

(1999) 08 MP CK 0055

In the Madhya Pradesh High Court

Case No : Election Petition No. 11 of 1999

Badan Singh Raghuwanshi

APPELLANT

Vs

B. Rajgopal Naidu and Another

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Constitution of India, 1950 — Article 2, 225, 329, 348, 348(2)
Representation of the People Act, 1951 — Section 100, 80, 81(3), 83(1), 87

Citation : AIR 2000 MP 56 : (2000) ILR (MP) 830 : (2001) 4 MPLJ 407

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : V.S. Chauhan, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

The petitioner claims that he was the authorised candidate of the Bharatiya Janata Party to contest the election of the Legislative Assembly of the State of Madhya Pradesh from Constituency No. 249, Shamshabad and had been allotted "Kamal" as the election symbol.

The result of the election was declared on 28-11-1998 whereunder the petitioner was shown to have lost the election by 544 votes.

By means of the present election petition; the election petitioner has prayed for staying the declaration of the result by the respondent No. 1 with a direction for recounting of the votes.

The election petition was presented by the petitioner before the Additional Registrar, High Court of Madhya Pradesh, Jabalpur on 9-1-1999. He had been identified by Shri V. S. Parihar, Advocate from Ujjain.

The Additional Registrar in his report dated 9-1-1999 has pointed, out that the election petition was in Hindu language and quarter margin had not been left in

the left side, therefore, it contravened Rule 2 of the Rules relating to the election petitions.

The election petition was put up for orders before the Court on 26-3-1999 along with the aforesaid objections raised by the Additional Registrar.

The learned counsel for the petitioner on that date sought for two weeks time to enable him to study the matter in regard to the aforesaid objections.

On 19-4-1999, Shri V. S. Chouhan, Advocate filed his vakalatnama putting his appearance in the case representing the election petitioner. On that date, he sought for one week's time for making the submissions in regard to the objections raised by the Additional Registrar. The time sought for was granted.

I have heard the learned counsel for the petitioner at some length on the objections in question as well as the question in regard to the issue of notice to the respondents which has been prayed for. I have also carefully perused the record.

The provisions contained in Section 87(1) of the Representation of the People Act, 1951, stipulate that subject to the provisions of the said Act and of any rules made there under, every election petition shall be tried by the High Court, as nearly as may be, in accordant with the procedure applicable under the Code of Civil Procedure, 1908.

However, Section 4 of the Civil Procedure Code, 1908, provides as follows :

"4. Savings.- (1) In the absence of any specific provision to the contrary nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special Jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

(2) *** **

In exercise of the powers conferred by Article 225 of the Constitution of India and all other powers including those envisaged under the notification issued by the Chief Justice u/s 51 of the States Reorganisation Act, 1956, the High Court of Madhya Pradesh had framed the rules relating to the Election Petitions presented before it as provided under the provisions of the Representation of the People Act. 1951. These Rules were published in the Madhya Pradesh Gazette Extraordinary dated 22-2-1967. Rule 2 of the aforesaid Rules provides as under :

"2. Every Election Petition shall be-

(a) typewritten or printed fairly and legibly on white foolscap size paper of reasonable quality, one side of the paper only being used, leaving a quarter margin on the left and at least 1/2 inches open space on the top and bottom of each sheet;

(b) written in the English language, numbering separately the paragraph thereof;

(c) couched in proper language and in conformity with Sections 81 82 and 83 of the Representation of the People Act, 1951."

Article 329. sub-clause (b) of the Constitution of India read with the provisions of the Representation of the People Act, 1951, as contained in Sections 80 and 87 of the said Act, provides as follows :

"329. Bar to interference by Courts in electoral matters,-

(a) *** **

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

"Section 80.- Election petitions.- No election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the said Act."

"Section 87.- Procedure before the High Court.- (1) Subject to the provisions of this Act and of any rules made there under, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits:

*** **

(2) *** **

It is, therefore, obvious that no election to either the Parliament or the State Legislature can be called in question except by an election petition presented in such manner as may be provided for, by or under any law made by the appropriate legislature. Since no procedure for presenting an election petition to the High Court has been provided by the Parliament in Part VI of the Representation of the People Act, 1951. though Section 80 of the Act comprised in that part prohibits that no election petition unless presented in accordance with the provisions of Part VI of the Act, shall be called in question, it was open to the High Court to frame the Rules to discharge its constitutional obligation and statutory duty. namely; trial of the election petitions filed before it by the election petitioners.

In the present situation, under the Rules framed by the High Court to which a reference has been made hereinabove, the presentation of the election petition stands regulated.

The right to challenge an election is a special right conferred under a self-contained special law and is circumscribed by its provisions. As clarified by the Apex Court in its decision in the case of Satya Narain Vs. Dhuja Ram and Others, , an election petition cannot be equated with a plaint in a civil suit. An election petition challenging the election of a successful candidate must strictly

conform to the requirements of the law.

-The first question which arises for consideration at this stage is as to whether the election petition presented in the Hindi language without complying with the requirements as envisaged under Rule 2 of the Rules framed by the High Court relating to election petitions referred to hereinabove is entertainable.

It may however be noticed that vide the notification dated 18-9-1971 in exercise of the powers conferred by clause (2) of Article 348 of the Constitution of India, the Governor of Madhya Pradesh with the previous consent of the President of India, had authorised the use of Hindi language in all proceedings of the High Court other than the decrees, orders and judgments of the High Court, subject to the following conditions :

"(1) If any Bench of the High Court so desires, specific orders for translating into English, the affidavits, statements and documents in Hindi shall be passed; and

(2) If any judgment contains extracts from pleadings, statements and documents, etc., in Hindi, it shall be accompanied by translation of the same in English language.

It was further provided that for the aforesaid purpose, use of Hindi shall be optional and if the parties so desire, they may continue to use English language as usual."

Article 348(1)(a) of the Constitution of India provides that all proceedings in the Supreme Court and in every High Court, shall be in the English language.

In the present case, the objection raised by the Additional Registrar is with reference to the statutory provisions contained in the separate rules regulating the presentation of the election petition framed in exercise of the jurisdiction envisaged under Article 225 of the Constitution of India to carry out the objects underlying the provisions relating to the "prescribed manner" as contemplated under Article 329(b) of the Constitution of India read with the provisions of the Representation of the People Act. 1951.

It may be noticed that Rule 2 of Section I, Chapter IV of the Rules framed by the High Court provides as follows :

"2. PRESENTATION OF APPEALS AND APPLICATIONS

Applications to the High Court shall, save where it is provided to the contrary in these rules, be by a petition-

(i) written in the English language;

(ii) neatly typed in thick paper of foolscap size with a margin of two inches, only one side of the paper being used;

(iii) to (v) *** **

From what has been indicated above, it is apparent that the rules relating to the presentation of appeals and applications as contained in Section I, Chapter IV of the rules deal with the matters other than the matters relating to election petitions, the rules in respect whereof have been framed separately vide the notification dated 21-2-1967 contained in Section II, Chapter VII which specifically provide that the said rules related to the election petition presented under the Representation of the People Act, 1951.

In the notification dated 18-9-1971 issued in the exercise of the powers envisaged under Article 348(2) of the Constitution of India, it has been provided that the use of Hindi language in all proceedings of the High Court other than decrees, orders and Judgments of the High Court was authorised subject to certain conditions.

The expression "all proceedings of the High Court" as used in the aforesaid ; notification is of a general character and in " my considered opinion it has to be taken as confined to the proceedings referred to in Rule 2 of Section I, Chapter IV of the Rules : framed by the High Court that is to say the presentation of the appeals and applications and not the special rules framed by the High Court for a specific purpose to carry out the object underlying the provisions contained "" in the Representation of the People Act, 1951, which rules had come into effect with the notification dated 21-2-1967 referred to hereinabove.

I am further of the opinion that the provisions contained in Article 348(2) of the Constitution of India of Chapter III have to be interpreted in such a manner that the object underlying the provisions contained In Article 329(b) of the Constitution of India as well as Sections 80 and 87 of the Representation of the People Act, 1951 read with, Article 225 of the Constitution of India is not defeated in any manner. The provisions contained in Article 329(b) of the Constitution of India specifically provide that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

The statutory provisions regulating the trial of an election petition for questioning an election of either House of Parliament or either House of the Legislature of a State have to be construed strictly ensuring that it must conform to the requirements of the law.

As has already been noticed hereinabove, the right to challenge an election is a special right conferred under a special law as apparent from the decision of the Apex Court in the case of Satya Narain Vs. Dhuja Ram and Others, .

It cannot be lost sight of that no procedure for presenting an election petition to the High Court had been provided by the Parliament in Part VI of the Representation of the People Act, 1951, though Section 80 of the said Act comprised in that part prohibits that no election petition unless presented in

accordance with the provisions of Part VI of the Act, shall be called in question. When no manner for presenting an election petition to the High Court is prescribed by that Statute or the rules framed there under then it was obviously open to the High Court to frame appropriate rules to discharge its constitutional obligation and statutory duty in regard to the trial of the election petitions filed before it by election petitioners as it cannot , refuse to entertain the same on the ground that no procedure for presenting them before it had been prescribed by the appropriate Legislature. Since an election petition has to be presented only to the High Court, it is for the High Court to regulate the presentation and trial of the election petition.

The Special Rules framed by the High Court. In the circumstances, taking into account in the implications arising under Article 329(b) of the Constitution of India read with Section 80 of the Representation of the People Act, 1951, relating to election petitions prescribing the manner for presentation of the election petition by necessary implication stand clothed with such a statutory character which could not be deemed to have been affected by an order relating to authorisation contemplated under Article 348(2) of the Constitution of India so as to take away statutory rigour of the Rules prescribing a requirement of an election petition to be written in English language, numbering separately the paragraphs thereof as provided in Rule 2 of the aforesaid Rules relating to election petitions.

A Division Bench of this Court in its decision in the case of Bhagwati Prasad Singhal v. M. P. High Court, reported in 1988 MP LJ 367, had clarified that the Rules framed by the High Court under Article 225 of the Constitution of India must have primacy over others.

The Apex Court in its decision in the case of Krishan Chander Vs. Ram Lal, it had been pointed out that when there are specific rules under the Act which govern the election petitions, no other rules are applicable.

As has already been noticed hereinabove, the provisions contained in Section 87 of the Representation of the People Act, 1951, mandates that subject to the provisions of the said Act and of any rules made there under, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure. 1908, to the trial of suits. The procedure provided under the aforesaid Code includes the manner regulating the presentation of a plaint, appeal, etc., Section 4 of the said Code however saves any special form of procedure prescribed, by or under any other law for the time being in force. Obviously, therefore, the procedure prescribed under the Civil Procedure Code, 1908. regulating the presentation stands superseded by the special procedure provided by the High Court in the special rules relating to the manner of presentation which rules have been framed in the exercise of the jurisdiction envisaged under Article 225 of the Constitution of India.

Our Constitution is structured with a wealth of influential and choice words, measured phrases and expressions, the real meaning and message of which are sometimes missed and on many occasions are hidden or unforeseen. However, the implications, relevance, significance, spirit and core of these words have to be taken into account.

Taking into consideration the implications arising under Articles 329(b) and 225 of the Constitution of India and Sections 80 and 87 of the Representation of the People Act, 1951, as well as the implications arising under the authorisation provided vide the notification dated 18-9-1971 issued in exercise of the powers contemplated under Article 348(2) of the Constitution of India, I am of the considered opinion that violation of the special law regulating the election petitions of Rule 2(b) of the Rules contained in Section II, Chapter VII, framed by the High Court relating to election petitions is fatal and renders the present election petition not entertainable.

An unreported decision of a learned single Judge of this Court at Indore Bench dated 21-2-1981 disposing of LA. No. 14 of 1980 filed in the Election Petition No. 9 of 1980 (Devilal S/o Shriram Khadav v. Kinkar Narmada Prasad) has been brought to my notice whereunder the said application filed by the respondent No. 1 in that case for dismissing the election petition on the ground that the petition had not been filed in the English language as required by Rule 2(b) of the Rules relating to the election petitions made by the High Court, was rejected.

A perusal of the aforesaid order indicates that the application had been rejected observing that in the absence of any provision in the Act or the Rules made under the Representation of the People Act, non-compliance with the Rule 2(b) of the Rules relating to the election petitions made by the High Court could not be a ground for the dismissal of the petition u/s 86 of the said Act. It was further observed that it was not the case of the respondent No. 1 who had moved the application that he was not conversant with the Hindi language in which the petition had been written noticing that the said respondent had himself filed I.A. Nos. 10, 11, 12 and 13 of 1980, which were written in the Hindi language. It was in such circumstances that the learned single Judge finding that it was not necessary to direct the petitioner to file a translation of the petition in English language had rejected the said application.

A perusal of the aforesaid order further indicates that the only question which had been considered by the learned single Judge was as to whether an election petition written in English language was required to be dismissed u/s 86 of the Representation of the People Act, 1951. It had however been observed that the counsel for the respondent No. 1 was unable to point out any provision of the Act or the Rules made under the aforesaid Act requiring the petition to be written in a particular language.

It may be noticed that although like cases should be decided alike but this principle is not an absolute rule nor of universal application. It does admit

exceptions. Where there is no discussion regarding applicability of the relevant statutory provisions and the decision has been reached by a Bench of the absence of knowledge of a decision binding on it or a statute and in either case it is shown that had the Court had the said material before it, it must have reached a contrary decision, it is clearly a case of a decision per incuriam which has no binding effect. This principle does not extend to a case where if different arguments had been placed before said Bench or a different material had been placed before it, it might have reached a different conclusion.

It cannot be lost sight of that it is not everything in a judgment which is binding but it is the ratio decidendi of the decision is the principle upon which the case is decided and for this reason it is important to analyse and isolate from it the ratio decidendi. Even where the facts appear to be identical, it is not obligatory to draw the same inference as drawn in the earlier case.

As a matter of fact, the Apex Court in its decision had observed in the case of *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, rendered by a Constitution Bench, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It was further clarified that a case is only an authority for what it actually decides. It was further indicated that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

The order disposing of I.A. No. 14 of 1980 referred to hereinabove, does not take notice of the statutory provisions and the Implications to which a reference has already been made hereinabove. In fact, in the order itself it had been pointed out by the learned single Judge that the counsel for the applicant had not been able to point out any statutory provision in support of the application apart from Rule 2(b) of the Rules relating to the election petitions framed by the High Court. Further, the only question considered in the aforesaid order was as to whether in that situation, dismissal of the election petition u/s 86 of the Representation of the People Act, was called for. The learned single Judge being of the view that the provisions contained in Section 86 of the said Act having been complied with no case for dismissal of the election petition under that provision had been made out. The case in hand is quite different as the controversy is not confined to the applicability of Section 86 of the Act alone.

In the aforesaid circumstances, the aforesaid order dated 21-2-1981, disposing of LA. No. 14/1980 in the case of *Devilal S/o Shriram Khadav* (supra) cannot come to the rescue of the petitioner.

It must not be lost sight of and it is needless to emphasise that the question in regard to the entertainability of an election petition with the presentation whereof a specific remedy is sought to be availed of ought to be ascertained

primarily at the thresholds. This is also the legislative intent running behind the provisions contained in Section 80 81. 82 83. 84 86(1) 87 and 117 of the Representation of the People Act, 1951. The provision contained in Art. 239(b) of the Constitution of India also lay emphasis on the manner of presentation of an election petition.

In the aforesaid circumstances, in case it is established that an election petition contemplated under the provisions of the aforesaid Act has not been presented in the manner prescribed. It cannot be treated as such an election petition at all which may require a trial.

The next question relates to another aspect of the matter in regard to the maintainability of the election petition as a triable case, which cannot be lost sight of. The provision contained in Section 81(3) of the Representation of the People Act, 1951, requires that 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 a true copy of the petition. This requirement that a copy of the election petition for respondents should be attested by the petitioner is of a mandatory character. The non-compliance thereof is fatal leaving no option but to dismiss the same. This position in law Stands amply clarified by the Apex Court in Its decision in the case of Sharif-ud-din Vs. Abdul Gani Lone, at page 309.

In the present case, the election petitioner has impleaded two respondents. Out of the three copies filed by the petitioner, one copy has not been attested by the petitioner under his own signature to be a true copy of the petition. The other two copies contain an endorsement to the effect TC" above the undecipherable initials. Further, the election petition has not been verified in the manner laid down in the Code of Civil Procedure. 1908 as provided u/s 83(l)(c) of the Act.

The words TC" as endorsed on two copies of the election petition in my opinion cannot be taken to satisfy the mandatory requirement of attestation by the petitioner under his own signature attesting that the copy was a true copy of the election petition. When the Act requires an attestation to be in a particular mode so as to clearly indicate in unambiguous terms that the copy was a true copy of the petition, the election petitioner cannot be held entitled to use any other expression leaving it to a guess work as to what alphabet has been used in isolation for what purpose or what could be of its intended meaning.

It may further be noticed that the petitioner has prayed for a direction for recounting of the votes. The only allegation in this connection is made in paragraph 4 of the petition. He has alleged that after the declaration of the result he had moved an application before the respondent No. 1 praying for recounting of the votes in paragraph 5 of the petition, it has been stated that the respondent No. 1 had orally rejected the said application. It has been further asserted in this paragraph that in this manner the respondent No. 1 had failed to consider the application for recounting of the votes in accordance with the

directions of the Election Commissioner and the Rules and Law. The commission to get the recounting done was claimed to be against the law and the rules in paragraph 6 of the election petition, it has been alleged that when he had appeared before the respondent No. 1 with the prayer for Issuing a certified copy of the order, the said application was returned by him saying that no copy of the application Of the order rejecting the application could be supplied.

In paragraph 7 of the election petition, it has been stated that attention of the respondent No. 1 had been invited on 22-12-1998 to the application filed before him for getting the recounting of the votes done which application had been filed immediately after the declaration of the result on which the respondent No. 1 had observed that although an application had been filed but it was not taken on record, therefore, certified copy there of could not be supplied in paragraph 8 of the election petition, the election petitioner has urged that on 28-12-1998. he had met the respondent No. 1 at his residence and invited the attention to the loss suffered by him on which the respondent had expressed the view that "MAIN IS BAT SE SAHMAT HOON KI MATGANANA MEIN GADBAD HUI HAJ. YEH GADBADI GANANA ABHIKARTA AVAM GANANA ADHIKARIYON KE MILI-BHAGATSE HI HO SAKATI HAL MUJHASE GALTI HO GAI HAL KINTU AAB DOS GALTI KO SUDHARNA SAMBHAV NAHIN KYONKI MEIN BHARAT NIRVACHAN AYOOG KO NIRDHARIT SAMAY MEIN NIRDHARIT PRARUP MEIN SUCHANA PRESBIT KAR CHUKA HOON."

So as the claim of the petitioner in regard to the recounting of the votes is concerned, it may be noticed that the Apex Court in its decision in the case of Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, , had observed that in view of the importance of maintaining secrecy of the ballot papers, scrutiny could only be ordered if the election petition contained an adequate statement of the material facts. Material facts must afford an adequate basis for prima facie satisfaction to order inspection. This contention, based on Bhimsen v. Gopalji, reported in (1961) 22 Ele LR 288 (SC). that inspection can be ordered without existence of a prima facie case, becomes meritless in view of the decision in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, whereunder it was indicated by the Apex Court after considering the aforesaid decision in the case of Bhimsen (supra). that an Election Tribunal would not be justified in ordering inspection unless the election petition contained an adequate statement of material facts.

In the present case, the petition is bereft of adequate statement of material facts and manifests no ground for inspection or scrutiny. It should not be lost sight of that a recounting is not to be ordered as a matter of right as held by the Apex Court in its decision in the case of Smt. Sumitra Devi Vs. Shri Sheo Shanker Prasad Yadav and Others, .

As noticed hereinabove, the pleadings in the matter relating to the relief of recounting are obscure and do not contain material facts and particulars. It is settled law that the material facts constituting cause of action must be averred.

The petitioner has not given the material facts which could constitute -and disclose the cause of action for the relief of recounting.

In view of what has been indicated hereinabove, I have no hesitation in holding that the present election petition as framed is not at all entertainable. It also deserves to be dismissed in view of the non-compliance of the mandatory requirement envisaged u/s 81(3) of the Representation of the People Act, 1951, and further on account of the absence of the pleadings and nondisclosure of the material facts which could establish a cause of action for the relief of recounting as prayed for, the present election petition in the circumstances is not at all triable.

In view of my aforesaid conclusions, the election petition is dismissed as not entertainable and triable with the result that the present proceedings shall stand terminated.

Ordered accordingly.