

(2015) 04 CHH CK 0019
In the Chhattisgarh High Court
Case No : Election Petition No. 11 of 2009

Lalji Chandravanshi

APPELLANT

Vs

Akhbar Bhai and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Chhattisgarh Excise Act, 1915 — Section 34(1)(A)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 2(1), Order 7 Rule 11
Representation of the People Act, 1951 — Section 1(b), 100, 100(1)(d)(ii), 123, 123(8)

Citation : AIR 2015 Chh 113

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Rakesh Pandey, for the Appellant; Amrito Das and Dinesh Tiwari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Goutam Bhaduri, J—This order will govern the disposal of application filed under Order 7, Rule 11 of the Code of Civil Procedure, 1908 read with Section 86 of the Representation of the People Act, 1951 as also the election petition filed by the petitioner. By way of instant election petition, the Election Petitioner Lalji Chandravanshi had challenged the election for the Constituency No. 71 namely Pandariya Assembly Constituency held in the month of November, 2008 in State of Chhattisgarh. The Election Commission had notified the election schedule for conducting assembly election for the State of Chhattisgarh in October, 2008 and as per the schedule of notification, the polling took place on 14-11-2008 and on the same day the election was declared. In the election, as many as 9 candidates including the petitioner contested the election for the Assembly Constituency No. 71 Pandariya. The petitioner contested on behalf of Bhartiya Janta Party whereas respondent No. 1 Akbar Bhai contested the election as a candidate for Congress (I). In the said election, respondent No. 1 was declared as a returned candidate and the total votes were procured by him were 72,397 whereas the petitioner Lalji Chandravanshi procured 70,536 votes and lost the election.

2. The election petitioner had pleaded in the petition that a complaint was made by the agent of the petitioner namely Dilip Chandravanshi that respondent No. 1 had called and gathered 400-500 persons from outside the district and the constituency and as such tried to influence the election. A complaint to this effect was also lodged and furthermore, the averments were made that before the date of election on 12-11-2008, Respondent No. 1 with the help of his agent Anil Jain and others distributed country made liquor to the voters of village Kanwalpur, Damapur etc. It was further stated that when the complaint was filed, the country made liquor along with the vehicles which were being distributed were also seized. The election petition also contained the averments that the returned candidate/respondent No. 1 had distributed currency notes to different voters to cast their votes in his favour. It was further averred that when such electoral malpractices came to the notice of petitioner and his followers, they tried to catch hold of respondent No. 1 red-handed but he escaped and fled away. It was also pleaded that the distribution of currency notes was also reported to the Police and the Police had tried to arrest Respondent No. 1 but the respondent again managed to escape from the scene. Therefore, on different allegations of corrupt practice the petitioner has prayed for setting aside the election.

3. Respondent No. 1, the returned candidate, who was declared elected filed his written statement and has also raised preliminary objection by way of instant application about the tenability of the petition on the ground that material particulars have not been furnished in the petition. It was vehemently argued by Shri Amrito Das, counsel for respondent that the petitioner though had levelled allegations at para 5 of the petition that 400-500 persons were brought from outside the district to influence the election, but such bare allegations cannot be held to be enough especially when the election petition contains the allegations of corrupt practice. It is contended that the petition must contain particulars of corrupt practice and full particulars of the names of the persons alleged to have committed such corrupt practice which are necessary to formulate complete cause of action. Respondent No. 1 further submits that there is no mention in the petition that in what manner such persons tried to affect the election and at what place they had gathered and tried to influence chances of the petitioner. It is also contended that the petition is silent that who were those persons and at least, particulars of names of few of those persons should have been mentioned. He further submits that in absence of material particulars such allegations in generality cannot be accepted since the respondents should be in a position to know the case he has to meet out in the election. Therefore, it is contended that it would be void of Section 83(1) of the Representation of the People Act, 1951 (for short "the RP Act").

4. It was next contended that the allegation of distribution of liquor was made in generality in respect of 3 villages and mainly the allegations were of hearsay in nature. He would submit that the petitioner taking the advantage of the some criminal act of certain persons of village is trying to shift the burden to the respondent coupled with the allegations of corrupt practices. He would submit

that in absence of pleading of material facts, no presumption can be drawn that the persons alleged to have distributed the liquor were the agents and followers of the respondents. It is contended that according to respondent No. 1, the allegation on people like such nature may belong to the petitioner himself. He further submits that distribution of currency notes to the voters is also vague. He submits that without pleading any material facts as to whom the money was distributed and in what manner it was done, the said allegation of distribution of currency notes cannot be accepted. He also submits that the election petition should contain specific averments so that the party against whom such allegation is made is in a position to defend any such allegation without giving scope for any speculation. He, therefore, submits that in such circumstances, the election petition is devoid of material particulars and the petition deserves to be dismissed at the threshold being not maintainable as no cause of action is made out to try the instant petition.

5. In reply to the arguments, the counsel Shri Rakesh Pandey appearing on behalf of the petitioner opposes the same and states that the petitioner has categorically pleaded all the facts about the corrupt practice and therefore, specific pleadings have been made which can be substantiated only after the evidence is adduced. Simply on the basis of objection raised by respondent No. 1, the petition cannot be rejected at the threshold.

6. Counsel for respondent No. 7 Shri Dinesh Tiwari submits that the petition is barred by limitation since as per the order sheet, it was filed on 6-35 p.m., and it should have been filed by 4.30 p.m. During the time of Registry and on that ground, he submits that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties. The predominant objection of Respondent No. 1 is that the petition lacks of material facts and material particulars of the alleged corrupt practice adopted by Respondent No. 1 and the allegations levelled against respondent No. 1 are too vague and bald.

8. Section 100 prescribes that if the High Court is of the opinion that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of either the returned candidate or his election agent, "the High Court shall declare the election of the returned candidate to be void". Relevant portion of section 100 reads as under:

"100. Grounds for declaring election to be void.--(1) Subject to the provisions of sub-section (2) if the High Court is of opinion--

(a) * * *

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;"

The said section also stipulates that if it is established before the High Court that a corrupt practice has been committed in the interest of the returned candidate

by an agent other than his election agent, then the High Court is also required to form an opinion that "the result of the election, insofar as it concerns the returned candidate, has been materially affected", before declaring the election of the returned candidate void:

100. (1)(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected--

(i) * * *

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent,"

(Emphasis supplied)

The sub-clause "by an agent other than his election agent" occurring in Section 100(1)(d)(ii), must be understood in the light of Section 99(2), which reads as follows:

"99. (2) In this section and in Section 100, the expression "agent" has the same meaning as in Section 123."

And Section 123(8) Explanation, which reads as follows:

"Explanation.--(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate."

9. Section 83 of the Representation of the People Act stipulates the contents of petition which read as under:

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."

10. Hon"ble the Supreme Court in case of Ajay Maken Vs. Adesh Kumar Gupta

and Another, (2013) 116 CLT 130 : (2013) 3 CTC 317 : (2013) 1 JT 587 : (2013) 2 RCR(Civil) 165 : (2012) 12 SCALE 173 : (2013) 3 SCC 489 has laid down that the election petition shall set-forth "as full statement of possible of the names of the parties alleged to have been committed such corrupt practice". Paras 31 and 33 of the said judgment are relevant here and quoted below:

"31. Section 83(1)(b) requires that an election petition shall set forth "as full a statement as possible of the names of the parties alleged to have committed such corrupt practice". In my opinion, the employment of the expression "parties" in the above mentioned clause is to compendiously cover the returned candidate, his election agent or any other person committing a corrupt practice with the consent of either the returned candidate or his election agent or any other agent committing a corrupt practice filing within the scope of Section 100(1)(d)(ii).

33. The question of proof of the commission of a corrupt practice arises only if there is an appropriate pleading in that regard in the election petition. I have already noticed that Section 83 stipulates that an election petition, which contains allegations of corrupt practice, must contain full particulars of the "names of the parties" alleged to have committed a corrupt practice. I am of the opinion that the legislature chose to use the expressions "PARTIES" for the reason that there are various categories of persons, who are capable of committing a corrupt practice in connection with the election of a returned candidate:

(i) the returned candidate; or (ii) his election agent, or (iii) any other person with the consent of either the returned candidate or his election agent; or (iv) any other agent, as explained earlier. The difference in the language of Sections 82 and 83(1)(b), in my opinion, is significant. While section 82 speaks of candidate, Section 83(1)(b) speaks of parties."

11. The Supreme Court further in a case law reported in Sahodrabai Rai Vs. Ram Singh Aharwar, AIR 1968 SC 1079 : (1968) 3 SCR 13 has interpreted the words "corrupt practice" and further Their Lordships have held in Ajay Maken Vs. Adesh Kumar Gupta and Another, (2013) 116 CLT 130 : (2013) 3 CTC 317 : (2013) 1 JT 587 : (2013) 2 RCR(Civil) 165 : (2012) 12 SCALE 173 : (2013) 3 SCC 489 that the purpose of stipulation under Section 81(3) is to put the returned candidate on notice of various allegations made against him in order to enable him to defend himself effectively in the election petition. This a stipulation flowing from the requirement of one of the basic postulates of the principles of natural justice.

12. Furthermore, fortifying the necessity of pleading, their lordships in a case law reported in Jitu Patnaik Vs. Sanatan Mohakud and Others, AIR 2012 SC 913 : (2012) 114 CLT 225 : (2012) 3 SCALE 107 : (2012) 4 SCC 194 : (2012) AIRSCW 2770 have explained the meaning of "material facts" at Paras 30, 31, 32 & 33 which read as under:--

30. "Order VI, Rule 2 of CPC, to the extent it is relevant, reads as under:

"O. VI, Rule 2. Pleading to state material facts and not evidence--(1) Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(1) & (2) xxx xxx xxx xxx

31. Section 83(1)(a) of the 1951 Act is as follows:

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

(a) shall contain a concise statement of the material facts on which the petitioner relies."

32. A bare perusal of the above provisions would show that the first part of Order VI, Rule 2, CPC is similar to clause 1(a) of Section 83 of the 1951 Act. It is imperative for an election petition to contain a concise statement of the material facts on which the election petitioner relies. What are material facts? All basic and primary facts which must be proved at the trial by a party to establish the existence of cause of action or defence are material facts. The bare allegations are never treated as material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of "material facts" has been explained by this Court on more than one occasion. Without multiplying the authorities, reference to one of the later decisions of this Court in *Virender Nath Gautam Vs. Satpal Singh and Others*, AIR 2007 SC 581 : (2007) 1 JT 265 : (2006) 14 SCALE 95 : (2007) 3 SCC 617 : (2006) SCR 413 Supp shall suffice.

33. In *Virender Nath Gautam*, this Court referred to the leading case of *Philipps v. Philipps and others* and the subsequent decision in *Bruce v. Odhams Press Limited* that referred to *Philipps* and observed in paragraphs 34 and 35 (Pg. 629) of the report as follows:

"34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at

the time of trial."

13. Recently, the Supreme Court in a case law reported in C.P. John Vs. Babu M. Palissery, AIR 2015 SC 16 : (2014) AIRSCW 5649 : (2014) 10 SCALE 439 has held in para 18 as under:

"18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place the date, the time and every other detail relating to the alleged corrupt practice."

14. Therefore, whether the averments in the election petition constitute the material facts or not would depend upon the facts of each case. A close analysis of the first part of the petition shows that in para 5 it is alleged that the election agent of the petitioner namely Dilip Chandravanshi complained to the observer that respondent No. 1 had called out 400-500 persons from outside the district to influence the election. The entire reading of the said para would reveal that nothing has been stated about the details of persons and even the names of any single person and in generality an allegation has been clamped that they were the persons in the mob of 400-500 brought by respondent No. 1. On reading of Para 5, it reflects that the averments made are too vague and it would be extremely difficult for the Court to adjudicate the averments on the basis of such allegations. As has been held by the Supreme Court in case of L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., (1998) 9 AD 193 : AIR 1999 SC 252 : (1998) 8 JT 278 : (1998) 6 SCALE 361 : (1999) 1 SCC 666 : (1998) 3 SCR 241 Supp : (1998) AIRSCW 3767 : (1998) 9 Supreme 193 , failure to plead material facts is fatal to the election petition and no amendment of the pleading can be allowed to introduce a new cause of action, after the time limit prescribed for filing of the election petition. Here, reading of averments contained in Para 5 of the election petition would go to show that nothing has been stated and mere general allegations have been made. Therefore, applying the aforesaid principle with respect to the averments made in Para 5, it is held that no cause of action can be said to have arisen as per the pleadings of Para 5 of the petition.

15. Now coming to Para 6 of the petition, it is alleged that on 12-11-2008 it was

informed to the election agent of the petitioner namely Dilip Chandravanshi that Anil Jain, the election agent of respondent No. 1 was carrying country made liquor and distributed the same initially at village Kanwalpur and asked to vote in favour of respondent No. 1. Similarly, Para 6 further pleads that the liquor was again distributed to the voters in village Damapur on the same day by the said Anil Jain who belongs to Congress (I) and further the liquor was distributed to the voters at village Devgadhiya by the said Anil Jain. It was pleaded at Para 7 of the petition that the vehicle which was used for distributing liquor was seized by the Police and one Madhuri Sahu was arrested and Anil Jain was left at large. Therefore, the allegation is also attributed to the Police that person Anil Jain though was caught red-handed was released. The documents have also been placed vide Ex. D-6 which is copy of the charge sheet which purports that one Madhuri Sahu was arrested and a case u/S. 34(1)(A) of the Excise Act was registered. Therefore, the document prima facie contradicts the averments on allegations of Dilip Chandravanshi and even the allegations attributed to Anil Jain along with police cannot be connected with respondent No. 1 as no material facts have been pleaded so as to connect the respondent. Therefore, it is contended that the averments made at paragraphs 5, 6 & 7 of the petition do not disclose any material fact against the returned candidate/respondent No. 1. The Court on its end cannot expand the scope of Section 83 of the Representation of the People Act, 1951 by drawing a presumption when the material particulars have not been pleaded.

16. If the contents of Paras 6 to 10 are examined, the pleadings do not substantiate and connect respondent No. 1 with the corrupt practice and it lacks exact type of firm allegations which connect the respondents with the said alleged corrupt practice. In para 8, the petitioner has further made averments of distribution of currency notes to the voters. The allegations are that respondent No. 1 has given some money to some villagers which in turn to distribute to the other voters. It was further alleged that while respondent No. 1 and his associates were distributing the amount the matter was complained but before the Police could reach, respondent No. 1 the respondent fled away from the scene.

17. In the matter of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, AIR 1969 SC 1201 : (1969) 3 SCC 238 : (1969) 3 SCR 603 , it has been held that first, section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present

a full picture of the causes of action. Sixth, in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

18. In the matter of Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, AIR 2004 SC 2066 : (2004) 4 JT 542 : (2004) 4 SCALE 129 : (2004) 4 SCC 522 : (2004) 3 SCR 683 : (2004) AIRSCW 2010 : (2004) 3 Supreme 3 referring to Order 6, Rule 2(1) of the C.P.C., it is held that the pleading has to state material facts and not evidence. It explained the distinction between the material facts and material particulars. The material facts are the facts which are necessary to formulate a complete cause of action. Omission of a single material fact leads to an incomplete cause of action and subsequently the plaint becomes bad. In this judgment, to elaborate the distinction between the two, judgments in the matters of Bruce v. Odhams Press Ltd. (2005) 5 SCC 46 : (AIR 2005 SC 2379) has been referred in which it has been observed that:

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for purpose of formulating a complete cause of action, and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology and in the new is liable to be "struck out" under RSC Order 25, Rule 4; or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim-gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiffs cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to full the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet, and to enable him to prepare for trial."

19. In the instant case, the allegations have been made by the petitioner that initially respondent No. 1 had brought 400-500 persons to influence the election and thereafter they distributed liquor to the voter's in villages and further distributed the currency notes. The petition lacks the specific leading as to who received the liquor and money and mere allegations have been made that the amount was given to the villagers which in turn to distribute to the voters. Therefore, at least, name of any single voter who has received such

considerations should have been disclosed. The petition should have disclosed the source of information and clearly state which allegation is based on personal knowledge and which is on the information received. When the election petition is taken up for consideration, the court which deals with such election petition should be in a position to note the exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation the parties involved, the date, time and the place etc., so that the party against whom such allegation is made is in a position to defend any such allegation without giving scope for any speculation. In that context, both section 83(1)(a) and 1(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it.

20. The Supreme Court further in a recent decision rendered in case of C.P. John Vs. Babu M. Palissery, AIR 2015 SC 16 : (2014) AIRSCW 5649 : (2014) 10 SCALE 439 has held in para 20 thus:

20. ".....In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."

Therefore, after careful consideration of the pleadings made in the election petition and for the reasons stated in the foregoing paragraphs, I am of the opinion that the pleading of petition fail to disclose the material facts as the allegations of corrupt practice alleged to have been committed by respondent No. 1 have not been substantiated with material facts. Therefore, I am inclined to hold that in absence of material facts, no cause of action arises for considering the instant election petition. Consequently, the application under Order 7, Rule 11 is allowed. In the result, the election petition is dismissed as no cause of action arises for consideration.