

(1965) 08 SC CK 0002

In the Supreme Court Of India

Case No : ?Appeal (civil) 437 of 1965

Kamal Narain Sharma

APPELLANT

Vs

Shri Pandit Dwarka Prasad Mishra and Others

RESPONDENT

Date of Decision : 17-08-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 139
Conduct of Elections Rules, 1961 — Rule 94A
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 139, 539
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Citation : AIR 1966 SC 436 : (1966) JLJ 293 : (1966) MhLj 493 : (1966) MPLJ 764 : (1966) 1 SCR 478

Hon'ble Judges : P. B. Gajendragadkar, C.J;S. M. Sikri, J;M. Hidayatullah, J;K. N. Wanchoo, J;J. C. Shah, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Hidayatullah, J.—This appeal arises from an election petition filed after the last General Election to the Madhya Pradesh Legislative Assembly, in respect of the election from the Kasdol Legislative Assembly constituency held on May 4, 1963. The first respondent was declared elected and the appellant challenged his election alleging several acts of corrupt practices, publication of false statements, filing of false accounts etc. The election petition was supported by an affidavit sworn before K. S. Moghe, Officer for Administering oaths on Affidavits, Jabalpur, Moghe was the Clerk of court in the District Court, Jabalpur. The first respondent objected that the affidavit was not sworn before the proper authority as required by rule 94-A of the Conduct of Election Rules, 1961, and it was, therefore, prayed that the election petition should be dismissed or the allegations about corrupt practices should be struck out. The Election Tribunal by an order dated October 31, 1963 accepted the objection but allowed the filing of a proper affidavit and a fresh affidavit was taken on record. No action was taken against that order. It appears that the Election Tribunal had framed two issues for

determination. They were :

"Issue No. 18 : Whether the affidavit filed by the petitioner in support of his petition is bad in law, as not properly sworn before a competent officer duly authorised to attest and authenticate an affidavit and does not also comply with the provisions of section 83 of the Representation of the People Act and the Rules made thereunder. It so, whether the petition is liable to be dismissed on this ground.

"Issue No. 20 : Whether the various alleged acts of corrupt practices mentioned in the petition are duly supported by an affidavit as required u/s 81[3] of the Representation of People Act ? If not, what is its effect on this petition?"

2. On February 14, 1964 the first respondent filed an application drawing attention to the after part of issue No. 20 and asked inter alia for a finding whether the election petition was not liable to be dismissed when the affidavit was not proper. The Tribunal by an order passed on February 24, 1964 rejected the act contention and held that as a fresh affidavit was filed the petition could proceed to trial.

3. On March 2, 1964 the first respondent filed a petition under Articles 226 and 227 of the Constitution in the High Court of Madhya Pradesh challenging both the orders and asked that they be quashed. The High Court, by its order now under appeal by certificate, quashed the two orders and the Tribunal was directed to deal further with the petition in the light of the order of the High Court.

4. The High Court in an elaborate order has considered whether the provisions of rule 94 - A were mandatory or directory but it did not address itself to the question whether the first affidavit was proper or not. This was, perhaps, due to the fact that the appellant seems to have conceded before the Tribunal that the first affidavit was not proper. This concession was sought to be withdrawn in this appeal by the appellant and on looking into the record we were satisfied that the concession was wrongly made and should be allowed to be withdrawn. We accordingly heard arguments on the question whether the original affidavit did not satisfy the Conduct of Election Rules, and the Representation of the People Act. We are satisfied that the first affidavit was proper and the second affidavit was not necessary.

5. Before we give our decision on this point we shall first set down the relevant provision. Section 83 of the Representation of people Act provided that:

"83 [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 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.

6. Rule 94-A of the Conduct of Election Rules. 1961 next provides:

"94-A The affidavit referred to in the proviso to Sub-Section [1] of Section 83 shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths and shall be in Form 25."

7. Form 25 need not be reproduced but the endorsement of the officer before whom the affidavit is sworn may be reproduced:

"Form 25. Solemnly Affirmed/
sworn by Shri Shrimati at..... this..... day of..... 196 Before me.
Magistrate of First of First Class/ Notary/ Commissioner of Oaths".

8. The relevant rules of the High Court and the notifications issued by the Government have been placed in our hands. The High Court has framed Rules relating to the CPC and rule 20 dealing with affidavits reads:

"20. All Court dealing with affidavits should make calls for affidavits at 11 a.m. and 2 p.m. every day. If the Clerk of court or other ministerial officer is appointed a Commissioner for administering oath of affidavits, he will discharges that function at such time as may be fixed by the District Judge in behalf.

Rule 34 says :

"34. The officer administering the oath shall make the following endorsement on every affidavit sworn before him and shall date, sign and seal the same.

"Sworn before me on the..... day of..... 19. by
son of..... who is personally known to me [or] who has been identified
by..... whose signature is/ signatures are here to appended. Signature S E
A L Designation"

The affidavit which was sworn before Moghe bore the above endorsement and Moghe described himself as "Officer for Administering Oaths on Affidavits, Jabalpur, Madhya Pradesh".

9. On February 16, 1959 the Government of Madhya Pradesh had issued a notification under which District Judges were empowered under S. 139[c] of the CPC to appoint Commissioners to administer oaths on affidavits made under the said code and the District Judge, Jabalpur in exercise of the powers so conferred appointed, among others, the Clerk of court attached to his office to be ex Officio

Commissioner for the purpose of administration of oaths on affidavits made under the code of Civil Procedure. It may be pointed out that subsequently in May 1960 the first notification was amended and in place of the words in the first notification "empowers all the District Judges to appoint Commissioners to administer oaths on affidavits made..... the words generally empowers the court of District judges to appoint officers to administer oaths to deponents in cases of affidavits were substituted. This change does not affect the present matter because the appointment of Moghe was under the first notification and not under the second. The contention of the first respondent is that the affidavit did not comply with the requirements of rule 94-A because Moghe was not a Commissioner of Oaths but was an officer for Administration of Oaths for the purpose of s. 139(c) of the Code. We shall refer to that provision presently.

10. The rule does not state before which Commissioner the affidavit must be sworn. It must, therefore, be read as including all Commissioner of Oaths duly appointed. The election petition is verified as a plaint but the affidavit is needed additionally when allegations of a particular type are made. The rule really requires an affidavit so that action for perjury may be based on it if the allegation is found to be false. We inquired whether, in the State of Madhya Pradesh, there was any other provision under which Commissioners of Oaths could be appointed but none was shown. The Indian oaths act, on doubt, consolidates the law relating to judicial oaths and for other purposes. Section 4 of that act gives authority to all courts and persons having by law or consent of parties authority to receive evidence, to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law. This is a general provision and it mentions generally persons having by law authority to receive evidence. It is difficult to say that the Clerk of Court answers this description. But there are other provisions of law under which oaths may be administered for purposes of affidavits. Section 139 of the Code of Civil Procedure, under which the Clerk of Court was given this jurisdiction, provides :

"139. Oath on affidavit by whom to be administered. In the case of any affidavit under this code:- [a] any court of any affidavit under this code- [b] any officer or other person whom a High Court may appoint in this behalf, of [c] any officer appointed by any other court which the provincial Government has generally or specially empowered in this behalf, May administer the oath to the deponent. Similarly section 539 of the Code of Criminal Procedure Provides.

"539. Courts and person before whom affidavits may be sworn:

Affidavits and affirmations to be used before any High Court or any officer of such court may be sworn and affirmed before such court or the Clerk of the State, or any Commissioner or other person appointed by such court for that purpose, or any Judge, or any Commissioner for taking affidavits in any court of Record in India, or any Commissioner to administer oaths in England or Ireland,

or any Magistrate authorized to take affidavits or affirmations in Scotland.

12. It is therefore not necessary that an appointment with reference to the Oaths act had to be made.

13. The Clerk of court was appointed a Commissioner of Oaths under S. 139[c] quoted above. It is contended that the power of such a Commissioner were to administer oaths for purposes of affidavits under the CPC and this meant or, XIX of the code. It is pointed out that none of the conditions under which the affidavit is required under that Order applies here. It is argued that Commissioner appointed under one statute cannot swear affidavits prescribed under another statute and s. 539 of the code of Criminal Procedure is also cited as an instance. This may be so. It may be that an affidavit sworn by a District Clerk of court may not be good for the purposes of the code of Criminal procedure and vice versa but that is because the restriction is to be found in s. 139 of the one Code and s. 539 of the other. Rule 94-A makes no such condition and makes receivable an affidavit sworn before a Commissioner of Oaths without specifying of what kind. In this view of the matter the affidavit sworn before the District Clerk of Court, who undoubtedly is a Commissioner of Oaths can only be excluded by taking an extreme and technical view which, in our opinion, is not justified.

14. The appeal must therefore succeed on this short ground and it is not necessary to discuss whether the rule is mandatory or directory for, in any event, its requirements have been met. The appeal is allowed but as the appellant had earlier conceded the point on which the appeal succeeds, there shall be no order about costs. The case will now go back to Tribunal for decision on merits.

15. Appeal allowed.