
(2012) 03 DEL CK 0077

In the Delhi High Court

Case No : IA 6871 of 2011 in El. Petition No. 12 of 2009

Mr. Sher Singh Dagar

APPELLANT

Vs

Dr. Yoganand Shastri and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11
Representation of the People Act, 1951 — Section 117, 123, 81, 82, 83

Citation : AIR 2012 Delhi 173 : (2012) 188 DLT 423

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Naresh Kaushik, for the Appellant; R.M. Bagai and Ms. Damini Khaira for R-1, for the Respondent

Judgement

V.K. Jain, J.—Election petition No. 12/2009 has been filed by Mr. Sher Singh Dagar, challenging the election of respondent No. 1, Dr. Yoganand Shastri to the Delhi Legislative Assembly, from constituency No. AC-45, Mehrauli, elections where were held on 29.11.2008. The election has been challenged inter-alia on the grounds that:- (i) respondent No. 1 himself, and his agents and workers with his consent, made an appeal to Muslim voters to vote for him, on ground of race community and religion and the voters were made to excite the religious sentiments and thereby respondent No. 1 committed corrupt practice. (ii) respondent No. 1 himself, and his agents and workers with his consent, made an appeal to Jatt voters to vote for him on the ground of race, community and cast and to refrain from voting for the petitioner. (iii) respondent No. 1 himself, and his agents and workers with his consent, hired and procured transport for the conveyance of the voters to the polling stations and back from there and thereby committed a corrupt practice. (iv) respondent No. 1 himself and his agents and workers with his consent distributed liquor to the voters in the Juggi Jhopri area in Kusumpur Pahari on 16.01.2008 and thereby he committed corrupt practice, and (v) respondent No. 1 himself and his agents and workers with his consent distributed gifts in the form of sarees in the area of Juggi Jhopri in Kusumpur

Pahari on 28.11.2008 and thereby respondent No. 1 committed a corrupt practice.

2. The election of respondent No. 1 has also been challenged on the ground that some voters had polled two or more times in the same constituency whereas some voters had polled in the constituency from where respondent No. 1 was declared elected, as well as other constituencies.

3. An additional affidavit was filed by the petitioner on 21.07.2010 by way of amplification of the corrupt practices alleged and the other allegations made in the petition. I.A. No. 6871/2011 has been filed by him for permission to place the aforesaid additional affidavit on record.

4. With respect to allegations of appealing to muslim electors to vote on grounds of race, community and religion, it is stated in the additional affidavit that respondent No. 1 himself, and his agents and workers with his consent had appealed to muslim voters, on 28.11.2008, in the presence of Abrar Ahmed and Rajinder Kumar, on the ground of race, community and religion, not to vote for the petitioner and to cast their votes in favour of respondent No. 1.

With respect to the corrupt practice, by way of an appeal to jat electors of Village Kishangarh, it is stated in the additional affidavit that respondent No. 1 and his workers and agents with his consent had made an appeal to the jat electors of Village Kishangarh on 24.01.2008 at 4.00 p.m. and the aforesaid appeal was made by respondent No. 1 himself in the presence of Baljeet Singh and others. Baljeet Singh is stated to be a resident of Kishangarh, Mehrauli. With respect to allegations of procurement of vehicle for the voters, it is stated in the additional affidavit that the vehicles were engaged by Manish Dagar and Ashwani Rathi, workers of respondent No. 1 for the conveyance of voters of Vasant Kunj area.

Regarding distribution of liquor and sarees to the voters in Kusumpur Pahari, it is stated in the additional affidavit that respondent No. 1 himself and his agents and workers with his consent had distributed liquor to voters of Juggi Jhompri in Kusumpur Pahari area on 16.11.2008 at 2.45 p.m. and this was witnessed by the petitioner himself. Similar statement is made in the additional affidavit with respect to distribution of sarees by respondent No. 1 in Juggi Jhompri of Kusumpur pahari.

5. The petitioner by way of an additional affidavit seeks to place on records the lists of voters, whose names appear at two different booths of constituency No. AC-45, Mehrauli, the voters whose names appear at two places in the same voter list, and the list of voters whose names appear in the voters list of constituency AC-45 as well as in the voter list of other constituency.

6. The application for permission to place an additional affidavit on record has been opposed by respondent No. 1. It has been stated in the reply that the election petition lacks material particulars and falls short of mandatory requirements of Section 83 of the Representation of People Act. It is pointed out

that the additional affidavit was filed only after respondent No. 1 filed IA No. 7208/2010 under Sections 83 and 86 of the Representation of People Act read with Order 7 Rule 11 of CPC for dismissal of the election petition on the ground that it does not contain material particulars. It is also alleged that the additional affidavit has been filed in a surreptitious manner without seeking permission of the Court. Another ground on which respondent No. 1 has opposed the application is failure of the petitioner to explain the delay in filing the additional affidavit. The application has also been opposed on the ground that the election petition is liable to be rejected for want of material particulars and the petitioner cannot be led to fill up the lacunae in the election petition, at this stage, by way of an additional affidavit which has been filed without permission of the Court.

7. Section 83(1)(b) of Representation of People Act, 1951 provides that an election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the name of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 of the Act mandates the High Court to dismiss an election petition which does not comply with the provisions of Section 81, 82 or 117. It would thus be seen that this Section does not provide for an outright dismissal of the election petition for want of full particulars of the corrupt practice required to be given in terms of Section 83(1)(b). Sub-section (5) of Section 86 which is an enabling provision provides that the High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice, alleged in the petition, to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. However, the High Court is mandated not to allow any such amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

8. Material facts are primary or basic facts which the petitioner must necessarily pleaded in the election petition. Particulars, on the other hand, are details of the material facts pleaded in the petition. The particulars serve the purpose of making the material facts more clear and more informative so that the opposite party knows the case he is to meet during trial and is not taken by surprise. The particulars thus are the evidence which the party concerned would be leading at the time of trial.

9. In *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, , Supreme Court drew the following distinction between material facts and particulars:-

What is the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will

have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus 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 cause of action.

In *Balwan Singh Vs. Lakshmi Narain and Others*, , there were allegations of corrupt practice by way of hiring or procuring vehicles of the elected candidate. The election petition was opposed on the ground that it lacked full particulars as to contract of higher vehicles. A Constitution Bench of the Supreme Court was called upon to consider the requirement of Sections 83 and 123 of the Act in the light of allegations made in the election petition. Holding that the election petition was not liable to be rejected for want of particulars of date and place of hiring of the vehicles, the Court, *inter alia*, observed as under:-

The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well founded. If the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of noncompliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars.

In *Raj Narain Vs. Indira Nehru Gandhi and Another*, , Supreme Court, *inter alia*, held as under:-

The charge of corrupt practice in an election petition is a very serious charge and has to be proved. It may or may not be proved. The allegations may be ultimately proved or not proved. But the question for the courts is whether a petitioner should be refused an opportunity to prove those allegations merely because the petition was drafted clumsily. Opportunity to prove should not be refused.

"Material facts" in Section 83 of the Representation of People Act, 1951 shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present a full picture of the cause of action so as to make the opposite party understand the case he has to meet. u/s 86(5) of the Representation of People Act if the corrupt practice is alleged in the petition the particulars of such corrupt practice may be amended or amplified.

An election petition is not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out. If an objection was taken and the Tribunal was of the view that full particulars have not been set out, the petitioner has to be given an opportunity to amend or amplify the particulars. It is only in the event of non-compliance with such order to supply the particulars, that the charge which remained vague could be struck down.

Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it.

In *K.K. Ramachandran Master Vs. M.V. Sreyamakumar and Others*, , Supreme Court, inter alia, held as under:-

The provisions of Section 83 (supra) have fallen for interpretation in several cases leading to a long line of decisions that have understood the said provisions to mean that while an election petition must necessarily contain a statement of material facts, deficiency if any, in providing the particulars of a corrupt practice could be made up by the petitioner at any later stage. The provision has been interpreted to mean that while a petition that does not disclose material facts can be dismissed as one that does not disclose a cause of action, dismissal on the ground of deficiency or non-disclosure of particulars of corrupt practice may be justified only if the election petitioner does not despite an opportunity given by the Court provide the particulars and thereby cure the defect. We do not consider it necessary to refer to all the decisions delivered on the subject as reference to some only of such decisions should in our opinion suffice.

In *Virender Nath Gautam Vs. Satpal Singh and Others*, , Supreme Court held as under:-

The High Court dismissed the petition inter alia on the ground that paras 8 (i) to (iv) lacked in material particulars. Apart from the fact that the law does not require material particulars even in respect of allegations of corrupt practice but only full particulars and if they are lacking, the petition can be permitted to be amended or amplified u/s 86 of the act, in the instant case, Clause (b) of Section 83(1) had no application and the petition has been dismissed by the High Court by applying wrong test. On that ground also, the order passed by the High Court is unsustainable [*Vide Harkirat Singh Vs. Amrinder Singh*,].

In F.A. Sapa Etc., Etc., Vs. Singora and others, , Supreme Court observed that once the amendment sought falls within the purview of Section 86(5), the High Court should be liberal in allowing the same unless, in the facts and circumstances of the case, the Court finds it unjust and prejudicial to the opposite party to allow the same. Such prejudice must, however, be distinguished from mere inconvenience. The Court was of the view that since Section 86(1) which lays down that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 83 or Section 117 does not refer to Section 83, the Legislature did not view the non-compliance of the requirement of Section 83 with the same gravity as in the case of Section 81, 82 or 117.

10. The proposition of law which emerges from a perusal of the above-referred decisions is that material facts are the primary facts which constitute the ground on which the election can be set aside and, therefore, must necessarily be alleged in the petition. No amendment can be allowed by the Court so as to plead an additional material fact. If, however, the material facts have been alleged in the petition, the Court will not be justified in dismissing the election petition on the ground that details or particulars of those material facts have not been given in the petition. If an objection is taken by the respondent that the petition lacks material particulars, the Court ought to give an opportunity to the petitioner either to amend the petition or to amplify the material facts alleged in the petition, by giving the requisite particulars of the material facts already pleaded by him. Another proposition of law which emerges from these judgments is that an application seeking permission to give particulars cannot be rejected merely on account of delay even if the period of limitation prescribed for filing the election petition has expired by the time permission is sought to furnish particulars of the material facts already supplied in the election petition.

11. In the case before this Court, the petitioner has specifically alleged in para G of the grounds given in the election petition that 4621 invalid and duplicate votes were wrongly created by respondent No. 1 himself and with his consent by his agents and workers and those invalid and void votes were polled in favour of respondent No. 1 and had materially affect the result of election. It is further alleged that these voters had polled two or more times in the same constituency. In para H of the grounds, it has been alleged that 11017 invalid and duplicate votes were wrongly created by respondent No. 1 himself and with his consent by his agents and workers, of those voters who were also the voters in other constituencies of Delhi. Regarding these votes also, it is alleged that they were invalid and void votes polled in favour of respondent No. 1 which had materially affect the result of the election. It has been further alleged that these voters had polled two or more times in the said constituency and in the other constituencies.

The material allegation made by the petitioner in this regard being polling of votes two times by the same voters, those who had polled more than once in the same constituency and those who had polled once in the constituency from

where respondent No. 1 was declared elected and the other time in another constituency. The material facts with respect to double polling of votes having already been pleaded, the lists sought to be filed by the petitioner as Annexure xiii to xvi only given particulars or evidence which the petitioner seeks to produce in support of material fact already alleged in the petition, by furnishing the list of the voters whose names appear in the voters list of more than one polling stations in the same constituency, those whose names appear more than once in the same voter list and the names of those whose names appear in the voter list of constituency from where respondent No. 1 was declared elected as well as in other constituencies.

12. With respect to appealing to the voters in the name of race, community and religion, the petitioner has alleged in Paragraph-B of the grounds that respondent No. 1 himself and his agents and workers with his consent had appealed to muslim electors on ground of race, community and religion to vote for him and to refrain from voting for the petitioner. It is further alleged that respondent No. 1 had visited Auliya Masjid, Mehrauli on 28.11.2008 at 12.00 noon to 1.00 p.m. and appealed to the muslim electors to vote for him on the said ground and those statements were calculated to prejudice the prospects of the petitioner's election and further the prospects of the election of respondent No. 1. By way of additional affidavit, the petitioner seeks only to give names of two persons namely Abrar Ahmed and Rajinder Kumar, in whose presence the respondent No. 1 and his agents and workers are alleged to have appealed to the muslim voters in the manner stated above. Thus, it cannot be said that the petitioner did not plead material particulars in this regard in the election petition.

Regarding the alleged appeal to jat electors, the petitioner has alleged in the petition that respondent No. 1 visited Village Kishangarh on 27.11.2008 at 4.00 to 5.00 p.m. and made an appeal to the jat electors to vote for him on ground of race, community and cast and to refrain from voting for the petitioner. By way of additional affidavit, the petitioner has given the name of one Baljeet Singh, a resident of Kishangarh as the person in whose presence the aforesaid appeal was made to jat electors. Thus, here also, the material facts have already been pleaded.

With respect to procurement of vehicle for the voters, the petitioner has alleged in the election petition that in the area of Vasant Kunj the agents and workers of respondent No. 1 had provided vehicles for conveyance of the electors to polling stations No. 19, 22, 30, 31, 34, 37, 38, 45 and 71 to 79. The numbers of some of the vehicles alleged to have been used by the agents and workers of respondent No. 1 to provide free conveyance to the electors have also been given in the election petition. By way of additional evidence, the petitioner is seeking only to give the name of the workers of respondent No. 1 who are alleged to have engaged the vehicles for conveyance of the voters in Vasant Kunj area. Therefore, material facts with respect to the allegations of procurement of vehicle for the conveyance of the voters have already been pleaded in the

election petition and only the names of the persons who engaged the vehicles are sought to be given.

Regarding distribution of liquor and sarees in Kusumpur Pahari area, it has also been pleaded in the petition that respondent No. 1 on 16.11.2008, at 2.45 p.m. to 3.30 p.m., as well as his agents and workers, with his consent had distributed liquor to the voters. It is further alleged that they have also distributed gifts in the form of sarees in Jhuggi Jhopri area in Kusumpur area at 7.30 p.m. to 10.00 p.m. on 28.11.2008. By way of additional affidavit, respondent No. 1 seeks to plead that distribution of liquor and sarees was witnessed by the petitioner himself. Here also, material particulars with respect to the alleged corrupt practice have already been pleaded in the election petition and now only the name of the witness in whose presence the corrupt practice is alleged to have been committed is sought to be given.

13. Since the additional affidavit sought to be filed by the petitioner is by way of particulars of the material facts already pleaded in the election petition and no additional material fact is sought to be pleaded by way of the additional affidavit, there is no good ground to reject the prayer made by the petitioner, seeking permission to place the additional affidavit on record. It is settled proposition of law that at the stage of considering amendment of pleadings, the court cannot go into the truthfulness or otherwise of the averments sought to be made by way of the proposed amendment. Similarly, while considering an application seeking permission to file an additional affidavit by way of elucidation or amplification of the material facts already pleaded in the election petition, the Court cannot go into the truthfulness of the averments made in the additional affidavit. As held by the Supreme Court in the cases referred herein above, an election petition which gives material facts but lacks in particulars with respect to those material facts cannot be rejected on account of lack of particulars, without giving an opportunity to the petitioner to amend the petition so as to give such particulars. It, therefore, becomes rather obligatory for the Court, to allow an amendment or amplification by giving particulars, to the extent those particulars pertain to the material facts already pleaded in the election petition.

It is true that the petitioner has not given a convincing explanation for the whole of the delay in filing this application seeking permission to file an additional affidavit, but, as noted earlier, the delay in seeking amendment of an election petition or for that matter delay in making request to file an affidavit by way of amplification of corrupt practice already pleaded in the election petition, by itself is not a good ground to reject such an application, particularly when no prejudice is shown to have been caused to the respondent on account of the delay in filing the application.

14. The Learned Counsel for defendant No. 1, while opposing the application, has relied upon Mahendra Pal Vs. Ram Dass Malanger and Others, as well as the decision of Supreme Court in Samant Balakrishna (supra). In Mahendra Pal (supra), Supreme Court, inter alia, held as under:-

Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. The function of particulars is, thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between "material facts" and "material particulars" is indeed important because different consequences follow from a deficiency of such facts or particulars in the pleadings. 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, CPC. In the case of a petition suffering from deficiency of material particulars the Court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with permission of the Court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation.

This judgment, to my mind, does not help respondent No. 1 once it is held that the averments made in the additional affidavit of the petitioner constitute particulars and not material facts and in this case also Supreme Court has clearly upheld the power of the High Court to allow the supply of the particulars even after the period of limitation prescribed for filing the election petition has expired.

In *Samant Balakrishna (supra)*, Supreme Court held that if the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later, but where the material facts themselves are missing, it is impossible to think that the charge has been made or can be later amplified. It was observed that the power of amendment is given in respect of the particulars, but there is prohibition against the amendment which will have the effect of introducing particulars of the corrupt practice not previously alleged in the petition. This judgment would be of no help to respondent No. 1 once it is found that the averments made in the additional affidavits are by way of particulars of corrupt practices, material facts pertaining to which have already been pleaded in the petition.

15. For the reasons stated herein above, the application is allowed, subject to payment of Rs. 50,000/- as costs and the additional affidavit is taken on record. Respondent No. 1 is granted two weeks' time to file an affidavit in reply to the additional affidavit filed by the petitioner.

This application stands disposed of accordingly.