

(1992) 01 GAU CK 0017
In the Gauhati High Court
Case No : Election Petition No. I of 1991

Membor Gogoi

APPELLANT

Vs

Renupama Rajkhowa

RESPONDENT

Date of Decision : 29-01-1992

Acts Referred:

Civil Procedure Code, 1908 — Order 6 Rule 4, Order 6 Rule 5
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, Order 6 Rule 5
Representation of the People Act, 1951 — Section 83(b), 83(b)

Citation : (1992) 1 GLJ 149

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : M.Nath, S.S.Dey, R.Chakraborty, H.N.Goswami, A.M.Majumdar, A.Choudhary, A.C.Buragohain, S.N.Medhi, Advocates appearing for Parties

Judgement

1. The petitioner has called in question the election of respondent No. 1, Smti Renupama Rajkhowa from 102 Teok Legislative Assembly

Constituency of Assam of the last general election held in the month of June, 1991. After receipt of the notice respondent No. 1 has filed an

application under Order VI Rule 5 and 16 of the Code of Civil Procedure, 1908 with the prayer to direct the election petitioner to furnish material

particulars in respect of the allegations contained in the election petition and as required under section 83 of the Representation of People Act as

well as under Order VI Rule 5 CPC and on his failure to do so, to strike out the pleadings.

2. The election petition is solely founded on the allegations of anomalies in counting of polled ballots. The prayer of the election petitioner is for

ordering recount of the polled votes in the last election and to declare the election of respondent No. 1 as void under section 100 of the

Representation of People Act, hereinafter referred to as the RP Act) and on the basis of the result after recounting, to declare that the petitioner to have been duly elected from the 102 Teok Legislative Assembly Constituency having polled majority of valid votes in his favour. The election of respondent No. 1 has not been called in question on the allegation of commission of corrupt practices under any head of section 123 of the RP Act.

3. I have heard Mr. S. N. Medhi, learned counsel for the respondent/applicant and Mr. A. M. Mazumdar, learned counsel for the election petitioner. Mr. Medhi has drawn my attention to section 83 of the RP Act and Order VI Rule 4 and 5 of the CPC and submits that due to vagueness of the allegations which is devoid of any particulars, the respondent No. 1 is unable to make/submit reply to the allegations effectively by filing written statement. Petitioner is legally bound to furnish the full particulars of the allegations. In support of the contention Mr. Medhi has placed reliance on the decisions of the Supreme Court in the following cases :

1. Samant N. Balakrishna vs. George Fernandez, AIR 1969 SC 1201; 2. Udhav Singh vs. Madhav fiao Scindia, AIR 1976 SC 744; 3. Sultan Saluddin Owasi vs. Mohd. Osman Shaweed, AIR 1980 SC 1347; 4. Roop Lal Sathi vs. Nachhattar Singh, AIR 1982 SC 1559; 5. Azhar

Hussain vs. Rajiv Gandhi, AIR 1986 SC 1253. In all the above cases, the election of the returned candidates were challenged on the allegation of commission of corrupt practices. As such in all the cases full compliance of section 83 (a) and Mibsection (b) of section 83 of the R P Act was held essential." Mr. Medhi has placed reliance on a decision of Delhi High Court in the case of Subhash Arya vs. Charnjit Singh, AIR 1981 Delhi

23. In the said case the Delhi High Court has held that:

..The election petition has to be tried by this Court as early as may be in accordance with the procedure applicable under the Code of Civil

Procedure, 1908 to the trial of suit. The Code of Civil Procedure empowers the Court to call for better and further particulars. That provision is to

be found in Order VI Rule 5. The power to call for particulars in respect of any pleading in an election case is, therefore, necessary for the fair trial of the election petition"".

4. Mr. Medhi has also placed reliance on the decision of the Allahabad High Court

in the case of Ram Singh vs. Kazi Mohiuddin, AIR 1988

Allahabad 210. In that case, Allahabad High Court has dismissed the petition on the ground that the allegations in the petition was devoid of material facts.

5. Mr. A.M. Mazumdar, learned counsel for the petitioner on the other hand has submitted that material facts are stated in the petition which have

made out a complete cause of action and since there is no allegation of commission of corrupt practice, furnishing of full particulars of the

allegations as contemplated under subsection (b) of section 83 of the RP Act, is not called for. The election petitioner is not supposed to disclose

the evidence. The allegations in the petition, are various anomalies made in the counting of ballot papers and the material facts of each of the

anomalies are stated in the petition clearly. Mr. Mazumdar has submitted that the instant application has been filed by the respondent solely for the

purpose of delaying trial of the election petition. Mr. Mazumdar has also placed reliance on the following decision of the Supreme Court: 1. Harish

Ch. Bajpai vs. Triloki Singh, AIR 1957 SC 444; 2. Ram Sewak Yadav vs. Harnam Singh Kamal Kidwai, AIR 1964 SC 1249; 3 Manphul Singh vs.

Surinder Singh, AIR 1973 SC 2158. To appreciate the rival contention, it is necessary to have a look into the relevant provision of the RP Act and

CPC. Section 83 of the RP Act provides as follows :

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." Order VI Rule 4

of CPC provides:

Particulars to be given where necessary. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful

default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid,

particulars (with dates and items if necessary) shall be stated in the pleading.

6. "From the provision of section 83 of the R.P. Act it is clear that the election petition shall contain concise statement of material facts on which the

petitioner relies. But when the petitioner alleges commission of corrupt practices, the petition shall contain 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

commission of each such practice. It is well settled by a catena of decisions of the Apex Court that section 83 of the R.P. Act is mandatory.

Omission of a single material fact leads to incomplete cause of action and the statement of claim becomes bad. The election of respondent No. 1

has not been challenged on the allegation of commission of any corrupt practice. The election is called in question solely on the allegation of

anomalies; committed in counting of ballots. As such furnishing, of full particulars in the instant election petition as contemplated under subsection

(b) of section 83 of the R.P. Act is not essential. Section 87 of the RP Act provides that subject to the provision of the RP Act or of any Rules

framed thereunder an election petition shall be tried, by the High Court as nearly as may be in accordance with the procedure applicable under the

Code of Civil Procedure, 1908. Order 6 Rule 4 of CPC provides that when in the pleadings there are allegations of any misrepresentation, fraud,

breach of trust, wilful default or undue influence, particulars (dates and items necessary) shall be stated in the pleading. It has also been provided

that in other cases particulars which may be necessary shall also be furnished.

7. Function of the particulars as contemplated under Order 6 Rule 4 is to present a full cause of action to make the opposite party understand the

case he will have to meet. As already indicated, prayer of the respondent is to direct the election petitioner to furnish material particulars and

particulars in support of allegation mentioned in different paragraphs as required under section 83 of the Act and Order 6 Rule 5 of the CPC and

on his failure¹ to do so, to strike out the statement of allegations. It is well settled that if any pleading is devoid of material facts it does not give rise

to complete cause of action and the pleading may be struck off without giving opportunity to supply material facts. In the instant election petition

since the furnishing of particulars as contemplated under section 83 (b) of the RP Act is not mandatory, it has to be seen as to whether for want of

some particulars respondent No. 1 is unable to understand and meet the allegations contained in the election petition. In her application the

respondent No. 1 has assailed that allegations of statement contained in paragraph 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 and 17 of the election

petition are extremely vague and devoid of material particulars. The respondent No. 1 however, has not specifically stated what particulars are to

be furnished by the election petitioner in the absence of which she is unable to meet the allegations.

8. I have perused the election petition and the allegations contained in different paragraphs to find as to whether the allegation are devoid of

material facts and whether some particulars are necessary to dispel the vagueness of the allegation, if any. The allegations made in paragraph 5 of

the petition are general in nature which are to be read along with the allegations made in the subsequent paragraphs. In paragraphs 6, 7 and 8 of

the election petition the system adopted in the counting of ballots which according to the petitioner is not in conformity with the Rules and

procedure and in violation of the provision of Conduct of Election Rules. The allegations contained in paragraph 9 of the election petition, in my

opinion do not suffer from any ambiguity nor the same are devoid of any material facts. The respondent No.1 in her application has contended that

no specific case has been made out by the election petitioner as to how not less than 250 ballots polled in favour of the election petitioner, were

placed in the box of the respondent No.1 in each of 2nd, 3rd, 5th and 6th round of counting and that type of allegation has no leg to stand. More

particulars in support of such allegations have to be furnished by the election petitioner. Whether the allegation is without foundation and incorrect

is to be decided after evidence is led. What particulars are felt necessary by the respondent No. 1 has not been specified. It has been contended

by the respondent No. 1 that the allegations contained in paragraph 10 of the election petition to the effect that officials entrusted with the counting

process were in favour of respondent No. 1 and they have committed large scale anomalies in preparing the bundle of 50 papers are devoid of

material particulars but what particulars are necessary for the respondent No. 1 to meet the allegations has not been specified. I have gone through

the pleadings of paragraph 10 of the election petition and I do not find that the allegations are devoid of material facts. I have gone through the

pleading of paragraphs 11, the allegations contained in the last sentence of the paragraph, namely, ""But again at the 5jth and final round, the

counting officials indulged in large scale anomalies in favour of the respondent No. 1 thereby materially affecting the result of the election"" is

extremely vague and devoid of material facts, as such, the allegation contained in the last sentence is struck off.

9. I have gone through the pleadings of paragraph 12"of the petition and I do not find the petition is devoid of material facts. The respondent No. 1

has not specified the particulars which may be necessary to meet the allegations. It is further contended that the allegations made in paragraphs

13,14, 15,17, 21 and 23 of the election are devoid of material particulars. I have gone through the statements made in the paragraphs of the

election petition and I find that statements are not devoid of material facts. The petitioner has not specified what particulars are necessary to meet

the allegations effectively by filing written statement.

For the reasons stated above, the application is partly allowed to the extent of striking out the pleadings in last sentence of paragraph 11 of the

election petition.