

(2017) 01 KL CK 0028
In the High Court Of Kerala
Case No : Election Petition No. 13 of 2016

P.C. Joseph

APPELLANT

Vs

P.C. George

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Representation of the People Act, 1951 — Section 100(l)(d)(i), Section 83(1)(b)

Citation : (2017) 2 ILRKerala 149

Hon'ble Judges : B. Kemal Pasha, J.

Bench : Single Bench

Advocate : Sri. G. Bhagavat Singh and Smt. K.V. Dhanya, Advocate. Smt. K.V.Dhanya, Advocate, for the Petitioner; Sri. K.Ramakumar (Sr. Adv.) Sri. T. Ramprasad Unni, Sri. Saijo Hassan, Sri. Benoj C Augustin, Sri. Prathap Pillai, Sri. Sebin Thomas, Sri. Vivek V. Kannankeri, Smt. J. Kasthuri, Sri. Vishnu Bhuvanendran, Sri. U.M. Hassan and Smt. Devi. R. Sens, Advocates, for the Respondents No. 1; Sri. P.K. Ibrahim, Smt. K.P. Ambika, Smt. A.A. Shibi and Sri. A.L. Navaneeth Krishnan, Advocates, for the Respondent No. 3; Sri. V.G. Arun (K/795/2004) Advs. , Sri. Neeraj Narayan, By Adv. and Sri. Murali Purushothaman, Sc, Election Commission, for the Respondent No. 9

Final Decision : Disposed Off

Judgement

B. Kemal Pasha, J.—Through this election petition, the petitioner, who has contested as one of the candidates in No.101, Poonjar Legislative Assembly Constituency, challenges the election of the returned candidate, who is the first respondent herein. The first respondent secured a total of 63,621 votes and is far ahead of the next candidate who secured only 35,800 votes. The petitioner, who is 3rd in the list, has secured 22,270 votes only. The petitioner challenges the election of the returned candidate on the grounds under Section 100(1) (d) (i) and Section 100(1)(b) read with Section 123 of the Representation of the People Act, 1951(hereinafter referred to as "the Act").

2. According to the petitioner, the first respondent had deliberately suppressed vital information which ought to have been disclosed in the affidavit filed along

with the nomination paper, thereby the acceptance of his nomination was improper. It has been pleaded that the first respondent had suppressed the existence of building No.147(A) in Ward No.14 of Erattupetta Municipality in the name of his wife Smt. Usha George, and an office having a plinth area of 600 sq.ft. in block No.47 of the Erattupetta Village. It has also been pleaded that the first respondent has suppressed his share amounting to Rs. 15,000/- at the Meenachil East Urban Co-operative Bank, the balance amount of Rs. 114/- in the name of Smt. Usha George in the SBI account at the Meenachil East Urban Co-operative Bank, Kalathukadav Branch, a recurring deposit having the monthly instalment of Rs. 100/- in the name of Smt. Usha George at the Meenachil East Urban Co-operative Bank M&E Branch, Erattupetta, his share of Rs. 20,000/- at the Poonjar Service Co-operative Bank and also the share of Rs. 20,000/- in favour of his wife at the Poojar Service Co-operative Bank. According to the petitioner, therefore, the acceptance of the nomination of the first respondent was nothing but improper acceptance within the meaning of Section 100(1)(d)(i) of the Act.

3. The further case of the petitioner is that with a view to inducing the votes of a particular community and also by way of illegal gratification, the first respondent has morphed his photograph in a book-let relating to Aruvithura Thirunal in order to make it appear that he had also participated in the procession along with the priests and all. According to the petitioner, the said act of the first respondent is a corrupt practise which comes under Section 100(1)(b) read with Section 123 of the Act.

4. The first respondent seriously challenges the maintainability of the election petition. It has been contended that there are no proper pleadings with regard to any of the grounds enumerated under Section 100(1)(d)(i) or Section 100(1)(b) read with Section 123 of the Act. According to the first respondent, no facts constituting the grounds have been pleaded and even the law has not been properly pleaded. It has also been contended that the corrupt practices allegedly committed have not been set forth in the election petition and therefore, there is absolutely nothing to take the matter to the stage evidence.

5. Heard the learned Senior Counsel Sri. K.Ramkumar for the first respondent and the learned counsel Sri. G. Bhagavat Singh for the election petitioner.

6. The learned Senior Counsel has argued that in order to maintain the ground under Section 100(1)(d)(i) of the Act, the petitioner has to specifically plead and prove both the limbs of the provision. The petitioner has to specifically plead that the acceptance of nomination of the first respondent is nothing but improper acceptance. Over and above it, the petitioner has to specifically plead that through the said improper acceptance, the result of the election in so far as it concerns the returned candidate, has been materially affected. It has also been argued that in what manner the same has been materially affected has also to be pleaded. Regarding the other ground of corrupt practise, the learned Senior Counsel has argued that the petitioner is expected to plead and prove with

mathematical precision as in a criminal charge, all the ingredients of the corrupt practices allegedly committed, by showing the exact date and place of the commission of such corrupt practices.

7. Per contra, the learned counsel for the petitioner has argued that the petitioner has pleaded the necessary facts to bring out the corrupt practices and also the ground under Section 100(1)(d)(i) of the Act. According to him, when the first respondent himself is the returned candidate, any pleadings to the effect that the improper acceptance of his nomination has materially affected the election of the returned candidate, need not be pleaded further.

8. The learned Senior Counsel has also argued that the election petition is, in fact, time barred as it was not preferred within the time stipulated in Section 81 of the Act. As per Section 81, it seems that the petitioner has to present the election petition within 45 days from the election of the returned candidate. Therefore, the time starts running from the date of declaration of the results and not from the date of election. The result was declared on 19.05.2016. The petitioner has presented the election petition and filed it before this Court on 04.07.2016. The learned counsel for the petitioner has pointed out that 03.07.2016 was Sunday on which day this Court remained closed and therefore, the petitioner is entitled to have the protection of Section 10 of the General Clauses Act, in order to get that day exempted, as well as the date of declaration of results also, exempted.

9. The said question was considered by the Apex Court in *Manohar Joshi v. Nithin Bhaurao Patil and another* [AIR 1996 SC 796]. It was categorically held by the Apex Court that Section 10 of the General Clauses Act will apply in the case of election petitions under the Act. Matters being so, this Court is satisfied that the election petition is not time barred.

10. The learned Senior Counsel has invited the attention of this Court to the decision in *Rajendra Kumar Meshram v. Vanshmani Prasad Verma and another* [(2016) 10 SCC 715] wherein it was held that in order to maintain a ground under Section 100(1)(d)(i), the election petitioner has to specifically plead and prove both the limbs of the provision, viz., that there was improper acceptance of the nomination and further that such improper acceptance has materially affected the result of the election in so far as it concerns the returned candidate. It was also held that how it has materially affected the election of the returned candidate has also to be pleaded and proved.

11. In *Mangani Lal Mandal v. Bishnu Deo Bhandari* [(2012) 3 SCC 314], the Apex Court has held that for the election petitioner to succeed on any of the grounds under Section 100(1)(d)(i), he has not only to plead and prove the said ground but also that the result of the election in so far as it concerns the returned candidate has been materially affected.

12. A learned Single Judge of this Court had occasion to deal with the very same question in *A. Essuddin v. P. Neelakantan and others* [1971 KLT 355]. It was held

therein that apart from the various grounds to be pleaded, the petitioner has to further show that "there was connection between them and the result of the election, as cause and effect".

13. In *Shiv Charan Singh v. Chandra Bhan Singh* [(1988) 2 SCC 12] also it was held that in order to succeed in an election petition alleging a ground under Section 100 (1)(d)(i) of the Act, the petitioner has to plead and prove both the limbs as aforesaid.

14. On a perusal of the election petition as such, as well as the affidavit filed in support of it, it has clearly come out that the petitioner has failed to plead that the alleged improper acceptance of the nomination of the first respondent has materially affected the election of the returned candidate. When the petitioner is expected to plead and prove both the limbs of the provision as aforesaid, the lack of pleadings shows the door to the petitioner, so far as the ground under Section 100(1)(d)(i) is concerned.

15. Regarding the corrupt practices, the petitioner has to clearly set forth the entire details of the so-called corrupt practices, as contemplated under Section 83(1)(b) of the Act. Full particulars of such corrupt practise have to be pleaded with precision along with the date and place of the commission of each such practices. Here, the only corrupt practise alleged is that the first respondent had caused morphing of his photograph in a booklet published in connection with "St. Gheevargheese at Aruvithura Thirunal Feroane Church". The petitioner has not pleaded the date on which such a corrupt practise has been allegedly committed. By that very fact itself, the election petition is not maintainable under Section 83(1)(b) of the Act.

16. Over and above it, the petitioner is expected to file an affidavit along with the election petition detailing the allegation of such corrupt practices. As per Rule 94A of the Conduct of Elections Rules, 1961, the affidavit referred to in the proviso to sub-section (1) of Section 83 of the Act shall be in "Form 25". On a perusal of the affidavit filed by the petitioner along with the election petition, it has clearly come out that such affidavit is not one prepared in Form 25, prescribed for the purpose. It specifically mandates as to what all facts constituting corrupt practices are "within the knowledge of the petitioner" and what all facts constituting corrupt practices are "within the information of the petitioner". When such a form has been specifically prescribed, the petitioner ought to sworn the affidavit in that particular form.

17. By relying on the decision in *Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari* [(2014) 5 SCC 312], the learned Senior Counsel has pointed out that, since material facts and full particulars are not pleaded, the petitioner cannot be permitted to adduce evidence on the election petition on those grounds. Here, in this case, it has clearly come out that the petitioner has not pleaded necessary facts constituting the grounds under Section 100 (1)(b) and under Section 100(1)(d)(i) of the Act. Therefore, the election petition as such is not maintainable and

this election petition is only to be dismissed, and I do so.

18. In the result, this Election Petition is dismissed. All the interlocutory applications in this Election Petition are closed.