

(1993) 12 GAU CK 0015

In the Gauhati High Court

Case No : Election Petition No. 3 of 1993

Henry Lamin and Dr. Henry Lamin

APPELLANT

Vs

H. Britainwar Dan and Others

RESPONDENT

Date of Decision : 21-12-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 6 Rule 2, Order 6 Rule 4, Order 6 Rule 6

Constitution of India, 1950 — Article 191

Representation of the People Act, 1951 — Section 100(1), 100(4), 101, 102, 103

Citation : (1994) 1 GLR 326

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : A. Sarma, B.M. Mahanta, B. Dutta and H.S. Thangkhiew, for the Appellant; M.K. Sharma, S.P. Mahanta and K.P. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—The returned candidate (first Respondent in the Election Petition and Petitioner in this petition) has filed this petition under Order VI, Rule 16 of the CPC read with Section 86 of the Representation of the People Act, 1951 praying, inter-alia, for passing an order of striking out the allegations contained in paragraphs 4, 6, 7(A) to (D), 8(A) and (B), 9(A) to (C), 10(A) and (B), 11, 12, 13, 14 and 15 Of the election petition and also to dismiss the entire election petition as not having disclosed any cause of action. According to the returned candidate, the election petition does not disclose any material fact and particulars, and therefore, the election Petitioner has no cause of action and accordingly the election petition has to be dismissed. The Petitioner in this petition under Order VI, Rule 16, CPC (hereinafter referred to as "the petition") has stated that the statements made in paragraph 4 of the election petition are vague, and do not disclose any "material fact" as to why the Respondent No. 1 (returned candidate) was not qualified to be chosen as a candidate and. as such no triable issues arise before this Court. Similarly, in paragraph 6 of the election

petition also, according to him, the statements do not disclose any material fact. With regard to paragraph 7 of the election petition, he has stated that the averments made therein including sub-paragraphs (A) to (D) are also vague and indefinite. He has further stated that he did not hold any office of profit either under the Union of India or under the State Government of Meghalaya and therefore was not disqualified to contest for a seat in Meghalaya Legislative Assembly nor was he disqualified under the provisions of the Constitution of India, the Representation of the People Act, 1951 and the North Eastern Hill University Act, 1973 or the Statutes and Regulations framed thereunder. He being a teacher of the North Eastern Hill University, he cannot be said to be a Government servant inasmuch as the University is not a Government Educational Institution but an autonomous body. The University neither functions under the control of the Union of India nor under any State Government. Therefore, there was no question his being disqualified for election in the Assembly. Besides, he did not hold at the relevant time any executive or administrative office under the University and that the competent authority of the said University duly permitted him to contest the election in question.

2. Similarly, he has also stated that the averments made in paragraphs 8(A), (B) and (C) are not tenable either on facts or in law. According to him, he was not, debarred from contesting the election. The conditions of service under the NEHU Act and the Regulations made thereunder do not even (sic) teacher of the University not holding an executive or administrative post of the University to take leave in the event of his being elected as a member of the Parliament or State Legislature, Therefore, According to him there is no material fact stated in the said paragraphs to give rise of cause of action for the election petition, Regarding paragraphs 9(A) to (C), he has stated that the nomination paper submitted by him was valid and the decision of the Returning officer in this behalf is correct and as, such no triable issue arises on the allegations made in the petition within the meaning of Sections 36 and 100(1)(d)(i) or (4) of the Act and as such the petition, is liable to be dismissed. Similarly regarding the statements and allegations made in Paragraphs 10(A) and (B) and 11 of the election petition do not disclose or, constitute any cause of action and therefore liable to be set aside. According to him; in the absence of any contemporaneous record, the said allegations are hardly. I credible and the same on the face of it appear to be an after thought and as such this Court may not allow a roving, inquiry. The election petition therefore deserves summary dismissal.

3. The election Petitioner has filed an objection against "the petition" totally denying the correctness of the statements made in the petition. According to the election Petitioner, the election petition contained all material facts and particulars. The election Petitioner has been able to establish the existence of the cause of action giving rise to triable issues and these material facts cover grounds under the provisions of Sections 100 to 106 of the Representation of the People Act, 1951, and as such, the election Petitioner rely on and reiterate the statements made in paragraphs 4, 7 to 12 of the election petition which clearly

indicate as to why the returned candidate was not qualified to be chosen as a candidate to contest the election as he held an office of profit which is a disqualification under Article 191 of the Constitution and as such there is no justification for striking out the pleadings. Similarly, the election Petitioner also denies that the contents of paragraphs 6, 7(A) to (D), 8(A) to (C), 9(A) to (C), 10(A) to (D), 11, 14 and 15 do not disclose any material fact giving rise to cause of action. According to him, he has given in details regarding corrupt practice and about the disqualification of the returned candidate to be elected as a member of the Assembly and therefore question of striking out the pleadings do not arise.

4. I heard both sides. Dr. Sharma, learned Counsel for the election Petitioner strenuously argued that on going through the election petition specially the paragraphs mentioned in the petition in the petition, namely paragraphs 4, 6, 7(A) to (D), 8(A) and (B), 9(A) to (C), 10(A) and (B), 11, 12, 13, 14, and 15 disclose cause of action inasmuch as the Respondent No. 1 is not qualified to be elected and he held an office of profit at the time of election and in view of the above, "the petition" deserves summary dismissal. Mr. B.M. Mahanta, learned Counsel for the Respondent No. 1, on the other hand, submitted that the statements made in the election petition do not contain any particular regarding the disqualifications of the Respondent No. 1. Besides there are no particulars whatsoever regarding corrupt practice.

5. Section 83 of the Representation of the People Act, 1951, for short the Act", refers to the contents of the petition. I quote Section 83 of the Act herein below:

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.

Clause (a) of Sub-section (1) of Section 83 refers to mandatory requirement as regards the contents of an election petition. The "material facts" may be construed as the facts that constitute the cause of action similar to that of a plaint. Clause (b) imposes an additional requirement if there are allegations of

corrupt practice in the election petition. This requires full particulars of corrupt practice alleged and full statements as far 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 and every such practice should be mentioned. Like the Code of Civil Procedure, Section 83 of the Act contemplates a distinction between "material fact" and "material particulars". Section 83(1)(a) corresponds to Order VI Rule 2, while Clause (b) is analogous to order VI Rules 4 and 6 of the Code. The distinction between "material fact" and "material particulars" is important, because the different consequences may flow from the deficiency of such facts or particulars, Failure to plead such facts or particulars may lead to incomplete cause of action and incomplete allegations are liable to be struck down under Order VI Rule 16 of the Code. Petition suffering from such deficiency of material particular, the Court has discretion to allow the Petitioner to supply the required particulars even after expiry of the period of limitation. From this it is clear that the election petition must contain material facts, and in case of an allegation of corrupt practice detailed particulars are also to be mentioned. However, in case of deficiency in giving material particulars, the Court has discretion to allow the Petitioner to supply the required particulars, even after expiry of the period of limitation.

6. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence to be "material fact." In the context of the charge of corrupt practice "material fact" would mean all the basic facts constituting the ingredients of particular corrupt practice alleged, which the Petitioner is bound to substantiate before he can succeed on the charge. Whether, a particular fact is a material fact or not, is a question depends on the nature of charge. The election Petitioner must give all details to give a full picture of cause of action for the charge of corrupt practice and he cannot make up his deficiencies by amendment or at the trial. The question came up before the Supreme Court in Azhar Hussain Vs. Rajiv Gandhi, In that case the apex Court was required to consider as to whether the election petition not complying with Section 83(1) should be summarily dismissed. It was argued that as Section 83(1) is not adverted to in Section 86, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, should not have the lethal consequence of dismissal. The court, however, rejected the said argument and held : (a) the provisions of Section 87 specifically require that every election petition be, tried by the High Court as nearly as may be in accordance with the procedure applicable under the CPC to the trial of the suits, (b) The fact that Section 83 did not find a place in Section 86 did not mean that the powers under the CPC cannot be exercised, (c) Under CPC the Court had power to act at the threshold, the power must be exercised at the threshold itself in case the court is satisfied that it was a fit case for the exercise of such power, (d) In regard to a matter pertaining to the elected representative of the people which was likely to inhibit him in the discharge of his duties towards the nation, the controversy should be set at rest at the earliest if the facts of the case and the law so

warrant, If the petition lacks the vital and essential material facts, it deserved summary dismissal.

7. Bearing in mind of the above proposition of law as laid down by the Supreme Court, now it is to be seen whether the election petition contains facts giving rise to cause of action. I have gone through all the paragraphs mentioned in the petition. In paragraph 4 the election Petitioner has specifically stated that his counsel raised objection regarding the validity of the nomination papers filed by "me Petitioner" (Respondent No. 1). However, the Returning Officer illegally rejected the objections raised and improperly accepted the nomination of "the Petitioner" (Respondent No. 1). According to him "the Petitioner" Was disqualified from being chosen as a member of the Meghalaya Legislative Assembly under the provisions of law as on the date of filing of the nomination paper as well as on the date of scrutiny of the nomination paper and also on the date of election he was holding an office of profit. Whether this contention of the election Petitioner is sustainable in law or not is required to be decided in the trial. In paragraph 6 of the petition, the election of the returned candidate (first Respondent) is liable to be declared as void on various grounds including the ground of corrupt practice within the meaning of Section 123 of the Act. It is true that the election Petitioner did not give details of corrupt practice in paragraph 6. However, details have been given in subsequent, paragraphs in 7(A), (B) and (C) and the election Petitioner has also stated regarding holding of office of profit by Respondent No. 1. In paragraph 8 of petition also the election Petitioner has given details regarding the eligibility of the returned, candidate for election. In paragraph 9 the election Petitioner has stated regarding the allotment of election symbols and submission of four nomination papers on different dates. In paragraph 10 the election Petitioner has stated regarding anomalies of acceptance of the nomination papers and that some of which had been over written. In paragraph U, the election Petitioner has stated that the returned candidate in violation published an appeal to the voters before scrutiny of the nomination paper. The said appeals were printed at Eureka "Printers" and distributed by the returned candidate himself at village Nartiang on 11.1.93 and was witnessed, by Sri Firstborn Siangshai and Sri Wanrose Pale of the village, the returned, candidate did not submit any declaration which was a mandatory requirement under the law. According to the returned candidate the statements and averments made in paragraph 12 of the election petition are frivolous and have no substance. However, in paragraph 12 the election Petitioner has stated that the returned candidate at the time of filing of the nomination papers submitted a certificate dated 21.8.81 issued by the Magistrate, First Class. Shillong certifying that the returned candidate belongs to Jaintia (Pnar) Community which is recognised as a Scheduled Tribe. However, in the certificate submitted by him, his father's name was shown as "Dominik Dhar" but in the nomination paper submitted by the returned candidate, he gave his, father's name as "Do Dhar". In paragraphs 13 and 14 of me election petition, the election Petitioner has made allegations regarding driving qui the supporters of the

election Petitioner with the help of police personnel as mentioned in the said paragraphs. This may or may not come within the mischief of Section 123(7) of the Act. However, it will depend upon how the election Petitioner can prove the allegations.

8. On perusal of the election petition specifically the paragraphs mentioned in the petition filed by the returned candidate, I find that the material facts and material particulars have been given. However, it will depend upon the proof of this.

In view of the above, I do not find any merit in the petition. Accordingly, the petition is dismissed.