
(1991) 05 MP CK 0007
In the Madhya Pradesh High Court
Case No : E.P. No. 31 of 1990

Asharam Paraste

APPELLANT

Vs

Om Prakash, M.L.A.

RESPONDENT

Date of Decision : 06-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11, 83
Representation of the People Act, 1951 — Section 100, 100(1), 101, 123(4), 127A

Citation : (1991) J LJ 704

Hon'ble Judges : P.C. Pathak, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; N.C. Jain and Rakesh Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pathak, J.—Petitioner and Respondent were candidates in Assembly election held in February, 1990 in Bajag Consistency, tehsil Dindori, District Mandla M.P. The Petitioner polled 8091 while the Respondent 14439 votes. Beside the Petitioner and the Respondent, there were 10 other candidates. Details of votes polled by each are not material for disposal of the petition. The Respondent was declared elected. One of the grounds on which the Petitioner challenges his election is that the District Election Officer set up Polling Stations in disobedience of instructions of the Election Commission. The relevant excerpts from the Instructions is reproduced below:

1. ... The draft lists of the Polling Stations must be forwarded to the Election Commission for scrutiny and approval atleast two weeks before the last date for the withdrawal of candidatures....

(d) The polling stations may be set up in colonies inhabited by the Harijans and weaker sections of the society, even though the number of voters may be less than 500.

2(a) To the extent practicable, polling stations should be located more or less permanently so that the voters go and cast their votes always at one polling station. Further as far as practicable, Polling stations should be set up at the same place as for local bodies elections so that the voters may not have to go to different polling stations for different elections.

(b) Polling stations should be set up in such a manner that ordinarily no voter is required to travel more than two kilometres for recording his vote. In sparsely populated, hilly or forest area this rule may have to be relaxed; but in order to avoid voters having to walk unduly long distances, polling stations in such cases may have to be set up for a smaller number of voters than usual.

The Petitioner submits that Bajag constituency is reserved for scheduled tribes, the voters are very back-ward, illiterate and live below the poverty line. The Petitioner alleges that the District Election Officer failed to send the draft list of polling stations to the Election Commission.

The polling stations were beyond 2 K.ms. distance from the villages attached to them as per list Annexure-P.2 which amounts to breach of the instructions. In consequence the attendance of voters on the date of poll in the polling booths was poor. The said breach makes the election of Respondent void under item (iv) of Clause (d) of Sub-section (1) of Section 100 of the Representation of the People Act, 1951.

2. The other ground is that the Respondent is not a doctor either of Allopathic, Ayurvedic or Homeopathic system of medicines and yet he declared himself to be a doctor and thus better qualified than any other candidate. He repeated every where his promise to treat the Advasi voters free of cost for their ailments. He has neither passed any MBBS examination nor any other examination of other system of medicines, he got printed and published or caused to be printed and published, election pamphlets or handbills like Annexures-P-3, 4 and 5. None these pamphlets bears the name and address of the printer and publisher thereof. No declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he was personally known, was delivered by him to the printer in duplicate nor one copy of any such declaration was sent by the printer together with one copy of the document, to the District Magistrate of Narsinghpur or Mandla. Thereby an offence u/s 127A was committed. Though the offence aforesaid does not by itself amount to corrupt practice, it rendered the election of Respondent void under item (iv) of Clause (d) of Section 100 of the Act, as the result of election in so far as it concerns the returned candidate, has been materially affected.

3. The Petitioner further pleads that the Respondents intention in getting the pamphlets published was to make a false impression in the mind of the voters that amongst all, he was the best candidate and hence he, and he alone and no other candidate, was qualified to look-after their interests and could also serve them with medicines. This was also the purport of the election speeches made by

the Respondent, his election agent and Ors. with his consent or the consent of his election agent. After the speeches the pamphlets and posters were distributed in almost all villages of the constituency, from about 15 days before the polling date by the Respondent, his election agent or Ors. with his consent or the consent of his election agent. The statement that the Respondent is a doctor and Ors. are illiterate was false to the knowledge of the Respondent. The real fact is that he like some candidates, he is only a matriculate. His false statement was in relation to the personal character of a mental achievement of himself and not attaining of that mental achievement by other candidates and was reasonably calculated to prejudice the prospects of all other candidates and that result was also achieved as the simple, ignorant adivasi voters of the constituency believed that false statement to be true and voted for the Respondent. The words "Personal Characters of conduct" as used in Section 123(4) of the Act are to be equated with mental or moral achievements. By the act alleged above, corrupt practice u/s 123(4) of the Act was committed, which materially affected result of election in so far as the Respondent is concerned and the election as declared in favour of Respondent is rendered void.

4. The Petitioner further submits that a large number of ballot papers as given in final election result in Form-20, were rejected on arbitrary grounds, without writing any reason for such rejection on the ballot papers which renders the election void. Majority of such rejected voters should have been counted as having been validly cast in favour of the Petitioner.

5. The Respondent filed written statement denying all the allegations and also submitted an application LA. No. 30/90 for dismissal for the election petition on the ground that the petition does not disclose any cause of action.

6. Section 81(1) of the Act provides that an election petition calling in question any election may be presented to the High Court on one or more grounds specified in Sub-section (1) of Section 100 and 101 of the Act. Section 100(1)(d) (iv) of the Act runs as under:

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

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

In order to make out a ground u/s 100(1)(d)(iv) the Petitioner was required to plead that (i) the result of the election in so far as it concerns a returned candidate has been "materially affected"; (ii) by any noncompliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

7. Learned Counsel for the Respondent relied on Shri Ram Autar Singh Bhadauria Vs. Chaudhari Ram Gopal Singh and Others, which held that the scope of the inquiry u/s 100(i)(d)(iii) is to determine whether any votes had been improperly

refused or rejected in regard to any other candidate. These are the only two matters which would be relevant for testing whether the election of the returned candidate had been materially affected or not.

8. In *Azhar Hussain Vs. Rajiv Gandhi*, it was held that an election petition can be and must be dismissed under the provisions of CPC if the mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with. The CPC applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 6, Rule 16 and Order 7, Rule 11(a). Therefore, Section 83 does not find a place in Section 86 of the Act which authorises dismissal of election petitions in certain contingencies but that does not mean that powers under the CPC cannot be exercised. In this decision, it was held that in a plea regarding corrupt practice, covered by Section 123(4), it is the duty of the Petitioner to pin point the particular person with whose consent, the statement was made or the booklet was distributed. The day or date, time and place of distribution, the names of the agent or persons who distributed it, if not indicated, the Court held that the pleading is vague. With regard to the distribution of the pamphlet, it must be pleaded who has distributed the pamphlets, when were they distributed, where they were distributed, to whom they were distributed and in whose presence they were distributed. If the pleading is silent on these aspects, no cause of action is disclosed. Reference was also made to *Nihal Singhs case*, 1970(3) SCC 239

9. In *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, it was held that if the Court on examination of the election petition finds that it does not disclose any cause of action, it would be justified in striking out the pleadings. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election Petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground, it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet, if the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action and the petition can be dismissed even after settlement of issues *Samar Singh Vs. Kedar Nath alias K.N. Singh and Others*,

10. In the light of aforesaid law, the pleadings in the election petition need to be examined. The first ground pleaded is that the District Election Officer did not send the draft list of the polling stations of Bajag constituency to the Election Commission for approval, in breach of the Instructions, so that the polling

stations were at long distances from the villages attached to the same. Consequence of the said breach is pleaded in para 8, namely there was poor attendance in the polling-booths else the Petitioner was bound to get more votes than recorded. Therefore the election of Respondent No. 1 is void under Item (iv) of Clause (d) of Section 100 as the non-compliance has materially affected the result of the election, in so far as it concerns the returned candidate.

11. In order to make out a ground u/s 100(1)(d)(iv) the Petitioner must plead with particulars that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the non-compliance with the provisions of the Constitution or of this Act or if any Rules or Orders made under this Act.

12. In order to satisfy this requirement, the Petitioner complains of breach of Instructions issued by the Election Commission. The first breach alleged is that the polling stations were set up in villages which were more than 2 K.ms. from the villages attached to them as a result of the voters were required to travel more than 2 K.ms. for recording their Votes. The relevant instructions is contained in Chapter II and the same is reproduced as under:

2 (b).- Polling Stations should be set up in such a manner that ordinarily no voter is required to travel more than two kilometres for recording his vote. In sparsely populated, hilly or forest area this rule may have to be relaxed; but in order to avoid voters having to walk unduly long distances, polling stations in such cases may have to be set up for a smaller number of voters than usual.

The instruction itself contemplates that in sparsely populated hilly or forest area, this may have to be relaxed. The Petitioner failed to specify that the instructions relied on by him were issued by the Election Commission. Even if I take those instructions to be of the Election Commission, the same is not mandatory but merely directory. The polling stations are to be set up after taking into account the local exigencies. There is no hard and fast rules that the polling booths must be set up within two kilometres. The other breach alleged is that the draft lists of the polling stations must be forwarded to the Election Commission for scrutiny and approval at least two weeks before the last date for the withdrawal of candidatures. On examining the instruction, I find that the lists of polling stations are required to be drawn up "as far as practicable" bearing in mind instructions detailed in Clauses (a) to (e). Instruction No. 2 lays down that to the extent practicable, polling stations should be located more or less permanently so that the voters go and cast their votes always at one polling station. Further, as far as practicable, the polling stations should be set up at the same place as per the local bodies elections so that the voters may not have to go to different polling stations for different elections.

13. The Assembly elections were held soon after the Parliament Elections in November, 1989. Nowhere the Petitioner alleges that the polling stations as were during the Parliament election were altered during the Assembly elections. In the

absence of such a plea, the presumption is that the polling stations remained the same as they were at the Parliament elections. The Petitioner nowhere pleads as to why the draft list of the polling stations were required to be sent by the District Election Officer when they are not shown to have been altered. In *Laxmicharan Sen v. A.K.M. Hassan Uzzaman* AIR 1985 SC 1233 it was held that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election.

14. Mere allegation of the breach of instructions does not satisfy what is required to be pleaded for making a ground u/s 100(1)(d)(iv). The Petitioner has to plead that the result of the election in so far as it concerns the returned candidate, has been materially affected. The only plea with regard to this is contained in para 8 of the petition. The Petitioner alleges that there was poor attendance at the polling booths and the Petitioner was bound to get more votes than was recorded. The Petitioner does not specify the polling booths in which the attendance was poor, the total number of voters vis-a-vis the actual number of voters who turned up in each such polling booth, and the number of votes the Petitioner expected to get more in the absence of breach. The pleadings are vague and too general and do not give rise to a triable issue. The burden to plead that the result of the election has been materially affected lies on the Petitioner. The meaning of the phrase was explained in *Vashit Narain Sharma Vs. Dev Chandra and Others*, Its scope was further examined in *Chhedi Ram Vs. Jhilmit Ram and Others*, In the absence of material particulars as to how the result of the election in so far as it concerns the returned candidate, has been materially effected, no issue can be raised.

15. The other ground pleaded in the petition is that the Respondent, though not a doctor, declared himself as such everywhere and promised to treat the Adivasi voters free of cost for their ailments. The Petitioner does not specify the places, the dates and time when the Respondent made such declarations. In the absence of particulars, issue on this count also cannot be framed. It was next alleged that the Respondent got printed or published or caused to be printed or published the election pamphlet, poster and hand bill, annexures-P-3 to P-5. It is also pleaded that the pamphlet does not contain any declaration showing the name and address of the printer and the publisher. Copies thereof were also not sent to District Magistrate which amounts to an offence u/s 127(1A) of the Act. The Petitioner contends that even though the aforesaid breaches do not amount to corrupt practice, it has materially effected the result of the election. On going through the entire petition, I could not find any material to demonstrate how the aforesaid breaches materially effected the result of the election in so far as the Respondent is concerned. Mere repetition of the words of Section 101(1)(d)(iv) hardly satisfy the requirements of Section 83 read with Section 86.

16. The Petitioner also alleges that the Respondent published the pamphlets Ex. P-3 to P-5 with sole intention to creat false impression in the minds of ignorant

voters of the constituency that he was the best and no other candidate was able to look after their interests and he could also serve them with medicines. Even if these allegations are accepted as they are, they do not amount to commission of corrupt practice as envisaged u/s 123(4) of the Act.

17. In order to prove the charge of corrupt practice u/s 123(4) the Petitioner is not only required to allege that the statements complained are factually untrue but he should also plead that the returned candidate did not believe the statement to be true. See - Raghunath Singh Vs. Krishna Chandra Sharma, The essential ingredients which are required to be pleaded and proved u/s 123(4) is also explained in Baburao Bagaji Karemore and Others Vs. Govind and Others,

18. I examined the pamphlets Ex. P-3 to P-5. The only false statement according to Petitioner in these pamphlets is that he is described as a Doctor. In my opinion, if the Petitioner was so described, it will not amount to corrupt practice since the said description does not reflect the "personal character or conduct of the candidate." The pamphlets do not allege anything against the Petitioner. Instead the Respondent is merely described as a Doctor. This is nothing but an attempt to puff off his academic achievements. In Dev Kanta Barooah Vs. Golok Chandra Baruah and Others, it was laid down that in an election it is always open to a candidate to show that his rival candidate is lacking in knowledge, in education, and is not capable of managing the affairs properly in any public body.

19. Last ground pleaded by the Petitioner is that large number of ballot papers were rejected on arbitrary grounds without recording any reason for such rejections. It is also stated that the majority of such rejected votes should have been counted as having been validly cast in favour of the Petitioner. These allegations are also vague and are devoid of material particulars.

20. In view of the foregoing discussions, it must be held that the petition suffers from lack of material particulars. The preliminary objections raised by the Respondent must be upheld. The petition fails and is hereby rejected with costs. Counsel's fee Rs. 1,000/-.