

KERALA HIGH COURT

K.K. Somanathan

Vs

K.K. Ramachandran

E.P. No. 6 of 1987

(S. Padmanabhan, J.)

24.10.1987

ORDER

S. Padmanabhan, J.

1. In the general election to the Kerala assembly held on 23-3-1987 ten candidates including once Mr. Cyriac John and respondents 1 to 3 contested for the No. 30 Sultan's battery seat. Real contest was between first respondent and Mr. Cyriac John. First respondent won by a margin of over 4,000 votes. Petitioner, an elector and the election agent of Mr. Cyriac John, seeks to declare the election of the first respondent void on various grounds. After the trial of the case started, at a time when the petitioner was partly examined as P.W. 1, first respondent wanted maintainability of the petition for want of cause of action to be heard preliminary and as agreed to on behalf of the petitioner also, the examination of P.W. 1 was suspended and the matter heard.

2. But at the time of argument the learned counsel for the petitioner took objection to the preliminary point being heard, seeking authority from the decision in *Balwan Singh v. Lakshmi Narain*¹, The argument was that after issues are settled and trial started there cannot be any question of deciding any preliminary point. I think the counsel has misunderstood the scope of that decision. That was a case dealing with corrupt practices, particularly those coming under Section 123(5) involving hiring or procuring of vehicles for the free conveyance of electors. It was held that the corrupt practices being hiring car procuring of vehicle for the conveyance of electors, if the full particulars of conveying by a vehicle of electors to or from any polling station are given, Section 83 is duly complied with, even if particulars of the contract of hiring, and distinguished from the fact of hiring, are not given. It was in that context that their Lordships said that normally the argument for hiring or procuring of a vehicle is within the special knowledge of the parties to that agreement and it is difficult to assume that it was intended to require the petitioner in an election petition to set out the particulars of such facts within the special knowledge of the other party, and expose the petitioner to a penalty of dismissal if these particulars could not be given. At the same time that decision itself said that insistence upon full particulars of corrupt practice is undoubtedly of paramount importance and if the petition is found

¹ AIR 1960 SC 770

to be defective in that respect an opportunity should be given to the petitioner to amend or amplify the particular without dismissing the petition *in limine* and in the event of non-compliance, charges which are vague may be struck out. It was in such a situation that their Lordships said that if the parties go for trial, despite the absence of full particulars of the corrupt practices alleged, and the evidence of the contested parties is led on the plea raised by the petitioner, the petition cannot thereafter be dismissed for want of particulars without giving an opportunity for amendment, because the defect is one of procedure and not one of jurisdiction to adjudicate the plea in the absence of particulars. After that decision was rendered Section 123(5) has undergone radical amendments. Anyhow that decision only said that when material facts regarding corrupt practices are alleged and the only defect is absence of sufficient particulars under Section 83(1)(b), the petition cannot be dismissed in limine, after the parties went for trial and evidence of the contesting parties is led, without giving an opportunity to amend or amplify the particulars. The limitations in the granting of such an amendment are also not for my consideration now.

3. Undoubtedly it is within the powers of the Court to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may be, in the opinion of the Court, necessary for securing a fair and effective trial of the petition. Whether such a relief can be granted after the expiry of limitation is not a matter that comes up for decision. Anyhow Section 86(5) itself prohibits introduction by amendment of the particulars of a corrupt practice not previously alleged. Now the law is well settled and decisions are unanimous that all material facts coming under Section 83(1)(a) will have to be alleged with exactitude and even the omission of a single material fact will render the cause of action incomplete, entailing that charge being struck out under Order 6, Rule 16 and if no further triable issue remains, the petition itself is liable to be rejected under Order 7, Rule 11, Civil Procedure Code as not disclosing any cause of action. So also the decisions are unanimous that while particulars under Section 83(1)(b) could, in appropriate cases, be allowed to be supplied by amendment, omission of a material fact is fatal and cannot be so cured.

4. The real scope of the objection of the counsel arises at this stage. We will take the case of an election petition which does not disclose any cause of action in the sense that no cause of action with complete material facts is alleged. That defect cannot be supplied by amendment. That means the petition continues to be defective and it could only be rejected because the defect cannot be supplied. If the argument of the counsel on the basis of his interpretation of AIR 1960 Supreme Court 770 is accepted the only course open to the Court will be to undergo the full ordeal of the trial by the unnecessary examination of the parties and witnesses at the risk of wastage of the precious time of the Court which could be utilised for other useful purposes. I do not think that this is what the decision meant. It cannot mean so because the words used in Order 6, Rule 16 are "at any stage of the proceedings". Though Order 7, Rule 11 does not contain such words the absence is immaterial. If pleadings could be struck out at any stage the applicability of Order 7, Rule 11 must also be there at all stages. When no triable cause of action remains after striking out the pleadings it will be an abuse of the process of Court to keep the proceedings still pending without being rejected under Order 7, Rule 11.

5. (*Balwant Singh v. Lakshmi Narain*²) was considered in several later decisions including (*Razik Ram v. J.S. Chouhan*³), (*Balwant Singh v. Prakash Chand*⁴) and (*Dhartipakar v. Rajiv Gandhi*⁵). In AIR 1987 Supreme Court 1577 the Supreme Court said that though AIR 1960 Supreme Court 770, related to corrupt practice under Section 123(5) and though it was decided prior to the

amendment of that Sub-Section, even then it was observed in that decision that corrupt practice under Section 123(5) being the hiring or procuring of a vehicle for the conveyance of electors, full statement of the hiring or procuring must be given in the election petition. Now it is well established that the Court has not only the power but the imperative duty also to strike out pleading in appropriate cases under Order 6, Rule 16, at any stage and to reject the petition itself under Order 7, Rule 11 if no cause of action remains. An election petition can be summarily rejected at the threshold of the proceeding and equally so at any subsequent stage if the basic defect persists even at that stage. The starting of the trial or settlement of issues is no bar to such an action. Order 7, Rule 11 does not place any restriction in that respect (see AIR 1987 Supreme Court 1926). Order 7, Rule 1 does not restrict the power of the Court or say that it could be only at any particular stage. Especially in an election petition this power has to be freely exercised. An election petition which does not disclose any cause of action and which is likely to prove abortive should not be allowed to engage the time of the Court or act as the Sword of Democles hanging over the head of the returned candidate deterring him from discharging his duties to the nation. I, therefore, reject the contention of the petitioner's counsel in this respect outright.

6. The grounds alleged in the petition broadly fall under three categories under Sections 123(1)(a), 123(2) and 123(7). True that there are some allegations coming under Section 100(1)(d)(iv) also. The allegations coming under Section 123(1) are that the first respondent persuaded respondents 2 and 3 to stand and continue as candidates with the object of dividing the votes likely to go in favour of Mr. Cyriac John and he also succeeded in that attempt. Apart from the absence of material facts and full particulars in support of that charge, the basic ingredients of the charge are not there in the petition. The only averment is a bald and general allegation of 'persuasion' without any further details. Details of the persuasion are not there. Even taking for granted that it is sufficient to establish persuasion, that is absolutely insufficient to bring home the charge under Section 123(1). What is involved in the charge is bribery in one form. Any gift, offer or promise by a candidate or his election agent or by another person with the consent of the candidate or his election agent of any gratification, to any person, with the object, directly or indirectly of inducing a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election is necessary to constitute such a charge. As held in *Ghasi Ram v. Dal Singh*⁶, bribery under Section 123(1) and undue influence under Section 123(2) require consensus of mind. A promise of a gift or an offer is equally a corrupt practice, but the gift, offer or promise must be made in the case of Section 123(1)(a) to the candidate or an elector and in the case of Section 123(2) to an elector with the requisite intention. Undue influence and obtaining or procuring services of a Government servant coming under Section 123(7) also must be with that intention. Offer, acceptance, influencing and submitting are the essential

² AIR 1960 SC 770

⁴ AIR 1976 SC 1187

⁶ AIR 1968 SC 1191

³ AIR 1975 SC 667

⁵ AIR 1987 SC 1577

factors. These corrupt practices cannot be unilateral or one sided. In the absence of any such allegations there is absolutely no cause of action for a charge under Section 123(1)(a).

7. One of the corrupt practices coming under Section 123(7) is that for the purpose of winning over the electors first respondent influenced the concerned officers and the Government itself to provide funds against the financial rules for getting electric connection for a lift irrigation scheme. What was the influence exerted, how the assistance was obtained or procured, who are the officer or persons, from where assistance was obtained or procured and what was the nature of the assistance are facts not alleged (see 1986 (Supp) SCC 315). These are material particulars

without which the cause of action is not complete. There must also be nexus between the assistance and procurement by or with the consent of the candidate. Material facts and necessary particulars as to the time and place where the assistance was sought from each of the persons will have to be alleged with exactitude and how it was in furtherance of the election prospects is also an essential ingredient. Mere expressions like "approached the minor irrigation officer", "influence and repeated pressure", "solicited assistance", "securing help" etc. without specific particulars will not constitute cause of action (see AIR 1972 Supreme Court 515).

8. What could be gathered from the petition is a general allegations without any details that the petitioner, using his influence with the Government and its officers, some hire or other managed to make available the requisite funds for being deposited to secure power connection for the project. The main prohibited or offensive portion of Section 123(7) is the obtaining or procuring of the prohibited assistance of Government officers for the furtherance of the prospects of the candidate's election. This charge is not all established by the allegations.

9. It is true that election is something which must be conducted fairly. Arranging to spend money on the eve of the election in difficult circumstances, although for the general good, is when all is said and done, an evil practice which the Election Commission has prohibited in its instructions in the Handbook. But it is not a corrupt practice as defined under the Act though the dividing line between them is very thin. Whatever is said by the Election Commission, its violation will not be a ground for interference with the election unless that violation comes within the ambit of Section 100(1). Even if the allegation is construed as one coming within the mischief of Section 123(1)(a) or Section 123(2) the ingredients are not attracted. If a Minister or an influential politician redresses the grievances of a class of the public or people of a locality or renders them any help or does some developmental activity in the constituency on the eve of the election, it is not a corrupt practice unless there is an element of bargaining by which in turn for the services he obtains some promises for his help. If it is under Section 123(2) the allegations must show that what was done amounts to undue influence which is a tyranny over the mind leaving the elector no choice in the matter of franchise. None of these requirements are satisfied and necessary material facts or particulars constituting the corrupt charges are not there. The over emphasis given in the petition to the instructions given by the Election Commission in the Handbook indicates that the petitioner has gone under the wrong impression that independent of the Representation of the People Act and Rules, violation of those instructions are grounds for setting aside an election. Such instructions cannot override the provisions of the Act and Rules and they cannot enlarge the scope of the provisions for setting aside an election.

10. Any corrupt practice or malpractice done by anybody other than the candidate or his election agent will operate against the candidate only if himself or his election agent consents to it. Election agent is the alter ego of the candidate in the scheme of the Act and his acts are acts of the candidate, consent or no consent on the part of the candidate. He alone can act on behalf of the candidate without his consent to bind him. He is the same as the candidate himself having been appointed under Section 40 (see AIR 1969 Supreme Court 1201). If somebody else, whether it be a Government servant coming within the prohibited class in Section 123(7) or not, does something for the candidate illegally in the election, without the consent of the candidate, that cannot affect his election even if the wrong doer may be otherwise liable. Canvassing for a candidate is the right of anybody and it is as important as the right to vote.

11. Two other allegations are that first respondent secured electric connection to one K.J.

Devassia who is not even alleged to be a voter and that he gave instructions for digging tube-well in the constituency. Without any other allegation I fail to understand how these allegations, even if taken as true, could constitute corrupt practices. The same is the case of the allegation that "at the instance of the first respondent" drinking water was supplied in lorries with his symbols displayed. Then there is the allegation that some Government officers' organizations rendered or offered assistance. Yet another set of allegations is that some officers of the revenue, excise, agricultural income-tax or sales tax department either threatened or influenced electors to vote for the first respondent. Apart from the absence of any material fact or particulars, the only allegation indicating consent of first respondent is the expression "at the instance of the first respondent". It is really unfortunate that the petitioner, himself an Advocate, approached the Court with vague allegations, many of which are irrelevant and some of which are insufficient, and all of which are without the requisite material facts of full particulars. The petition seems to have been filed in the most irresponsible way without looking into the requirements of the provisions of the Act and the Rules as interpreted by the Supreme Court and various High Courts in ever so many decisions.

12. The irresponsible way in which the petition was filed is further clear from the other allegations. One ground alleged for declaring the election void is that Prime Minister Mr. Rajiv Gandhi and Central Minister Mr. M.M. Jacob canvassed for the first respondent by their speech in election meetings. Petitioner ought to have realised that in a democratic set up where Governments are headed by political parties, even Ministers who are representing political parties are entitled to canvass for their candidates and it will not amount to corrupt practice unless the requirements for that purpose in the Act are satisfied. Probably it was to overcome this situation that the petition made a vain attempt to make an empty allegation, "the Prime Minister apparently used his official position to compel the voters to vote for his party". The only allegation of use of official position is "the Prime Minister exhorted the voters present to raise their palm if they are inclined to vote for the first respondent and actively instigated many voters present in the meeting to raise their hands so as to resemble the election symbol of the first respondent". I do not think that any misuse of official position is disclosed.

13. The other allegations are "the petitioner understands that on the closing date for the preparation of electoral rolls, at the instance of the first respondent and his active supporters caused the inclusion of many names in the electoral roll which could not have been legally included since the concerned persons were not qualified to be included in the electoral rolls." It is said that names of dead persons and minors were included. Apart from the question of omission of material facts in the forms of instances and their details, the petitioner ought to have realized that the electoral rolls and the eligibility of person included in the rolls to vote are not matters that could be challenged in a Court. The allegation regarding counting is "several malpractices were detected". It is sufficient to say that the petition is lacking immaterial facts and particulars and as such incapable of bringing about any cause of action and the allegations are mere irresponsible and careless statements.

14. Under Section 83(i)(c) the petition shall be signed and verified in the manner laid down in the Civil Procedure Code for verification of pleadings. Proviso to that Sub-Section says that where the petitioner alleges any corrupt practice it shall be accompanied by an affidavit in Form No. 25 in support of the allegation of corrupt practice and the particulars thereof. The only verification in the petition is "on information which I believe to be true". This is no verification at all when the

object and purpose of verification is considered. The affidavit do not support any material facts or particulars and it is not in Form 25 as required by Rule 94A. The verification is only "on information which I believe to be true". The affidavit and the verification in the petition, therefore, cannot be accepted at all. Grounds A to K in the petition are therefore struck out under Order 6, Rule 16, Civil Procedure Code. The other allegations do not disclose any cause of action and hence the petition itself is rejected under Order 7, Rule 11(a), Civil Procedure Code. Petitioner will pay the costs of the first respondent which is quantified at Rs. 1,500/-.
Petition dismissed.