

(2013) 08 P&H CK 0562
In the Punjab And Haryana At Chandigarh
Case No : CWP-7840-2013 (O and M)

Devinder Bhadana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 198
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 323, 325
Wild Life (Protection) Act, 1972 — Section 39, 42, 50, 51, 9

Citation : (2013) 08 P&H CK 0562

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Augustine George Masih, J

Bench : Division Bench

Advocate : Sanjiv Bansal, for the Appellant; Brijeshwar Singh Kanwar, Advocate for Respondent No. 1 - UOI, Mr. Kulvir Narwal, Additional Advocate General, Haryana, Mr. Namit Kumar, Advocate for Respondent No. 4, Mr. R.S. Rai and Mr. Gautam Dutt, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.

CM-11538-2013

1. Application for exemption is allowed subject to all just exceptions.

CM-11539-2013

Leave is granted to place on record the written statement of respondent No. 5 and the application is allowed.

CWP-7840-2013

2. The present writ petition under Article 226 /227 of the Constitution of India, styled as a Public Interest Litigation, has been filed alleging that respondent No. 5 who had contested the Lok Sabha general elections in the year 2009 from

Faridabad Constituency had given false information in the affidavit filed by him in the prescribed format under the Representation of Peoples Act, 1951.

3. The allegations are predicated on the plea that the disclosure of assets of himself and his spouse has been based on an averment that his spouse name is Smt. Mamta Bhadana. It is alleged that respondent No. 5 already stood married to one Smt. Bimla Bhadana and is, thus, not only the guilty of suppression of material facts, but also the commission of criminal offence u/s 494 of the Indian Penal Code, as he married to two women at the same point of time.

4. In support of these allegations, the petitioner has referred to certain documents of one Smt. Bimla Bhadana, wherein she has disclosed that she is the wife of respondent No. 5. However, it is not in dispute that none of the documents bear the signatures of respondent No. 5. The public interest litigation seeks to raise the issue whether an elected Member of Parliament should be disqualified being the guilty of suppression of material facts and of bigamy.

5. The petition is supported by an affidavit of the petitioner categorically stating that he has filed the petition in public interest and has no personal interest involved.

6. Respondent No. 5 has brought his affidavit on record in which he has denied that he is married to Smt. Bimla Bhadana. A preliminary objection is also sought to be raised that the present petition has not been framed as per the "Maintainability of Public Interest Litigation Rules, 2010". It is stated that the petitioner has failed to disclose his credentials and his direct or indirect personal motive or interest involved in the case as mandated by Rule 2 which reads as under:-

2. No Public Interest Litigation shall be entertained by the Registry unless the petitioner(s) has specifically disclosed his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit.

7. In the aforesaid context, it has been averred that the petitioner stood for election to the Parliament from Faridabad Parliamentary Constituency in the general elections of 2004 and was pitched against respondent No. 5. Respondent No. 5 won that election where the petitioner was at the fifth position being the candidate of the Haryana Vikas Party. It is, thus, alleged that it is the clear case of concealment of material facts and violation of the aforesaid Rules.

8. The conduct and character of the petitioner is also assailed on the basis of various FIRs registered against the petitioner the details of which have been disclosed as under:-

(a) FIR No. 185 dated 26.06.2011 under Sections 148 /149 /323 /325 /452 /506 IPC, Police Station Surajkund, District Faridabad.

(b) FIR No. 210 dated 21.07.2011 under Sections 323 /452 /506 / 34 IPC, Police Station Surajkund, District Faridabad.

(c) FIR No. 66 dated 15.03.2013 under Sections 9 /39 /42 /50 /51 of Wildlife Protection Act, 1972, Police Station Surajkund, District Faridabad.

(d) FIR No. 94 dated 26.03.2013 under Sections 380 /420 /427 /457 /34 /120-B IPC, Police Station Surajkund, District Faridabad.

9. It has been alleged that the petitioner bears a personal grudge and has tried to file this petition as a public interest litigation, more so about four years after the elections have been held only with the objective of embarrassing respondent No. 5 on the anvil of the general elections which are due over the next year.

10. Without prejudice to the denial of the allegations qua bigamy it is stated that reading of Section 17 of the Hindu Marriage Act, 1956 read with Sections 494 and 495 of the Indian Penal Code and Section 198 of the Code of Criminal Procedure shows that a charge of bigamy has to be complained of only by the first wife or second wife or certain named close relatives mentioned in Section 198 of the Code of Criminal Procedure and no other person is entitled in law to complain about the same. Respondent No. 5 claims that he has not violated the provisions of the Representation of Peoples Act, 1951. It is further stated that if there is any false information disclosed, any loosing candidate or any another person can always file an election petition. There has been no election petition against respondent No. 5.

11. We may note that the Election Commission of India/respondent No. 4 in its counter affidavit has stated that there is no provision in law empowering the Election Commission to disqualify a sitting Member of Parliament on the ground that he had furnished wrong/incomplete information in the affidavit filed at the time of filing of the nomination paper. The affidavit filed on behalf of the State of Haryana refers to the verification of the documents filed by the petitioner which only go to show that one lady by the name of Smt. Bimla Bhadana has been showing herself as the wife of respondent No. 5. There is, however, no complaint by her or by the wife (Smt. Mamta Bhadana) declared by respondent No. 5.

12. We have heard learned counsel for the parties.

13. We may note in the inception that none has put in appearance for respondent No. 3/Speaker of the Lok Sabha. It is trite to say that if the conduct of the Member of the Parliament is inappropriate or any grievance has to be made, it can be so made directly to the Speaker.

14. In so far as we are concerned, some violation of any statutory law must be shown and having filed the petition as the public interest litigation it is necessary that the petition is within the conformity and as per the said Rules. The important aspect of the said Rules is full disclosure by a party approaching the Court.

15. In our view, the petitioner has clearly violated the aforesaid norms and has concealed the material facts from this Court that he was a contestant in the Lok Sabha elections against respondent No. 5, albeit the one held in 2004 and not in

the year 2009. We are unable to accept the plea of the learned counsel for the petitioner that this is an insignificant fact. The public interest litigation cannot be made into personal interest litigation to settle private scores, moreso between persons of different political hues and thinking. This is exactly what the petitioner seeks to do by filing the present petition on the anvil of the next general elections.

16. In so far as the factual contours of the allegations against respondent No. 5 are concerned, no material has been brought on record to substantiate that there is any concurrence on the part of respondent No. 5 to Smt. Bimla Badhana being his wife. In fact, in his affidavit, he has specifically denied this fact. We may also note that there is no complaint either by the lady alleged to be his first wife or his wife as disclosed in his statement or any named close relative in terms of the provisions of the Hindu Marriage Act and the Indian Penal Code. The petitioner has not approached the Hon"ble Speaker of the Lok Sabha directly.

17. We had given the option to the learned counsel for the petitioner whether he would like to withdraw the petition, but on instructions he stated that he would like to still invite an order. We have, thus, no hesitation in holding that the public interest litigation is misconceived, suffers from non-disclosure of material facts and has been filed with an oblique motive and, thus, must suffer dismissal with costs of Rs. 20,000/-, which as per request of the learned counsel for the respondents, be deposited with the Mediation Centre.