
(2010) 10 JH CK 0018
In the Jharkhand High Court
Case No : Election Petition No. 10 of 2005

Diwakar Minz

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 6
Conduct of Elections Rules, 1961 — Rule 94A
Representation of the People Act, 1951 — Section 83, 83(1), 83(2), 83(3), 86(5)

Citation : AIR 2011 Jhar 55 : (2011) 1 JCR 458

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—Instant interlocutory application has been filed on behalf of the Petitioner requesting therein for amendment in the original election petition.

2. Petitioner contended that the statement was made in paragraph-4 of the original election petition to the effect that the polling for the 66 Mandar Assembly Constituency (ST) was conducted on 15.2.2005 and complain of booth capturing and other irregularities were alleged against the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey who by coming on Bolero Jeep bearing registration No. JH 01 F 3232 along with his criminal associates namely. Sarfarai Imam, Niraj Singh and Ranjan Sahu and taking the help of his bodyguard prevented the voters of that constituency from casting their votes and amongst the voters who could not cast their votes were Anuj Singh, Anthoni Lakra, Firan Sahu and other villagers.

3. Petitioner further contended that the Railway Police apprehended Banwa Tirkey @ Bandhu Tirkey with his Bolero Jeep and seized the said vehicle which was carrying four swords, three hockey sticks, one fighting punch, one model of Electric Voting Machine (EVM), flag of 35 pairs showing symbol of twin leaves (Jora Patta), thirty banners and one identity card of the candidate. Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey was arrested at the polling booth No. 137 Malar and seizure list was prepared of the seized articles, to which FIR was also

lodged by the Magistrate on deputation vide Itki PS Case No. 11/05 against him.

4. Petitioner further contended that capturing of booths, by intimidating the voters on displaying arms and ammunition with the help of his musclemen, Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey prevented the voters, who could not cast their votes out of fear in favour of the Petitioner and for such reason, Petitioner lost the election, though he was a winning candidate and was legally entitled to be declared as a winning candidate.

5. Petitioner further contended that in support of the statement made in paragraph 5 of the election petition regarding Electronic Voting Machine being tampered, a complain was made by the booth agent to the Returning Officer as also to the Election Commissioner.

Copies of the FIR aforesaid and the complaint made to the Returning Officer as also to the Election Commissioner have been annexed as Annexure-1 and Annexure-2 of the amendment petition.

6. The amendment petition further contented that the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey at the time of filling up of his nomination form left the column of declaration of assets with regard to the property possessed by him as also by his wife and on this ground alone, his nomination form should have been rejected. That apart, several other columns, such as, religion, living wife etc. were left vacant by him.

7. It was further pointed out that the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey was the candidate of United Gomantak Democratic Party (UGDP) but the posters, flags publicity were as of Janadhikar Party and therefore, Respondent No. 5 defrauded the voters and won the election by adopting illegal means.

8. The Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey was earlier working in Oriental Bank of Commerce in Ranchi University Branch, Ranchi and a proceeding for his suspension was initiated against him for misappropriation in the accounts of the Bank and was suspended by the order of the Regional Office, Calcutta in the year 1996 but this fact was concealed by him in the nomination form. Suspension of a candidate during his service amounts to punishment and therefore, his candidature for contesting election should be declared cancelled.

9. The Petitioner finally requested that he be permitted to make addition in the prayer portion that the Petitioner may be declared as the winning candidate for 66 Mandar Assembly Constituency after declaring the election of Banwa Tirkey @ Bandhu Tirkey from the said constituency illegal.

I.A. No. 2064 of 2008

10. The Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey filed the rejoinder to the aforesaid amendment petition, stating inter alia that the amendment petition was filed after more than 45 days from the declaration of result on 27.2.2005, as such the proposed amendment was hopelessly time barred. Election petition was

filed by the Petitioner on 12.4.2005 just before one day of the expiration of the limitation with the vague allegations without any material fact, as required u/s 83(1) of the Representation of People Act, 1951 and therefore, allegation of corrupt practices cannot be introduced in the election petition by bringing about amendment beyond the limitation period. The amendment petition was not verified as required under the statute and the Petitioner did not support the contention alleged in the amendment petition by filing affidavit in prescribed format as required u/s 83(3) of the Act read with Rule 94-A of the Conduct of Election Rule, 1961. The Petitioner wanted to change the nature of Election Petition by making substantial development in its body and in the "prayer portion" of the election petition which was barred u/s 86(5) of the Representation of People Act, 1951. The Court should not allow any amendment petition which would have the effect of introducing particulars of corrupt practices not previously alleged in the petition and in the instant amendment petition, the Petitioner has tried to amend the election petition by introducing the new particulars of corrupt practices which was not previously alleged in the petition. The Apex Court in Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi and Others, held that if material facts were missing from the main election petition, the same could not be supplied later on after expiry of limitation period. It was further observed by the Apex Court that in absence of material facts, plea raised subsequently in the petition was liable to be struck down.

11. The Respondent No. 5 further contended that the election petition was filed hurriedly with vague allegation of corrupt practices as against the specific and mandatory provision of Section 83 of the Representation of People Act, 1951 and only after two months of its filing, amendment was sought for addition of fresh particulars of corrupt practices, which were not previously alleged in the election petition, as such, amendment petition was liable to be rejected on the ground as well that the allegation of corrupt practices was not supported by affidavit disclosing the source of information and stating therein that the allegations were true to the Petitioner's knowledge and belief and that the amendment, as sought for, was also violative to the specific provision of Section 86(5) of the Representation of People Act, 1951.

12. Respondent No. 5 categorically denied the contents of the amendment petition in the rejoinder by submitting that the statement made in paragraph-2 of the amendment petition was disputed and in paragraph-3 of the amendment petition.

Petitioner tried to introduce new particulars of corrupt practices, not previously alleged in the original petition, as such, it was barred u/s 86(5) of the Act. In paragraph-4 of the amendment petition, Petitioner further tried to introduce new facts in the election petition which was not permissible. Similarly paragraphs-5, 6, 7 and 8 were controverted and amendment proposed in paragraph-9 of the amendment petition were not permissible u/s 86(5) of the Representation of

People Act, 1951.

13. Respondent No. 5 stated that in absence of adequate statement of material facts and full particulars, the facts cannot be added subsequently by filling an amendment petition as the same was barred by law. The amendment petition was not verified under Order VI, Rule 6 of the CPC as no verification was made by the Petitioner in the amendment petition about the annexures except the formal affidavit sworn by the Petitioner. None of the annexures of the amendment petition was verified as required under the mandatory provisions of Section 83(2) of the Representation of People Act, 1951, as such, amendment petition was fit to be dismissed with exemplary costs.

14. Before adverting to the main contention of the amendment petition as proposed by the Petitioner and the rejoinder filed on behalf of the Respondent No. 5 thereof, it would be relevant to mention the important facts of the election petition of the Petitioner. The Petitioner has challenged the election of the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey from the 66 Mandar Assembly Constituency (ST) on 27.2.2005 and according to the Petitioner, the Respondent No. 5 was the candidate of United Gomantak Democratic Party (UGDP). Polling of the said constituency was conducted on 15.2.2005. The Petitioner herein made the general and vague allegation regarding the booth capturing and other irregularities which were though complained but the Returning Officer and the District Election Officer did neither care nor took cognizance since they were influenced by the Respondent No. 5, the Petitioner alleged. There was vague allegation that Electronic Voting Machine (EVM) was tampered without specifying the polling booth. The Petitioner admitted that the Returning Officer declared the Respondent No. 5 as elected/returned candidate from the 66 Mandar Assembly Constituency (ST) by margin of about fifty-six thousand votes more than what the Petitioner received. Voters turn out report and counting report though indicated difference in the number of votes cast, but no explanation was given by the Returning Officer which would make the result of returning candidate null and void as re-polling was done at four places, out of whom at one place EVM was not found in order, whereas at another place people had boycotted the polling and at two places there were gross irregularity. Petitioner made general allegation about the illegality and irregularity committed by the Presiding Officer, Polling Officer and the security staff at various booths in connivance with the Respondent No. 5 and his party men, which adversely affected free and fair poll. It was further alleged in the main petition that the Returning Officer did not take into consideration when reported about the tampering with the EVM and the process of election was completed by the Returning Officer ignoring all the protest and objection raised by the contesting candidates, which were adversely affected the result of the Petitioner. General and vague allegation was leveled against the Respondent No. 5 that several cases were pending against him and was stated that the declaration with regard to election of Respondent No. 5 was bad, illegal and fit to be declared null and void on the ground of corrupt practices committed by the Respondent No. 5 and his men. Petitioner also challenged the

nomination paper filed by the Respondent No. 5 but without pinpointing the shortcomings therein. However, it is mentioned that there was recovery of arms and ammunition from the vehicle of the Respondent No. 5 on the day of election and he was arrested by the railway police which sent him to jail. It was further alleged that the Respondent No. 5 was beaten by the villagers while he was indulged in capturing booths and in this connection, two FIR were lodged counter to each other.

15. From pleading of the election petition, amendment petition (IA No. 1766 of 2007) and the rejoinder (IA No. 2064 of 2008), it is quite evident that the general allegation, which was made by the Petitioner in the election petition about the corrupt practices adopted by the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey, has been magnified by substantiating the facts in details with annexures. The allegation of misconduct regarding booth capturing was also therein in the main petition and I find that it would not be appropriate to say that new facts were introduced by seeking amendment in the election petition of the Petitioner. Admittedly, election petition was filed within the statutory period of limitation.

16. Section 83 of the Representation of the People Act, 1951 deals with the contents of election petition, which speaks,--

83. Contents of petition.--(1) An election petition--

(a) shall contain a concise statement of the material facts on which the Petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the Petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the Petitioner and verified in the same manner as the petition.

17. It is settled law that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1), of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. "Material facts" are those which a party relies upon and which, if he does not prove, he falls in discharging burden. The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and

to give him a reasonable opportunity.

18. In the facts and circumstances, I find that the facts of the corrupt practice alleged in the election petition are "material facts" u/s 83(1)(a) of the Representation of the People Act, 1951, whereas the details that have been given with regard to the corrupt practice alleged against the Respondent No. 5 in the proposed amendment petition are "full particulars" in view of Section 83(1)(b) of the Act. The Respondent No. 5 in the rejoinder has consistently raised the plea that the amendment petition with its annexures was not properly verified by the Petitioner and affidavited in prescribed proforma. I observe that the amendment petition cannot be dismissed only for want of proper verification by the Petitioner and the affidavit not being filed by him in prescribed format since the defects pointed out are curable in nature.

19. Section 86(5) of the Representation of the People Act, 1951 deals with the provision of amendment in the election petition, which speaks,

The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice nor previously alleged in the petition.

20. Rule 94-A of the Conduct of Election Rule, 1961 prescribes that the affidavit referred to in the proviso of Sub-section (1) of Section 83 of the Representation of the People Act, 1951, shall be sworn before the Magistrate of 1st class or a notary or a Commissioner of oath and shall be in Form-25 but I find in the pleading of the interlocutory application No. 1766 of 2007 by which amendment has been sought for is not in conformity with the said provision. However, in my view, such irregularity in filing the affidavit is curable in nature. Therefore, I allow the amendment petition vide IA No. 1766 of 2007 in part on payment of cost of Rs. 1,000/- (One Thousand) to be deposited with the JHALSA, Ranchi. The Petitioner is permitted to set forth the full particulars about the alleged corrupt practices against the Respondent No. 5 Banwa Tirkey @ Bandhu Tirkey by introducing the material facts as contained in paragraph Nos. 18, 19, 24 and 25 of the election petition by introducing paragraphs 18-A, 19-A, 24-A and 25-A. The particulars as contained in paragraph Nos. 2, 3 and 9 in the amendment petition is permitted to be similarly introduced by amending the election petition at the appropriate places to be carried out within the statutory period. The copies of amended election petition be filed thereafter within two weeks (sic) with the copies of such amended petition to all the Respondents with the signatures of the Petitioner on each copy.

21. Accordingly, IA No. 1766 of 2007 and IA No. 2064 of 2008 are disposed of in the manner indicated above.