
(1985) 07 BOM CK 0002

In the Bombay High Court

Case No : Election Petition No. 1 of 1985

Narayan Shrinivass Fugro

APPELLANT

Vs

Shamjibhai Bhika Solanki and Another

RESPONDENT

Date of Decision : 02-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3

Citation : AIR 1986 Bom 275

Hon'ble Judges : G.D. Kamat, J

Bench : Single Bench

Advocate : J. Dias, for the Appellant; V.B. Nadkarni, for No. 1 and F. Rebello, for No. 2, for the Respondent

Judgement

G.D. Kamat, J.—This Order shall dispose of the following issue : --

Whether the petition is not maintainable for want of proper verification of the petition and the supporting affidavit (O.P.R. 1).

2. The above issue arose in the following circumstances :

The petitioner who was a candidate at the general elections to the Legislative Assembly of Goa, Daman and Diu from 30-Diu Assembly Constituency having been defeated challenges the election of respondent 1, for short returned candidate, on the grounds that the returned candidate committed corrupt practices. Apart from seeking a declaration that the election of the returned candidate is void he also seeks an order for a declaration that he has been duly elected from that Constituency: The allegation of corrupt practices as contained in para 5(1) relates to bribery. Paras 5(2) and 5(3) are in relation to corrupt practice of undue influence and para 5(4) relates to other corrupt practices. While verifying this petition it has been however stated by the petitioner that what is contained in these paras 5(1), 5(2), 5(3) and 5(4) is stated on information received and believed to be true. The petition is duly supported by an affidavit of the petitioner sworn before the Court of the Judicial Magistrate F.C.

which again mentions that the statements made in paras 5(1), 5(2) and 5(3) in relation to the corrupt practices is true to his information.

3. The returned candidate in his defences filed to the petition has in para 1 raised an objection to the effect that neither the petition nor the Affidavit filed by the petitioner in relation to the averments relating to corrupt practices have been verified in the manner laid down in the Civil P.C. 1908 and the Rules regulating such petitions inasmuch as the petitioner has failed to mention the sources of information. In the absence of disclosures of sources of information it was urged that the petition is liable to be dismissed at the very threshold and it is in this way that Issue No. 1 was pressed to be heard as a preliminary Issue.

4. According to the learned counsel for the returned candidate the petition is liable to be dismissed on this ground alone as it was clearly mandatory on the part of the petitioner to have disclosed the sources of information as the allegations are of corrupt practices" committed by the returned candidate and since the petition and the affidavit do not disclose the sources of information of the petitioner it is fatal to the petition.

5. According to Shri Dias, learned counsel for the petitioner, the petition cannot be dismissed even if this Court holds that the verification of the petition and the supporting affidavit is defective and at the most this Court can direct the petitioner to file a fresh affidavit and amend the petition. It is further urged that it is only a procedural matter and therefore not fatal and it is further urged that the manner in which the issue is couched even if it is answered in the affirmative, the petition cannot be dismissed and the sole question for deciding that issue is whether the petition is maintainable and if it is not maintainable it cannot be held that it is liable to be dismissed and petitioner can amend the petition and file a fresh affidavit.

6. Section 83 of the Representation of the People Act, 1951 provides : (1) An election petition --

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 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."

Section 94A of the Conduct of Elections Rules, 1961 provides that the affidavit referred to in the proviso to Sub-section (1) of Section 83 shall be sworn before a Magistrate of the first class or a notary or a commissioner of oaths and shall be in form 25.

Form 25 provides a pro forma of an affidavit that is required to be filed as mentioned in the proviso to Section 83 of the Representation of the People Act, 1951. Insofar as the affidavit filed by the petitioner accompanying the petition is concerned there is no dispute that it is in the prescribed form, being Form No. 25

as prescribed pursuant to Rule 94A of the Conduct of Elections Rules, 1961. But then however it must be seen that Clause (c) of Sub-section (1) of Section 83 provides that the petition shall be verified in the manner laid down in the Civil P.C. 1908 for the verification of pleadings. Insofar as the Civil P.C. is concerned Order 6 Rule 15 provides that every pleading shall be verified at the foot by the party to be acquainted with the facts of the case and the party verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Order 9 which deals with affidavits in Rule 3 mentions that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted : provided that the grounds thereof are stated. In the present case however in paras (a), (b) and (c) it is mentioned that the corrupt practices alleged in paras 5(1), 5(2) and 5(3) respectively of the petition are true to his information. None of the allegations made relating to corrupt practice are averred to be true to his own knowledge. It is now contended by Shri Nadkarni that trial of a criminal petition being quasi criminal in nature firstly it is necessary for the petitioner who makes allegation of corrupt practice must assume full responsibility and secondly, the petitioner must be tied down in the matter of allegation of corrupt practice so that he may not fill in lacunae and that way lead evidence and for this reason it is mandatory on the part of the petitioner to disclose the sources of information upon which allegation of corrupt practice is alleged against a returned candidate. And on consideration of this aspect of the matter if the petition and the affidavit do not disclose sources of information the petition must be dismissed on that score alone and he placed reliance on some authorities of the Supreme Court to which I will presently make a reference.

7. He first placed reliance in the decision of Virendra Kumar Saklecha Vs. Jaggiwan and Others, . In that case the High Court had declared the election of the appellant Saklecha to be void on some corrupt practice committed by him. In the appeal filed by Saklecha before the Supreme Court it was contended on his behalf that the respondent Jaggiwan who had filed the election petition but however had not disclosed the source of his information in the affidavit accompanying that petition and therefore the petition ought to have been dismissed on that score. The Madhya Pradesh High Court had framed its own Rules in respect of election petitions and Rule 7 of the Madhya Pradesh High Court Rules provided that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information and belief and must also state the source or ground of information or belief with sufficient particularity. It further held that though the Form No. 25 of the Conduct of Election Rules required the deponent to an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information there is no requirement of disclosure of this source of information and yet the Supreme Court held that so long as the M.P. High Court Rules are not inconsistent with that Form the

affidavits supporting the election petition must be in conformity with Rule 7 and therefore there must be a disclosure of the source of information and that way held that the affidavit was fatal. But it must however be seen firstly that this case was decided on the basis of Rule 7 of the M.P. High Court Rules in respect of an election petition and secondly this point was canvassed not as a preliminary issue at the trial of the election petition. Therefore it is difficult to accept that this authority supports the contention now raised by the learned counsel for the returned candidate. He next relied upon the decision of Ramanbhai Nagjibhai Patel Vs. Jashvant Singh Udesingh and Others, In this case the election of Ramanbhai was declared to be void by the Gujarat High Court and that is how the said Ramanbhai preferred his appeal to the Supreme Court. The attack in the petition was charges of bribery, which according to the Gujarat High Court were held to be proved. Mr. Nadkarni has placed reliance on para 9 of this Report which mentions that the Judges of the Supreme Court said that they are noticing some salient criticism against the judgment of the High Court which shake the foundation of the charge of bribery which were held to be not sustainable. It was observed, that the allegations in the election petition itself were too vague and indefinite. Further an observation is made that the affidavit in support of the statements of bribery as contained in para 9 were wholly inadequate and wrong as the statements in the affidavit were mentioned to be true to the information of the election petitioner which was held to be neither a correct form of an affidavit nor it fulfilled the requirement of disclosing the source of information. With due respect this authority again does not help the returned candidate because the point in connection with the defective verification was not decided at the threshold of the petition and it was dealt with subsequently. The verification was held to be defective because the very petitioner who in his affidavit had averred that what was mentioned in the affidavit was true to his information, in his deposition before the High Court he stated that he received this information from one Ramanbhai Punjabhai who had filed another election petition and this Ramanbhai was not even examined as a witness in the election petition filed by Jasvantsingh. It is difficult to accept that this authority lays down the law that if disclosure is not made regarding the source of information in the affidavit the petition is liable to be dismissed in limine. Next reliance is placed on the authority of K.M. Mani Vs. P.J. Antony and Others, . In this case also the election of K.M. Mani, appellant, was held to be void and that made him file the appeal before the Supreme Court. At his instance a point had been raised that the election petition had not been properly verified as it had not been stated which of the averments of the paras 3 to 6 were true according to the information received by the petitioner and which were believed by him to be true. An objection had been taken in the written statement that affidavit filed along with the petition was not in conformity with the requirement of law and what is more, it was canvassed that the petition was liable to be dismissed because of that defective verification and reliance was placed on the authority of Virendra Kumar Saklecha Vs. Jagjiwan and Others, The learned Judges of the Supreme Court held that the election petition against K.M. Mani could not have been dismissed

on the ground of defective verification of the affidavit as no breach of any rule of the Kerala High Court Rules had been brought to the notice of the Supreme Court. It is however interesting to note that the Supreme Court observed that the decision in *Virendra Kumar Saklecha Vs. Jagjiwan and Others*, was based on the Rules of the M.P. High Court and that is how the plea for dismissal of the election petition on that ground was negated.

8. Mr. Nadkarni, learned counsel for the returned candidate has however made reference that this Court has its own Rules relating to election petitions and even if it is held that there are no such Rules by virtue of the Notification of the Central Government made under Sub-section (1) of Section 13 of the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981 all rules and forms relating to procedure and conduct of cases before the court of the Judicial Commissioner which were in force immediately before the appointed day are adopted to continue in force and to be applicable *mutatis mutandis* to proceedings before the Bench of the High Court at Bombay insofar as the Panaji Bench is concerned. It is equally true that under the Goa, Daman and Diu Judicial Commissioner's Regulation, 1963 in exercise of the powers conferred by Section 20 rules were made in regard to election petitions under the Representation of the People Act, 1951. On going through the Judicial Commissioner's Court Rules and the Rules available as framed by the High Court of Judicature at Bombay in regard to election petitions under the Representation of the People Act, 1951 they are *pari passu* and there is no difference whatsoever. Neither the one or the other Rules provide unlike Rules 7 and 9 of the M. P. High Court Rules that a deponent is bound to disclose the source of his information. It is therefore clear that the authority of *Virendra Kumar Saklecha Vs. Jagjiwan and Others*, cannot be held applicable to the present case.

9. Shri Dias, learned counsel for the petitioner has however placed reliance on the authority of *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others*, . In this case it has been clearly held that a defect in verification can be cured and that it is not fatal to an election petition. It must be further seen that this decision is a decision of a larger Bench and there is nothing shown to me by the learned counsel for the returned candidate that this authority is no longer a good law.

10. Shortly stated the Supreme Court has examined in what cases the petition could be dismissed and in that context reference is made to Section 90 of the Representation of the People Act. Section 90 is today akin to Section 86 of the Representation of the People Act, 1951. The Election Tribunal in that case had held that the defect in the verification is not a fatal defect and a fresh affidavit could be permitted to be filed at a later stage if the earlier affidavit had been found to be defective insofar its verification was concerned. The Supreme Court while approving the view of the Tribunal mentions :

"This view of the Election Tribunal was affirmed by the High Court. We agree with the view expressed by the Election Tribunal and we do not think that the defect

in the verification due to inexperience of the Oaths Commissioner is such a fatal defect as to require the dismissal of the election petition."

The passage quoted above is at the end of para 13 which deals with that contention. Shri Dias next pointed out another authority of a Single Judge of the Madhya Pradesh High Court in the case of Bhartendra Singh Vs. Ramsahai Pandey and Others, . In this case also the learned Single Judge held the defect in the affidavit is not fatal. In that case also the election petitioner in his affidavit had mentioned that whatever allegations of corrupt practice made in paras 3, 4, 5 and 6 of his petition were true to his knowledge and information received and believed to be true. It is not necessary to point out that this type of verification is itself meaningless because no information can be true to his knowledge and to his information at one and the same time as the identical facts cannot be verified both on knowledge and information. As rightly pointed out in the Supreme Court case of Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, it is not possible to hold that merely because the affidavit and the petition did not disclose the source of information of the petitioner that defect is fatal and therefore the petition is " liable to be dismissed at the threshold. It was however sought to be contended by Shri Dias that the issue under discussion as couched, the dismissal of the petition cannot be made even if it was found that there is a requirement of giving source of information as according to him this Court could only hold whether the petition is maintainable or not maintainable, but this court cannot dismiss it even if it comes to hold that the petition is not maintainable. With due respect I am unable to accept this contention for if I am to hold that the petition is not maintainable it would thus mean that the petition is liable to be dismissed because if it is not maintainable it is not maintainable at all and therefore the only order that is possible is the order of dismissal.

11. Shri Dias is otherwise right. Section 86 of the Representation of the People Act lays down that the election petition is liable to be dismissed if it is not in compliance with Sections 81, 82 and 117. In turn Sections 81, 82 and 117 lay down conditions, the non-compliance of which entails in the dismissal "of the petition at the threshold. Therefore it is clear that the defect in the matter of verification u/s 83 cannot be a ground for dismissing the petition in limine. This view is supported by the authority of Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others,

12. Shri Dias however pleaded that even if this Court finds that the verification of the affidavit is defective and is not in accordance with Order 19, Rule 3 of the Civil P.C. this Court could now direct the petitioner to file a fresh affidavit.

13. Shri Nadkarni however contended that in spite of the point regarding maintainability of this petition having been raised, the petitioner did not try to rectify the defect in the verification earlier and therefore the petitioner is, not entitled to any indulgence from the Court allowing the petitioner to now amend the petition or to direct the filing of a fresh affidavit in support of the petition by incorporating the correct verification.

14. Rule 3 of Order 19 of the Civil P.C. provides that a deponent of an affidavit must confine to facts of his own knowledge. Since the petitioner has averred corrupt practice against the returned candidate and the facts leading to the corrupt practice is not within the direct knowledge of the petitioner they are said to be received by him on information believed to be true but however he has not given the source of this information. These proceedings being what they are as mentioned earlier and with a view to confine the petitioner to what is alleged against the returned candidate the petitioner can be directed to file a fresh affidavit disclosing the sources of his information so that the returned candidate has an opportunity to test the genuineness and veracity of the source of information on one hand and not to allow the petitioner to make any departure from the sources or grounds and make embellishment to his case. The petitioner can be permitted to file a fresh affidavit disclosing the source of information.

15. There is however another aspect which needs to be considered. The trial in the petition has so far not begun. The verification of pleadings is a matter of procedure. As held in the authority of Virendra Kumar Saklecha Vs. Jagjiwan and Others, source of information is required to be mentioned so as to tie down a petitioner and not to allow him to introduce embellishment. It is equally laid down in the authority of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, that the Civil P.C. is a procedure to facilitate justice and further its ends, not for penalties and punishments and to trip people up. Considering this aspect of the matter amendment of pleadings and/or filing new affidavit cannot be held to cause prejudice to the returned candidate. To advance cause of justice the petitioner ought to be directed to file the necessary affidavit in compliance with the provisions of the Civil P.C.

16. For the reasons mentioned, the petitioner is directed to file a fresh affidavit disclosing the sources of his information in relation to corrupt practices alleged by him in terms of the Civil P.C. on or before 5th July, 1985. Issue No. 1 is answered as indicated. Order accordingly.