss the election petition at the threshold. The High Court also found that the application under consideration was filed by the appellant one month after the date of service of summons and that the plea under consideration was not taken in the written statement filed by the appellant on 4th October, 2017. The High Court concluded that in the absence of any positive statement in the application filed by the appellant, as to which of the office objections was not removed by the election petitioner (respondent No.1) before the matter was placed before the Court for consideration under Rule 285, the objection raised by the appellant was replete

with conjectures and surmises. That could not be made the basis to dismiss the election petition on the ground of non-removal of office objections. The relevant extract of the impugned judgment dealing with this aspect reads thus:

"32 In the opinion of the Court there is basic fallacy in the said submission. It appears that the applicant himself was not sure as to whether the office objections were, in fact, removed or not, when the Election Application No.2 of 2017 was filed by him inasmuch as there is no specific allegation made in the application as to which objections raised by the office/registry of the High Court were not removed, and it is stated that "It appears that the objections which were raised by the office were not removed". The application appears to have been filed on mere conjectures and surmises. That apart, the office was required to place the matter before the Court for appropriate orders under Rule 284 only if the objections were not removed within the time fixed or as per the order, if any, passed by the Court under Rule 283.

33. The petitioner in the reply to the said application, while denying the said allegation, has stated on oath that the petitioner had removed all the objections before the petition was actually placed before the Court for consideration. Pertinently, the petition could be placed before the Court for consideration under Rule 285, only after the removal of the office objections, otherwise the matter would be placed for appropriate orders by the office for non-removal of the objections as per Rule 284. No such orders were sought by the office under Rule 284, meaning thereby it has to be resumed that the office after scrutiny of the petition, and after removal of office objections by the petitioner had placed the matter for consideration before the Court. As held by the Supreme Court in case of Chandrakant Uttam (supra), the scrutiny of election petition is one of the administrative functions to be performed by the officers of the High Court, and such an act would draw a presumption of having been performed in terms of Section 114(e) of the Evidence Act.

34. It is also pertinent to note that after the matter was placed before the court as per the roster, the Court had issued summons to the respondents on 21.08.2017, directing the respondents to appear before the Court on 21.09.2017. Thereafter the learned Advocate Mr. Champaneri appearing for the Respondent No.1 had stated that he had filed a separate application seeking further time to file written statement. Thereafter the matter was directed to be placed on 06.10.2017. In the meantime, the respondent No.1 had filed the written statement and the present applications on 4.10.2017. At no point of time after the filing of the appearance, the learned Advocate for the applicant (original respondent No.1) had raised such contention to the effect that the petition was placed for consideration before the Court without removing all office objections. It is true that on presentation of the petition on 18.08.2017, the office had pointed out the office objections i.e. No.19, 22 and 23 listed in the prescribed check-list in Form B. office objection No.19 is as to whether paging is done; No.22 is as to whether copies are true, legible and whether typed copies of any written annexures are filed, and No.23a is as to whether copies are true copies signed by the Advocate. The matter was permitted to be circulated before the appropriate Bench on 21.08.2017. Hence, it is just possible that the petitioner had removed the said office objections before the matter was actually placed before the Court for consideration on

21.08.2017. In absence of any positive statement in the application filed by the applicant as to which office objections were not removed by the petitioner before the matter was placed before the court for consideration, such application No.2 of 2017 filed merely on conjectures and inferences could not be entertained for dismissal of the petition on the ground of non-removal of office objections.”

(emphasis supplied)

7. The view so taken by the High Court has been assailed by the appellant on the argument that the High Court could not have presumed that office objections noted by the Registry of the High Court on 18th August, 2017, were duly removed. Further, if the office objections had not been removed, it must necessarily follow that the Registry could not have posted the matter before the Court under Rule 285 but ought to have proceeded under Rule 284 of the High Court Rules. In that event, the office objections would remain valid and for which reason the order passed on 21st August, 2017, issuing summons to the appellant to appear in the proceedings ought to be recalled and the election petition dismissed for non-removal of the office objections within the limitation period. The respondent No.1, on the other hand, supported the view expressed by the High Court in rejecting the application and has reiterated the same argument before us.

8. The question is: whether the view taken by the High Court as regards the rejection of Election Application No.2 of 2017 is just and proper? For that, we may first turn to the averments in the application to discern whether the finding recorded by the High Court is a possible view. The relevant averments can be traced to paragraphs 10, 11 and 14 in particular. The same read thus:

“10. It appears that after the election petition was filed, the office/Registry of this Hon’ble Court has raised several objections which are more popularly referred to and known as ‘office objections’. That in terms of Rule 282 (ii) read with Section 283, the same were bound to be removed by the petitioner or his advocate on the 3rd day from the date of presentation provided and stipulated under Rule 282 (ii). The 3rd day from the date of filing of the petition would fall on the 20 th of August.

11. It appears that the objections which were raised by the office were not removed and the election petition was placed pursuant to the request made on the 18th of August for circulation on the 21st of August. Thus, in the respectful and humble submission of the Applicant/Respondent No.1, there is non-compliance of Rules 282 (ii) and 283.” "14. In view of the office objections raised by this Hon’ble Court and the procedure prescribed under Rule 282 (ii) & (iii) read with Rules 283a and 284 having not been adhered to, it is most humbly and respectfully submitted that the order passed by this Hon’ble Court of the nature contemplated under Rule 285 (i) dated 21st of August, 2017 of issuance of summons was at a premature stage and, therefore, the Applicant/Respondent No.1 respectfully begs to submit that the said order be recalled and as the office objections, raised by the office in the above captioned petition after it being filed on 17th of August, 2017 not having been removed and no time having been either granted or extended, the petition ought to be

and this hereby prayed to be dismissed for non-compliance of Rules 282 (ii) & (iii) read with Rule 283 for non-removal of office objections.”

9. From these averments in the application under consideration, it is not clear as to which of the office objections remained to be cured when the matter was placed before the Court on 21st September, 2017 under Rule 285 of the High Court Rules. As aforesaid, the election petition was filed on 18th August, 2017, on the same day the office objections were noted by the Registry, as is noticed from Page 411 of the paper book. It is also noticed at the bottom of that document in the column of office objections, the numbers notified are only serial Nos.19, 22 and 23. The said office objections are:

"19. Whether paging is done?

22. Whether copies are true legible and whether typed copies of hand-written Annexure filed?

23. Whether the copies are true copies signed by the Advocate?"

After mentioning the serial numbers of three office objections, a further noting is found "(PC- with OO)". In the first place, this noting is evidently made on 18th August, 2017. What is relevant for our purpose is that the matter was processed by the office under Rule 285 of the Gujarat High Court Rules, 1993 and placed before the Court on 21st September, 2017. On that date, the Court passed the following order:

"Date: 21/08/2017 ORAL ORDER

Having regard to the provisions contained in Section 86(1) of the Representation of Peoples Act, 1951 read with Rule 285 of the Gujarat High Court Rules, 1993, office is directed to issue summons as per the provisions contained in the Rules, to the respondents to appear before the Court on 21.9.2017.”

10. In this backdrop, while rejecting the objection taken by the appellant, the High Court opined that since the appellant had come to the Court with an assertion that the office objections remained to be cured before the limitation period, he should have expressly stated as to which objection remained to be cured and the source of his information. The averments in the application, even if read as a whole and liberally, do not even remotely suggest that such a case has been made out. The High Court, therefore, relying on the exposition of this Court in the case of *Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and Ors^l*. opined that the scrutiny of election petition is one of the administrative functions to be performed by the office of the High Court and such an official act would draw a presumption of all necessary steps having been duly taken by the office and being satisfied in that behalf, the matter was placed by the office before the Court for appropriate orders under Rule 285.

11. We may usefully refer to the Rules of the High Court which may have some bearing on the issue under consideration, namely, Rules 282, 283, 284 and 285. The same read thus:

““282. Petition.-

(i) Every application invoking the jurisdiction of the High Court under section 80A of the Representation of the People Act, 1951, shall be by petition addressed to the Honorable the Chief Justice and Judges of the High Court.

(ii) The petition shall comply with the provisions of sections 81, 82, 83 and 84 of the Act and the grounds on which the relief are sought shall be clearly stated in the petition which shall be arranged in suitable paragraphs consecutively numbered. The relief sought should be set out at the end of the petition.

(iii) The full names and the full addresses of all the parties to the petition for service of any process shall be stated in the petition. In addition to the permanent residence and addresses of the respondent the present address of the respondent at which service of the notice may be effected, shall be stated in the petition.”

"283. Examination of petition.-

The office shall examine the petition with a view to see whether it is in conformity with the requirements of law and rules applicable to the same, and if it is not in conformity with law and rules, raise objections which should be removed by the party or the Advocate concerned. The office shall complete the examination within two days after filing of the petition and shall bring the office objections to the notice of the party or the Advocate on the date fixed for attendance under rule 282(ii) and such objections shall be removed, subject to the orders of the Court, if any, within three days thereafter.”

"284. Petition to be placed for orders if objection not removed.- Immediately after the expiration of time fixed for the removal of objections, the petition shall be placed before the Judge for appropriate orders.”

"285. Petition to be placed for orders after removal of office objections.- respondent to appear before the High Court on the date fixed and answer the claim or claims made in the petition.””

(i) After the removal of office objections, the petition shall be placed before the Judge for consideration as to whether the petition is liable to be dismissed under section 86(1) of the Act. If the petition is not dismissed under section 86(1) of the Act, the Judge shall direct issue of summons upon the respondent; and the summons shall be issued to the respondent to appear before the High Court on the date fixed and answer the claim or claims made in the petition.””

12. On a bare perusal of the said Rules, it is evident that the election petition is required to be placed for orders before the Court by the office only after removal of office objections as per

Rule 285. If the office objections are pending and not cured within the prescribed period, the office is obliged to list the matter before the Court for appropriate orders under Rule

284. For that reason, the High Court opined that in the absence of any positive statement in the application filed by the election petitioner and as the record would show that the matter was placed by the office before the Court under Rule

285, it must follow that the grievance made in the application under consideration was based on mere conjectures and surmises and cannot be the basis to dismiss the election petition at the threshold, as prayed. We respectfully agree with the said view taken by the High Court and as a result, the order rejecting the application under consideration, being Election Application No.2 of 2017, deserves to be upheld.

13. Reverting to the second application filed by the appellant, being Election Application No.3 of 2017, the thrust of the grievance was that the copy of the election petition served on the appellant was not a true copy. It was not a copy attested by the election petitioner under his own signature, much less to be a "true copy" of the petition. Further, there were blanks in the verification clause of the petition and the affidavit in Form No.25 was not in conformity with the requirement of law. Additionally, it was also urged that the election petitioner had not filed as many copies of the election petition as there are respondents mentioned in the election petition. The last point raised by the counsel for the appellant came to be rejected by the High Court on the finding that the same was not taken up in the application filed by the appellant. In other words, it was canvassed across the Bar for the first time. That being the position, the High Court justly disallowed the said contention.

14. However, with regard to the other aspects raised in the application, the High Court noted that the appellant did not file the original copy of the election petition served on him, but produced only a photocopy of the allegedly served copy of the election petition along with the application filed for that purpose, bearing Election Application No.3 of 2018. The High Court noted that the only grievance of the appellant was that the copy of the election petition served on him did not contain the words: "True Copy". That contention was rejected by placing reliance on the exposition of the Constitution Bench of this Court in *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore*², *Ch. Subbarao Vs. Member, Election Tribunal*³ and in *T.M. Jacob Vs. C. Poullose and Ors*⁴, wherein it has been held that the real test of whether the copy served is a "true one" is to find out whether any variation from the original is calculated to mislead an ordinary person and if there is substantial compliance with the requirements of Section 81(3) of the Act, the election petition cannot be dismissed at the threshold.

15. We must agree with the High Court that to test the arguments of the appellant as to whether the copy served on him was a true copy of the original election petition or otherwise, it was imperative for him to produce the copy of the petition actually served on him and not the photocopy thereof. The grievance of the appellant that some blanks had been kept in the verification clause or there were material discrepancies, could be examined only if the copy of the petition actually served on the appellant was produced before the Court. The High

Court could have non-suited the appellant on this sole ground instead of examining the matter any further.

16. However, the grievance made before us by the appellant is that the factual position recorded by the High Court in paragraph 35 of the impugned judgment that the appellant had not produced the copy actually served on him in the Court is incorrect. In that, the appellant had submitted the photocopy of the actually served copy along with Election Application No.3 of 2018 and had also undertaken to produce the original of the actually served copy at the time of hearing and that the same was so produced at the time of hearing and handed over to the High Court. This specific plea has been taken in ground (u) of the special leave petition. In other words, the High Court committed manifest error in that regard. If that is so, it would be appropriate to relegate the parties before the High Court for consideration of grievance that the copy actually served on the appellant is not the true copy within the meaning of Section 81(3) of the Act. We are inclined to say so also because the plea taken by the appellant before us is that the appellant had pointed out 20 discrepancies in the copy of the election petition served on him and a chart whereof has been appended at Pages 855-867 of Volume IV of the Special Leave Petition, which according to the appellant, were material discrepancies warranting a finding that the copy of the petition served on him was not a “True Copy” within the meaning of Section 81(3) of the Act. We find that the High Court has not dealt with this contention in the impugned judgment at all. Even for this reason, the decision of the High Court on the application under consideration, being Election Application No.3 of 2017, will have to be set aside and the parties will have to be relegated before the High Court for its consideration afresh on its own merits in accordance with law. In this view of the matter, we have consciously avoided to advert to the rival pleadings and submissions on the merits of this issue so that no prejudice is caused to either party and the remanded Election Application No.3 of 2017 can be decided de novo in accordance with law. All contentions available to the respective parties in that regard are kept open.

17. We may hasten to add that the question to be decided in Election Application No.3 of 2017 for dismissal of the election petition, will be limited to non-compliance of Section 81 (3) and the consequences flowing there from including under Section 86(1) of the Act. For, the dismissal of the election petition under the latter provision is envisaged only on that count and not in reference to some non-compliance of requirement under Section 83 of the Act. This is the settled legal position.

18. As we are inclined to relegate the parties before the High Court for consideration of Election Application No.3 of 2017 afresh in accordance with law, and in the event the appellant is in a position to persuade the High Court to allow the said application, the election petition will have to be dismissed at the threshold under Section 86(1) read with Section 81(3) of the Act. However, if that application fails, the appellant can be permitted to reopen or revive the challenge to the issues raised in Election Application No.6 of 2017 for dismissal of the election petition under Order VII Rule 11(a) & (d) of the CPC, on the ground that the election petition does not disclose a cause of action or that it is barred by law. In that eventuality, the appellant may challenge the judgment rendered in the remanded Election Application No.3 of 2017 and also have the liberty to file fresh special leave petition against

the impugned judgment and order passed by the High Court in Election Application No.6 of 2017. Further, both such special leave petitions can be heard together. All questions in that regard are kept open, to be decided appropriately if and when occasion arises. For the time being, we do not wish to burden this judgment with the said issues and leave it open.

19. Accordingly, we allow this appeal in the following terms:

(I) The judgment and order dated 20th April, 2018 passed by the High Court of Gujarat in Election Application No.2 of 2017 in Election Petition No.1 of 2017, is upheld and as a result thereof, the appeal against that decision is dismissed.

(II) The judgment and order dated 20th April, 2018 passed by the High Court of Gujarat in Election Application No.3 of 2017 in Election Petition No.1 of 2017 is set aside and the parties are relegated before the High Court for de novo consideration of the said application which is restored to the file of the High Court to its original number in terms of this order. The High Court is requested to decide the remanded application expeditiously, preferably within one month. Hence, the appeal against the decision on the Election Application No.3 of 2017 is partly allowed.

(III) The appeal against the judgment and order dated 20th April, 2018 passed by the High Court of Gujarat in Election Application No.6 of 2017 in Election Petition No.1 of 2017 is disposed of with liberty to the appellant to challenge the selfsame decision afresh in the event his remanded Election Application No.3 of 2017 in Election Petition No.1 of 2017 is rejected. That special leave petition be heard analogously with the special leave petition against the order to be passed on Election Application No.3 of 2017, should the need arise.

20. The appeals and the accompanying application(s) are disposed of in the aforesaid terms with no order as to costs.

Judgment Referred.

¹(2005) 2 SCC 0188

²(1964) 3 SCR 0573

³(1964) 6 SCR 0213

⁴(1999) 4 SCC 0274