

(2013) 01 DEL CK 0010

In the Delhi High Court

Case No : Rev. Petition No. 268 of 2012 in Election Pet 12 of 2009

Mr. Sher Singh Dagar

APPELLANT

Vs

Dr. Yoganand Shastri and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 134 DRJ 187

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

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Vide order dated 21st March, 2012, IA No. 6871/2011, filed by the petitioner was allowed, subject to payment of Rs. 50,000/- as cost and the Additional Affidavit filed by him was taken on record. Vide Review Petition No. 268/2012, the respondent No. 1 is seeking review of the aforesaid order primarily on the following grounds:-

- i) The proposition of law propounded by the Court in the order dated 21st March, 2012 to the effect that the court ought to give opportunity to the petitioner to amend the plaint or amplify the material facts was erroneous and against the law laid down by the Supreme Court, since in none of the judgments, the Supreme Court said that the delay was immaterial in allowing the amendment;
- ii) In the present case even material facts are missing and therefore there was no question of amplifying the same since the material facts cannot be supplied after expiry of the period of limitation;
- iii) The petitioner has not disclosed the source of information in respect of commission of the alleged corrupt practices and the verification of the Additional Affidavit of the petitioner does not meet the requirement of law;

- iv) The court did not consider the law laid down by the Supreme Court in Bhagwan Dass Vs. Thakur Dass and Others, where the Election Petition was dismissed for non-disclosure of material facts;
- v) The reliance by the Court upon Mahendra Pal Vs. Ram Dass Malanger and Others, was misplaced since the petitioner had not obtained any permission to file the Additional Affidavit;
- vi) Because the contents of the Additional Affidavit cannot be treated as material particulars;
- vii) Because the Additional Affidavit has been filed by the petitioner in a surreptitious and covert manner;
- viii) Because there is an error apparent on the face of the record in the impugned order by brushing aside undue delay of 900 days by holding that permission to give particulars cannot be rejected merely on account of delay;
- ix) Because the Supreme Court has held in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, that casting more than ones does not amount to a corrupt practice;
- x) Because Supreme Court has held in Ram Sukh Vs. Dinesh Aggarwal, held that no cause of action arises if material facts are missing;

The review petition has been opposed by the petitioner.

A Review Petition would lie primarily if there is a mistake or error apparent on the face of the record or some new and important matter or evidence is discovered which after exercise of due diligence was not in the knowledge of the review petitioner or could not be produced by him at the time when the order was passed. In Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , the order of September, 1959 contained a statement that the case did not involve any substantial question of law. It was held that even if the aforesaid statement was wrong, it would not follow that it was an error apparent on the face of the record because a mere erroneous decision could not be characterized as vitiated by error apparent. It was held that a review is not an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. In Parsion Devi and Others Vs. Sumitri Devi and Others, , the Supreme Court held that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said an error apparent on the face of the record, justifying the court to exercise its power of review under Order 47 Rule 1 of CPC. It was further held that in exercise of the jurisdiction under Order 47 Rule 1 of CPC, is not permissible for an erroneous decision to be re-heard and corrected. In Rajan Bai 2007 15 SCC 513, the Supreme Court held that in the absence of an error apparent on the face of the record, the finality attached to the judgment/order cannot be disturbed. In Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., , the Supreme Court held that the review Court does not sit in appeal over its own order and re-hearing of the matter is not permissible in law.

2. A perusal of Para 6 of the order dated 21.3.2012 would show that the Court, while passing the said order considered the case of respondent No. 1 that the Election Petition lacks material facts and falls short of mandatory requirement of Section 3 of the Representation of the People Act. It was also noted that the Additional Affidavit had been filed only after respondent No. 1 had filed IA No. 7208/2010 for dismissal of the Election Petition on the ground that it does not contain material particulars. The Court also considered the allegations that the Additional Affidavit had been filed in a surreptitious manner without seeking permission of the Court. The Court also took note of the contention of respondent No. 1 that there was failure on the part of the petitioner to explain the delay in filing the Additional Affidavit and the Election Petition was liable to be rejected for want of material particulars since the lacunae in the Election Petition could not be filled by way of an Additional Affidavit. It would, therefore, not be correct to say that the contention of respondent No. 1 have not been taken into consideration while passing the order dated 21st March, 2012. If the respondent No. 1 is aggrieved on account of the Court not accepting his above-referred contentions, the proper remedy for him is to file an appeal against the order dated 21st March, 2012 and a Review Petition is not the appropriate remedy.

3. In *Balwan Singh Vs. Lakshmi Narain and Others*, , the Supreme Court specifically held that 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 and where an objection is raised by the respondent that a petition does not give full particulars of an alleged corrupt practice and the objection is upheld by the Tribunal. It should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged. Therefore, the view taken in para 10 of the order dated 21st March, 2012 that 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 pleaded by him, cannot be said to be incorrect. If the Court cannot dismiss a petition on the ground that the requisite particulars with respect to the material facts alleged in the petition have not been given and an opportunity must necessarily be given to the petitioner, for supply of such particulars, the delay in giving such particulars becomes immaterial and the application seeking permission to give the necessary particulars in respect of the material facts alleged in the petition cannot be rejected merely on account of delay in seeking such a permission. Therefore, the proposition of law enunciated in para 10 of the aforesaid order that an application seeking permission to give particulars cannot be rejected even if the period of limitation prescribed for filing the Election Petition has expired by the time permission is sought to furnish particulars, cannot be said to be incorrect.

Vide order dated 21st March, 2012, this court took the view that the Additional Affidavit sought to be filed by the petitioner was by way of particulars of the

material facts already pleaded in the Election Petition and no additional material fact was sought to be pleaded by way of the Additional Affidavit. If the view taken in this regard by the Court is not a correct view, the remedy of the respondent No. 1 lies in filing an appeal against the said order and a Review Petition would not be the appropriate remedy since taking incorrect view of such a matter is not an error apparent on the face of the record. The respondent No. 1 cannot be allowed by way of this petition to re-argue the matter on merits and say that the material facts pertaining to the particulars sought to be given by way of Additional Affidavit of the petitioner have not been pleaded in the petition. In any case, IA No. 7208/2010 filed by respondent No. 1 under Sections 83 and 86 of Representation of the People Act read with Order 7 Rule 11 CPC for dismissal of the Election Petition on the ground that it does not contain material particulars is still pending disposal and it would be open to respondent No. 1 to make such submissions as are open to him in law, at the time of hearing of the above-referred application.

4. The learned counsel for respondent No. 1 has referred to Subhash Desai Vs. Sharad J. Rao and Others, , Azhar Hussain Vs. Rajiv Gandhi, , Prestige Lights Ltd. Vs. State Bank of India, and Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, . However, none of these judgments is relevant for the purpose of deciding this review petition though they may be relevant at the time of consideration of IA No. 7208/2010.

The learned counsel for respondent No. 1 has also referred to decision of this Court in RP No. 228/2007 in LPA No. 262/2001 decided on 28th May, 2009.

In the above referred case, while passing the order dated 25th April, 2007, the Court had relied upon the decision in Amita Gulati & Ors. vs. Union of India & Ors. in CWP No. 2273/1995 decided on 6th March, 1996. The revision petitioner pointed out to the Court that Amita Gulati's appointment was on contract basis relating to a particular project whereas the appointment of the petitioner was temporary for one year at the first instance and this difference had escaped the attention of the Court while delivering the judgment under review. Acknowledging the distinction pointed out by the learned counsel for the review petitioner, the Court allowed the Review Petition and recalled the judgment dated 25th April, 2007. However, the facts of the case before this Court are altogether different. No error apparent on the fact of record has been pointed by the review petitioner. The reliance upon this judgment is, therefore, wholly misplaced.

For the reasons stated above, I find no merit in the review petition and the same is, therefore, dismissed. Considering the fact that it has taken more than eight months to decide this revision petition which the learned counsel for the review petitioner argued extensively on a number of hearings, I burden the review petitioner with cost assessed at Rs. 10,000/-.