
(1991) 06 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4463 of 1989

Manne Pitcha Rao

APPELLANT

Vs

Nelluri Madhava Rao and Others

RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Andhra Pradesh Gram Panchayats (Conduct of Elections) Rules, 1978 — Rule 51(2), 55(1), 60
Andhra Pradesh Gram Panchayats Act, 1964 — Section 14B, 14C(6), 14C(6)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16

Citation : (1991) 3 ALT 114

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : E. Ella Reddy, for the Appellant; B. Chandra Kumar and Government Pleader for Panchayat Raj for Respondents 2 and 3, for the Respondent

Judgement

Parvatha Rao, J.—The petitioner in this Writ Petition was declared as elected as Sarpanch of the Gram Panchayat of Mangollu of Vatsavai Mandal in Krishna district at the election held on 12-3-1988 and he prays for quashing the order of the Election Tribunal (3rd respondent herein) dismissing I.A.No. 647 of 1988 in O.P.No. 8 of 1988 dated 22-2-1989. The said O.P.No. 8 of 1988 was filed by the 1st respondent herein, who is the unsuccessful candidate in the said election, questioning the election of the petitioner herein at the said election. The said I.A.No. 647 of 1988 was filed by the petitioner herein under Rule 16 of Order 6 of the Civil Procedure Code, 1908 for striking of allegations in paragraphs 3, 4, 6, 7 and 8 of the election petition in the said O.P. on the ground that they are frivolous, vexatious and unnecessary and did not constitute any cause of action as they suffer from want of details or particulars.

2. The 3rd respondent held in his order in the said I.A. dated 22-2-1989 that the allegations of the 1st respondent herein in paragraphs 3/4,6,7 and 8 of his election petition are not frivolous, vexatious and unnecessary and he also held that they constitute cause of action. In this Writ Petition, the petitioner questions

the said finding of the 3rd respondent in respect of allegations in the said election petition in paragraphs 6, 5 and 8 only. He also contends that the allegations in paragraph 9 of the said election petition are highly vague. But the said contention was not raised in the said I.A. and therefore, the petitioner cannot be permitted to raise the said contention for the first time now in the present Writ Petition wherein what he is seeking is only the quashing of the order of the 3rd respondent in the said I.A.No. 647 of 1988.

3. So far as the allegations in paragraph 5 of the said election petition are concerned also, the petitioner herein has not questioned them in the said LA. But the said allegations are similar to the allegations made in paragraph 8 of the election petition. The allegations in paragraph 5 of the said election petition are that certain persons who were enrolled as voters in the electoral roll of Mangollu Gram Panchayat have got themselves enrolled once again as electors in the electoral roll for Jayanthipuram Panchayat in Jaggaiahpetta Rural Mandalam and that the said persons exercised their franchise twice by voting in the election of the Sarpanch of Jay anthipuram Panchayat and also in the election of the Sarpanch of Mangollu Panchayat and that the same was in violation of Sections 14-B and 14-C of the Andhra Pradesh Gram Panchayats Act, 1964 (hereinafter referred to as "the Act"). The allegations in paragraph 8 of the said election petition are that certain persons who were enrolled as voters in the electoral roll for Mangollu Gram Panchayat were also enrolled as voters in the electoral roll for Radlakunta Gram Panchayat in Kodad Mandalam and that they also exercised their franchise in both the village Panchayats and that the said votes cannot be counted in both the villages and that therefore they will have to be rejected as invalid votes. This question is concluded by several decisions of this Court. In *Dharmaiah v. Basavaiah*, 1966 (II) An.W.R a Division Bench of this Court held as follows:-

"The election of each panchayat is distinct and separate being unconnected with the election of other panchayats, the conduct of the election in respect of each panchayat being the concern of that panchayat alone. So then if the name of the person appears in the electoral roll of the constituencies in different panchayats, it cannot be held that such a person would not be entitled to exercise his franchise in different panchayat elections on a proper interpretation of Section 14 (6). All that Section 14 (6) prohibits (sic) exercise of void at an election in more than once constituency or more than once in the same constituency. An election has a reference to a certain Panchayat and the constituency or constituencies are referable to that Panchayat alone".

Sub-section (6) of Section 14 of the Act as it then was provided that.

"No person shall vote at an election under this Act in more than one constituency, or more than once in the same constituency, and if he does so, all his votes shall be invalid".

After the Act was amended by the Andhra Pradesh Gram Panchayats

(Amendment) Act, 1978 it is provided in Sub-sections (6) and (7) of Section 14-C as follows:-

"(6): Every person whose name appears in the part of the electoral roll relating to a ward shall, subject, to the other provisions of this Act, be entitled to vote at any election which takes place in that ward while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such election.

(7): No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid".

Another Division Bench of this Court held in *K. Sundara Rao v. V. Raghava Rao*, 1983 (2) An.W.R 412 and also in *K. Pichi Raju v. Shaik Mahaboob Basha*, 1983 (2) (HC) APLJ 202 that if a person is registered as a voter in more than one Gram Panchayat and if he exercises his franchise in more than one Gram Panchayat, his vote cannot be declared invalid". The Division Bench considered the decision of an earlier division Bench of this Court in *Rajya Lakshmi v. Venkata Subbamma*, 1967 (1) ALT 16 and also Section 14-B and Sub-section (7) and (6) of Section 14-C of the Act and held as follows in *K. Sundara Rao's* case (1 supra):

"Therefore, we are not inclined to accept the argument advanced by the learned Counsel that the ward refers to not only in the gram panchayat in which election takes place, but also ward or wards in the other gram panchayats, even if election takes place at the same time in the other gram panchayats. Even if a person casts his votes in different gram panchayats, on the same date, we are of the view that such vote cannot be declared as invalid under Sub-section (7) of Section 14-C in the absence of any positive provisions in this regard".

The learned counsel for the 1st respondent has not questioned the correctness of the above judgments. In view of the said decisions of this Court, even if the facts alleged in paragraphs 5 and 8 of the said election petition are established by the 1st respondent herein, the election of the petitioner cannot be affected.

4. The 3rd respondent dealt with the allegations made by the 1st respondent in paragraphs 3, 4 and 8 of his election petition without noticing that the allegations in paragraphs 3 and 4 fall in an entirely different category from the allegations in paragraph 8. The allegations in paragraphs 3 and 4 relate to enrolment of three named electors in two different wards in Mangollu Gram Panchayat itself and their voting in both the wards in which they are registered as electors as per the electoral roll. The said allegations, if proved, will be directly covered by Sub-section (7) of Section 14-C of the Act which categorically provides that no person shall vote at an election in more than one ward and that if he does so, all his votes shall be invalid. As already pointed out earlier, Sub-section (7) of Section 14-C has no application to a person who is registered as voter in two different Gram Panchayats and who exercises his franchise in the elections held under the Act for the two Gram Panchayats. The 3rd respondent has therefore committed an error apparent on the face of the record in not differentiating between the

allegations made by the 1st respondent in paragraph 8 from those made in paragraphs 3 and 4 of his election petition. The allegations in the said paragraphs 5 and 8 do not raise any cause of action for the setting aside of the election in question or any triable issue and therefore are liable to be struck down under Order VI Rule 16 in view of Sub-rule (1) of Rule 55 of the Andhra Pradesh Gram Panchayats (Conduct of Elections) Rules, 1978 (hereinafter referred to as "the Rules") which provides that "every election shall be inquired into by the election court as early as may be in accordance with the procedure laid down in the Code of Civil Procedure, 1908, to the trial of suits....." ..". The Supreme Court has consistently held that since provisions of CPC apply to the trial of an election petition, Order VI, Rule 16 is applicable to the proceedings relating to the trial of an election petition and that those paras of a petition which do not disclose any cause of action are liable to be struck off under Order VI, Rule 16 as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. (Vide Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, . In the circumstances, paragraphs 5 and 8 of the election petition of the 1st respondent are to be struck off.

5. Now paragraph 6 of the election petition of the 1st respondent remains for consideration. The said paragraph reads as follows:-

"The 1st respondent (the petitioner herein) also adopted the corrupt practice of freely distributing liquor and sarees and blouses to the voters one day prior to the date of election and got their votes polled since they are the voters under the electoral roll of the said panchayat. In fact the petitioner (1st respondent herein) and his agents having seen the same brought it to the notice of the concerned authorities but it is of no avail".

The contention of the petitioner in I.A.No. 647 of 1988 is that the allegation in the said paragraph 6 does not constitute any cause of action. The 3rd respondent referred to Sub-rule (2) of Rule 51 of the Rules and held that the particulars of corrupt practice given are sufficient and that the said Rule does not require the names of the persons to whom the corrupt practice was adopted" and that the allegation in paragraph 6 discloses the cause of action for the petition. In that view he held that the allegation in paragraph 6 is not frivolous, vexatious and unnecessary. The learned counsel for the petitioner contends that the allegation in the said paragraph 6 has not furnished the necessary material facts and the particulars of the corrupt practice. According to him the person or persons who freely distributed liquor, sarees and blouses are not specified. Reading paragraph 6, it is not clear whether the allegation is that the petitioner herein himself distributed, or his agents distributed, or some others with the connivance of the petitioner herein or his agent. He also contends that the localities in which or atleast the wards in which such distribution was made are also not specified; the names of the voters to whom liquor, sarees and blouses were distributed and

who as a consequence of that polled their votes are also not mentioned; and that in the absence of the said material facts, the allegation in paragraph 6 is vague and no corrupt practice is made out.

6. I am inclined to agree with the learned counsel for the petitioner. The allegation is that the petitioner adopted the corrupt practice of freely distributing liquor, sarees and blouses to the voters and that he got their votes polled since they are the voters under the electoral roll of the said Gram Panchayat. The corrupt practice sought to be made out seems to be one of "bribery", though it is not clearly spelled out from the facts alleged. "Bribery" is defined in Section 171B of the Indian Penal Code, 1860 as giving a "gratification to any person with the object of inducing him or any other person to exercise any electoral right", apart from other things. The material facts which have to be alleged for making out the corrupt practice of bribery have to be identified also with reference to Rule 60 of the Rules. Clause (a) of Rule 60 contemplates that the corrupt practice may be committed or abetted either by the returned candidate or by his agent or by any other person with the connivance of the candidate or his agent; Clause (b) of Rule 60 provides for cases where it is committed by others without the connivance of the candidate or his agent. Who had freely distributed liquor, sarees and blouses is not stated in the election petition of the 1st respondent, it is not stated as to whether the petitioner himself freely distributed, or his agent did it, or somebody else did it with the connivance of the one or the other or without such connivance. It is not stated how such a free distribution is a corrupt practice and whether such free distribution was with an understanding that the voters receiving the distributed articles should vote for the petitioner. In fact, no such understanding is referred to or mentioned in the allegation and such a gap cannot be filled up by assumptions and inferences. When there is no allegation as regards such an understanding in the pleading, no such inference can be drawn especially when such an allegation relates to a material fact: I have no doubt that such an understanding is a material fact without which the allegation of corrupt practice is incomplete and cannot be made out; Then the statement that the petitioner "got their votes polled since they are the voters under the electoral roll of the said panchayat" indicates that somebody else was at the job and that persons to whom the alleged free distribution was made were voters because their names were in the electoral rolls of the said Gram Panchayat. Whether those who did the job did it at the backing of the petitioner or of his agent, or on their own is also not stated. Thus another material fact necessary for completing the allegation of the corrupt practice of bribery is left out. I am of the view that in the absence of the material facts referred to above, the allegation of corrupt practice of bribery is incomplete. I need not decide the further question whether the names of the persons to whom the alleged free distribution was made and who exercised their franchise because they are the voters under the electoral roll, have also to be stated in order to complete the allegation of the corrupt practice of "bribery".

7. The 3rd respondent referred to Sub-rule (2) of Rule 51 of the Rules and

Section 83(1)(b) of the Representation of Peoples Act, 1951 and pointed out the difference in language between the two provisions and opined that Rule 51 did not require the giving of names of the parties alleged to have committed the corrupt practice, etc. He held that as per the said Rule 51 (2), the particulars of corrupt practice given in paragraph 6 of the election petition were sufficient and that they disclosed the cause of action for the petition. The 3rd respondent failed to see the distinction between "material facts" and "particulars".

8. It will be convenient to extract in full Sub-rule (2) of Rule 51 of the Rules. It is as follows: -

"(2) The petition shall contain a statement in concise form of the material on which the petitioner relies, and the particular of any corrupt practice which he alleges and shall where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908".

This is obviously lifted from Sub-rule (2) of Rule 50 of the Andhra Pradesh Gram Panchayats (Conduct of Elections) Rules, 1964 made in G.O.Ms. No. 256, Panchayati Raj (Panchayats-VIII) dated 18-3-1964 (hereinafter referred to as "the Old Rules") which is, as follows:-

"50 (2) : The petition shall contain a statement in concise form of the material on which the petitioner relies, and the particulars of any corrupt practice which he alleges, and shall where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908".

Sub-rule (2) of Rule 2 of the Rules relating to the decision of election disputes in respect of Panchayat Samithis and Zilla Parishads made in G.O.Ms.No. 286 dated 3-3-1960 u/s 69 (1) of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 is as follows: -

"(2) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges, and shall where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleading under Code of Civil Procedure, 1908".

A comparison of Sub-rule (2) of the above Rule and of Sub-rule (2) of Rule 51 of the Rules shows that the word "facts" after the word "material" is missing in the latter and that in all other respects it is an exact copy, except for the missing V in the word "particulars" - the V is not missing in Sub-rule (2) of Rule 50 of the Old Rules. Sub-rule (2) of Rule 2 of the Rules for the decision of election disputes made in 1967 under the Andhra Pradesh Municipalities Act, 1965 and Sub-rule (2) of Rule 2 of the Rules relating to the decision of election disputes in respect of Mandal Praja Parishads and Zilla Praja Parishads made in G.O.Ms.No. 130 dated 24-2-1987 u/s 92 (1) of the Andhra Pradesh Mandal Praja Parishads, Zilla

Praja Parishads and Zilla Abhivrudhi samkshema Mandals Act, 1986 are identical to Sub-rule (2) of Rule 2 of the Rules for the decision of election disputes in respect of Panchayat Samithis and Zilla Parishads made in G.O.Ms.No. 286 dated 3-3-1960 extracted above. I am therefore, of the view that the omission of the word "facts" after the word "material" and the omission of the letter"s" in the word "particulars" in Sub-rule (2) of Rule 51 of the Rules is only a typographical error and not an intended omission. Even otherwise, I am of the view that the expression "material" in the context of Sub-rule (2) of Rule 51 denotes only material facts. Jagannadha Rao,J, in T. Penchalaiah v. Election Court states, 1990 (1) ALT 669 the same thing when he observes:

"Just as the provisions of Sec. 83 (1) (a) of the Representation of People Act, 1951 require "a concise statement of the material facts" on which the petitioner relies, the provisions in Rule 52 (2) of the A.P. Gram Panchayat (Conduct of Elections) Rules, 1978 requires that the election petition should contain a statement in concise form of the material" on which the petitioner relies".

Thus there is no difference between the two provisions as regards statement of material facts in election petition. In that case he was dealing with an election petition relating to the election of a Sarpanch under the Andhra Pradesh Gram Panchayats Act and he observes that in election cases pleadings are viewed with extreme strictness. In Laxmi Narayan Nayak v. Ramratan Chaturvedi, the Supreme Court observes that in a catena of cases it has laid down the principles as to the nature of pleadings in election cases and that " the pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law", and that" the allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue".

9. In this connection it is necessary to bear in view the distinction between "material facts" and "particulars". In Shri Udhav Singh Vs. Madhav Rao Scindia, the Supreme Court observes as follows

"Like the Code of Civil Procedure, this section (Section 83 of the R.P. Act, 1951) also envisages a distinction between "material facts" and "material particulars". Clause (a) of Sub-section (1) corresponds to Order 6, Rule 2, while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a

discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

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, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

"Particulars", on the other hand, are "the details of the case set up by the party". "Material Particulars" within the contemplation of Clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of Clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative".

In *Hardwari Lal Vs. Kanwal Singh*, The Supreme Court after noticing the distinction between "material facts" and "particulars" observed as follows: -

"It is therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to cloth the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance".

There is no distinction between Sub-section (1) of Section 83 of the Representation of Peoples Act, 1951 and Sub-rule (2) of Rule 51 of the Rules so far as material facts are concerned. Both require that the petition shall contain a concise statement of the material facts; the distinction is only as regards particulars; whereas the said Section 83 requires that the election petition shall set forth full particulars of any corrupt practice "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", under the said Rule 51 (2) particulars of any corrupt practice have to be stated in the election petition.

10. The allegation in paragraph 6 of the 1st respondent's election petition is

lacking in material facts as already found by me earlier. It is also lacking in material particulars. Though the deficiency in material particulars can be rectified, deficiency in material facts is fatal and therefore the pleading in the said paragraph 6 is liable to be struck down.

11. For the aforesaid reasons, the Writ Petition is partly allowed and the order of the 3rd respondent in I.A.No. 647 of 1988 in O.P.No. 8 of 1988 dated 22-2-1989 is set aside in respect of paragraph Nos. 5, 6 and 8 of the 1st respondent's election petition in the said O.P. and the 3rd respondent is directed to strike out the said paragraphs in the light of this judgment. No costs. The 3rd respondent is directed to dispose of the Election Petition expeditiously.