
(2010) 11 UK CK 0098

In the Uttarakhand High Court

Case No : Civil Miscellaneous Application No. 3020 of 2010

Rajeev Gupta

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 20-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 6

Citation : (2010) 11 UK CK 0098

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.

(Civil Misc. Application No. 3020 of 2010)

(Civil Misc. Application No. 8925 of 2010)

1.This application (No. 3020 of 2010) has been moved on behalf of the returned candidate-Respondent No. 4 with the prayer that the election petition may be dismissed for non-compliance of the mandatory provisions of Section 81(3) of the Representation of the People Act, 1951 (for short the Act) by the election Petitioner alleging therein that the election petition was filed challenging the election of the Respondent No. 4 as Member of Parliament and for declaring the Petitioner to be an elected candidate. It is an admitted fact that the notice was issued to be Respondent No. 4 after filing of the amended election petition by the counsel for the election Petitioner, which was not served. Vide order dated 19-8-2009, this Court directed to serve the Respondent No. 4 apart from normal mode of service through publication and only after publication of notice in the newspaper, the Respondent No. 4 got the knowledge of filing of election petition. The Respondent No. 4 put in appearance before the Court and requested the Court for a direction to the Petitioner to serve a copy of the election petition to him. Consequently, the copy of election petition was served upon the counsel of

the Respondent No. 4 but the same was signed by the counsel for the election Petitioner and not by the election Petitioner as provided under Sub-section (3) of Section 81 of the Act, which reads as under:

(3) Every election petition shall be accompanied by as many copies thereof as there are Respondents mentioned in the petition and every such copy shall be attested by the Petitioner under his own signature to be a true copy of the petition.

2. The Respondent No. 4 has alleged that since the copy of the election petition supplied to the Respondent No. 4 does not bear the signature of the Petitioner, therefore, the provision of Section 81(3) has not been complied with and the election petition is liable to be dismissed on this ground alone u/s 86(1) of the Act.

3. Against this application, objection has been filed on behalf of the election Petitioner mainly on the ground that the election Petitioner has not violated any of the mandatory requirement as envisaged by Sub-section (3) of Section 81 of the Act and the Petitioner had filed copies of election petitions duly signed by the election Petitioner at the time of filing of the election petition itself. The alleged copy of the election petition was supplied to the Respondent No. 4 on the direction of the Court after the Respondent No. 4 had put in appearance before the Court. It has also been asserted that the Respondent No. 4 was served by a notice accompanying signed copy of election petition by registered post as well. It is also asserted in para 10 of the objection that the Petitioner had fully complied with the provision of Section 81(3) of the Act and had submitted to copies of the petition duly signed by the Petitioner in the Registry of this Court on 30-5-2009 along with 20 other copies of the petition duly signed by the Petitioner meant for service upon Respondent Nos. 4 to 23, who had contested the impugned election. It has been prayed that the application moved by the returned candidate-Respondent No. 4 is liable to be dismissed outright with costs as not maintainable.

4. I have heard learned Counsel for the parties at length and perused the record.

5. The undisputed facts of this case are that the election petition challenging the election of the returned candidate, who has been elected as Member of Parliament from Parliamentary Constituency No. 5-Haridwar in the General Elections of 2009, was presented before the Registrar (Judicial) of this Court on 1-6-2009. When the election petition was filed, no defect had been detected by the Office of this Court. On 2-6-2009, the election Petitioner was put up before this Court and adjournment was sought on behalf of the election Petitioner. The petition was ordered to be listed on 4-6-2009. On that day again, adjournment was sought on behalf of the Petitioner. The petition was ordered to be listed on 11-6-2009. The learned Counsel for the Petitioner again sought adjournment on the ground that amendment is required to be made in the election petition. The amendment was allowed and Petitioner was directed to incorporate the required

amendments by way of filing an amended memo of petition. Admittedly, the amended memo of election petition was filed by Mr. P.S. Rawat, Advocate, counsel for the election Petitioner. Adjournments were again sought by the learned Counsel for the election Petitioner on 15-7-2009 and 23-7-2009. It was only on 6-8-2009, this Court had passed an order to issue notice to the Respondent No. 4- returned candidate only to file his written statement on or before 10-9-2009. In compliance of the order, notice was issued to the Respondent No. 4 by both ways i.e. through ordinary process as well as through registered post. Notice was also published in the newspapers i.e. Dainik Amar Ujala and Dainik Jagran. The notice which was sent through registered post also did not received back unserved within a period of 30 days from the date of issue of said notice. Ultimately, the service of notice was held sufficient on Respondent No. 4 through registered post as well as through publication and on 25-9-2009, the Respondent No. 4 had put in appearance in the case through his counsel Mr. Sharad Sharma, Senior Advocate, assisted with Mr. V.B.S. Negi, Advocate and the Respondent No. 4 sought time to file written statement. The Petitioner was also directed to supply copy of petition to the counsel for the Respondent No. 4 positively by 5-10-2009. The case was fixed for framing of issued on 9-11-2009. The written statement was filed on behalf of the Respondent No. 4 on 12-11-2009 and on 19-11-2009, at request of the learned Counsel for the Respondent No. 4, the case was fixed for framing of issues on 2-12-2009. On that day, the case was adjourned to 15-12-2009 at the request of learned Counsel for the Respondent No. 4.

6. Subsequently, an application was moved on behalf of the Respondent No. 4 that notices should have been issued to other Respondents, who had contested the election in question. The prayer was allowed and notices were ordered to be issued to Respondent Nos. 5 to 23, who were the contestants, and the Respondent No. 2- Election Commission of India. The service was held sufficient on the Respondents as the undelivered envelopes were not received back in this Court. An objection was also raised on behalf of the Respondent No. 4 that service is not sufficient on the Respondents as per Rule 6(b) of Chapter XV-A of the Rules of the Court, 1952. The objection raised by the learned Counsel for the Respondent No. 4 had been rejected by this Court vide order dated 26-3-2010.

7. A perusal of the office report reveals that in this case, written statements were received by registered post on behalf of Respondent No. 6, 7 and 11 and the Respondent Nos. 9, 10, 18, 20 and 21 also filed their statement in person.

7A. On 28-4-2010 the Respondent No. 4 had moved the present application (No. 3020 of 2009). The arguments of the learned Counsel for the parties were heard subsequently and only the Respondent Nos. 1, 2, 3, 4 and 22 were represented through their counsel in the case and rest of the Respondents had not put in appearance before the Court.

8. The only challenge made in the application No. 3020 of 2009 on behalf of the Respondent No. 4-returned candidate is that the election Petitioner has not

complied with the mandatory provision of Sub-section (3) of Section 81 of the Act as the Respondent No. 4 had not been supplied with the copy of the election petition duly signed by the election Petitioner, therefore, the election petition is liable to be dismissed u/s 86 of the Act for non-compliance of the provisions of Section 81 of the Act.

9. The short controversy to be resolved here is whether or not the election Petitioner had made sufficient compliance of the said provision of Sub-section (3) of Section 81 of the Act. It has also to be seen that what would be the effect of filing of amended election petition, which is admittedly signed only by the counsel for the election Petitioner and not by the election Petitioner himself. Whether this lacuna is a curable defect or not.

10. The learned Counsel for the applicant-Respondent No. 4 in support of his contention that there has been non-compliance of the mandatory provision of Sub-section (3) of Section 81 of the Act, has placed reliance upon the following case law:

1. Sharif-ud-din Vs. Abdul Gani Lone, .
2. Jugal Kishore Patnaik Vs. Ratnakar Mohanty, ;
3. U.S. Sasidharan Vs. K. Karunakaran and Another, ;
4. Satya Narain Vs. Dhuja Ram and Others,
5. Charan Lal Sahu Vs. Nandkishore Bhatt and Others, ;
6. Mukhtiar Singh Vs. Chief Election Officer, ;
7. G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, .
8. Sardar Mal Vs. Smt. Gayatri Devi, .

11. I have perused all the above case-law relied upon by the Respondent No. 4. It has been held in these cases that the election petition shall be dismissed by the High Court in case of non-compliance of the provisions of mandatory provision of Section 81 of the Act.

12. The Apex Court in the case of Sharif-ud-Din V. Abdul Gani Lone (supra) while considering Sections 89(3) and 94 of the Jammu & Kashmir Representation of the People Act, which are identical to Section 81(3) and 86 of the Act, has held in paragraph No. 20 as under:

20. We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the Respondent should be attested by the Petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in Section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground.

13. In *Jugal Kishore Patnaik v. Ratnakar Mohanty*(supra) the Apex Court has observed in paragraph 8 as under:

8. There are, in our opinion, some broad facts of the case which lend support to the finding of the High Court on issue No. (1) that the election petition was accompanied by an attested copy signed by the Respondent. Endorsement dated April 15, 1974 made by an officer of the High Court shows that a copy of the election petition had been filed. We find no cogent reason as to why an officer of the High Court should make a false endorsement on the petition if, in fact, no such copy had been filed. As regards the factum of the attestation of the copy by the Respondent under his own signature, we find that the Appellant cannot in the very nature of things assert positively that the copy had not been attested by the Respondent as, according to him, he did not see that copy. The copy was also not available on the record as the same had been affixed at the residence of the Appellant when he, according to the report of the process-server, declined to accept the summons. Before summons was issued to the Appellant, the following endorsement was made by an officer of the High Court in respect of the election petition filed by the Respondent:

Defect: Nil

We see no cogent ground to question the correctness of this endorsement which clearly lends support to the inference that the copy filed with the petition had been attested by the Respondent and that the petition did not suffer from lack of compliance with the procedural requirement.

14. The Apex Court in the case of *Satya Narain* (supra) has inter alia held in paragraph 17 of the judgment that "the purpose of enclosing the copies of the election petition for all the Respondents is to enable quick dispatch of the notice with the contents of the allegations for service on the Respondent or Respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition u/s 86 of the Act." In that case, the requisite copies of the election petition were not filed in the Court within the period of limitation by the election Petitioner.

15. In the case of *G.V. Sreerama Reddy* (supra), the Apex Court has inter alia observed in paragraph 14 that A close look at Section 81 reveals that the two remaining Sub-sections after the amendment introduced by Act 47 of 1966 i.e. (1) and (3) deal with two distinct, but interrelated issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and Sub-section (3) deals with additional requirements as to the petition presented."

16. In the case at hand, the contention of the Respondent No. 4 is that there has been non-compliance of Sub-section (3) of Section 81 of the Act. The Apex Court

in the case of Satya Narain (supra) has specifically observed that the copies of election petition have to be enclosed along with the petition at the time of presentation of election petition.

17. On the other hand, learned Counsel for the election Petitioner in reply has placed reliance upon the following case-law:

1. Rajendra Singh v. Smt. Usha Rani and Ors., J.P. Goyal v. Raj Narain and Ors. and B.N. Pande and Ors. v. Raj Narain and Ors. decided by the Apex Court on 27.02.1984 ELR (75) 89.

2. M. Kamalam v. Dr. V.A. Syed Mohamad (decided by the Apex Court on 8-3-1978 ELR (61) 177.

3. Dr. Anup Singh v. Shri Abdul Ghani and Anr. (decided by the Apex Court on 14-8-1964).

4. Subbarao v. Member, Election Tribunal, Hyderabad (decided by the Apex Court on 13-1-1964).

5. Chilkuri Ramchandra Reddy v. Chilkuri Vamana Reddy and Anr. (73)ELR 163 (decided by the High Court of Andhra Pradesh on 23-9-1983.)

6. Nizamuddin Ahmad v. Narmadaprasad and Ors. (53)ELR 202 (decided by the High Court of Madhya Pradesh on 9-7-1973.

18. Before considering the case-law relied upon by the election Petitioner, it is necessary to make a reference to the election petition.

19. Initially, the election Petitioner while presenting the election petition has made the following prayer in the election petition:

PRAYER 1. Summon the record of the Election to Uttarakhand Parliamentary Constituency 5-Haridwar in the General Parliamentary Elections-2009; and after hearing the parties herein, allow the election petition of the Petitioner;

2. declare all the proceedings of election in Parliamentary Constituency No. 5-Haridwar, from the date of scrutiny as unlawful and void;

3. And to declare the election of the Returned Candidate/Respondent No. 1 and from Respondent No. 2 to Respondent No. 20 to be void and; further declare that the Petitioner to have been duly elected in the said election;

4. Any other order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

20. After the present writ petition was filed in the Registry on 1-6-2009, the election petition moved amendment application (No. 4656 of 2009) for amendments in the pleadings. In the prayer clause, the election Petitioner had sought election of the returned candidate/Respondent No. 1 and that of Respondent No. 2 to 20 to be void, while by amendment, the Petitioner has

sought to replace the figure 4 occurring for Respondent No. 1 and to replace the figures 5 to 23 occurring for Respondent Nos. 2 to 20 besides seeking amendment to that effect at some other places in the election petition. The amendment application bears the signatures of the election Petitioner. The amendment application was allowed and the Petitioner was directed to incorporate the required amendments by way of filing an amended memo of petition. On behalf of the election Petitioner, the amended petition was filed by the counsel for the election Petitioner and the amended memo of election petition does not bear the signatures of the election Petitioner, rather the amended memo of election petition has been signed by Mr. P.S. Rawat, Advocate, counsel for the Petitioner. In this view of the matter, the format of the amended memo of election petition shall have to be examined in the light of the legislative intention contained in Section 81 of the Act.

21. Admittedly, the notices to Respondent No. 4 and other Respondents contesting the election in question were directed to be issued after the amended memo of election petition was filed on behalf of the Petitioner. In the amended memo of election petition, the election Petitioner has made the following averment in paragraph No. 85:

85. That this Election Petition is accompanied by 20 copies of the Petition along with documents and the affidavit of the Petitioner and every such copy has been attested by the Petitioner under his own signatures to be a true copy of the petition, as required u/s 81(3) of the said Act.

22. A perusal of the amended election petition itself admittedly goes to show that the amended memo of election had not been signed by the election Petitioner, rather the same bears the signatures of the counsel for the election Petitioner. The election Petitioner neither had signed the amended memo of election petition nor has filed amended copies of election petition as required under Sub-section (3) of Section 81 of the Act. That being so, the averment made in paragraph 85 of the amended memo of election petition falls to the ground. It appears that this paragraph is only the copy of initial election petition. Moreover, the notices were ordered to be issued to Respondent No. 4 and other Respondents after amended memo of petition was filed on 15-9-2009 on behalf of the Petitioner. In paragraph 5 of the reply filed on behalf of the election Petitioner, the following averments inter alia were made:

There is no question of invoking the provisions of Section 86 of Representation of People Act, 1951. It is reiterated that the Petitioner had complied with all the provisions of Representation of People Act, 1951 at the time of presentation of the election petition before the Registrar of this Hon'ble Court. It is further submitted that the Registry of this Hon'ble Court has accepted the petition and had not raised any objection at any time.

23. Thus, indisputably, the amended copies of election petition duly attested by the Petitioner under his own signature to be a true copy of the petition as

required under Sub-section (3) of Section 81 were not filed. Moreover, it was incumbent upon the election Petitioner to have incorporated the amendment in the pleadings as per provisions of Order 6, Rule 17 of the CPC Code. The relief clause was substantially changed by way of amendment because initially, there was no prayer in respect of Respondent Nos. 21 to 23 and the prayer was confined only to the election of returned candidate and from Respondent No. 2 to Respondent No. 20 alone. In this view of the matter, it cannot be said that only typographical errors were there in the election petition initially filed by the Petitioner, therefore, it was obligatory upon the election Petitioner to have filed the amended memo of petition accompanied by sufficient number of copies of amended election petition duly signed by him for service upon the Respondents.

24. The stand taken by the learned Counsel for the election Petitioner is that since the election Petitioner filed sufficient number of copies of election petition duly signed by him at the time of presentation of election petition, therefore, the requirement of Sub-section (3) of Section 81 had been satisfied. I have given my anxious thought to this contention. There is no such provision under the Act to entertain the amended election petition being signed by the counsel for the election Petitioner alone. In my considered view in order to maintain the election petition the election Petitioner was required to have signed the amended memo of election petition and must have filed amended copies of election petitions as per mandatory provisions of Sub-section (3) of Section 81 of the Act duly attested by the Petitioner under his own signature to be a true copy or at least duly signed by him as stated by the election Petitioner in paragraph 85 of the amended memo of petition for service upon the Respondents particularly when the amendment of pleadings coupled with substantial amendment of relief clause was sought prior to issuance of notice to the Respondents.

25. The learned Counsel for the election Petitioner has relied upon the case of *Rajendra Singh v. Smt. Usha Rani and Ors.*, *J.P. Goyal v. Raj Narain and Ors.* and *B.N. Pande and Ors. v. Raj Narain and Ors.* (75) ELR 89, decided by the Hon'ble Supreme Court on 27-2-1984. In that case, the Apex Court while dealing with *J.P. Goyal v. Raj Narain and Ors.* Civil Appeal No. 9 of 1983 and *Bishambhar Nath Pande and Ors. v. Raj Narain and Ors.* Civil Appeal No. 10 of 1983 has held as under:

The learned Counsel for the Respondent submitted that this is highly technical objection and did not cause any prejudice to the Appellants because so far as their copies were concerned they already contained page 17. Mr. Bhandare, counsel for the Appellants, however, submitted that this is beside the point and does not cure the invalidity of the election filed on 10-5-82. The mandate contained in Section 81(3) enjoins that there should be no difference of any kind whatsoever barring some typographical or insignificant omissions between the petition filed and the copy served on the Respondent. If an entire page is missing in the petition but it is there in the copy served on the Respondent, then it is manifest that the copy served was not an exact and true copy of the petition.

The consequences of the mandatory provisions of Section 81(3) could not be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of Section 81(3). It is not disputed that this discrepancy between the election petition and the copies served on the Appellants was undoubtedly there. In these circumstances, the High Court was wrong and committed a serious error of law in allowing the amendment of the petition. The High Court should have tried to appreciate the tenor and spirit of the mandate contained in Section 81(3) of the Act. In the case of Sharif-ud-Din v. Abdul Gani Lone this Court dismissed the election petition only on the ground that the words "attested to be a true copy" were not signed by the election-Petitioner and held that this was not a sufficient compliance with the provisions of Section 89(3) of the Jammu & Kashmir Representation of the People Act, which is the same as Section 81(3) of the Act. In the instant case, the inconsistency is much greater than in Sharif-ud-Din's case.

26. It may be pointed out here that the aforesaid appeals were filed in the Apex Court against the order passed by the Allahabad High Court and the common issues involved in these civil appeals before the Apex Court were whether the election petitions filed before the High Court were liable to be rejected on the ground that the copies of the petition served on the Respondents was neither attested to be a true copy nor a correct copy of the original petition as contemplated by the provisions contained in Section 81(3) of the Act. The Apex Court allowed the appeal, set aside the judgment of the High Court and dismissed the election petition in limine u/s 86 of the Act.

27. In the case at hand, as mentioned earlier, the election Petitioner has neither filed amended memo of election petition duly signed by him after the relief clause was substantially amended by way of amendment in the original election petition nor has filed sufficient number of amended copies of election petitions for service upon the Respondent No. 4 as well as other Respondents, who contested the election in question. The case-law relied upon by the learned Counsel for the election-Petitioner does not help him, rather it supports the contention of the Respondent No. 4 that non-supply of signed copy of election petition by the Petitioner as per letter and spirit of Section 81(3) of the Act is an incurable defect and the election petition is liable to be dismissed in limine u/s 86 of the Act.

28. The other case law relied upon by the learned Counsel for the election Petitioner, which have been cited hereinabove, are also distinguishable, because in the case at hand, as mentioned earlier, the election Petitioner has neither filed amended memo of election petition duly signed by him nor has filed correct and true copies of the election petition for service upon the Respondents as per provisions of Sub-section (3) of Section 81 of the Act.

29. In the case of G.V. Sreerama Reddy and Anr. (supra), the Apex Court has observed in paragraph 18 as under:

18. In spite of existence of adequate provisions in the CPC relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trials of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mention by the legislature.

30. The Apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and Others, has observed that where a statute provides a thing to be done in particular manner, then it has to be done in that manner and in no other manner. Relevant portion of paragraph No. 12 reads as under:

In our opinion insofar as an election petition is concerned, proper presentation of an election in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the Rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. It is well-settled statutory principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner." Section 86(1) of the Act provides for dismissal of election petition by the High Court, which does not comply with the provisions of Section 81 or Section 82 or Section 117.

31. For the reasons and discussion above, I, therefore, hold that the election Petitioner has not signed the amended petition, after the amendments having been incorporated in the election petition, rather it was signed by the counsel for the Petitioner. The amended election petition as well as the copies thereof were to be signed by the Petitioner himself. I also hold that the election Petitioner has failed to comply the mandatory provision of filing sufficient number of copies of amended election petition for service upon the Respondents as per provision of Sub-section(3) of Section 81 of the Act. I also find that the copy of the election petition, supplied to the Respondent No. 4 and issued to other Respondents, who had contested the election in question, did not bear the signature of the Petitioner, rather it bore signatures of counsel for the Petitioner. Therefore, the defect being fatal and incurable, the election petition is liable to be dismissed in limine u/s 86 of the Act.

32. Accordingly, the Civil Misc. Application No. 3020 of 2010 moved by the Respondent No. 4 is allowed. The election petition is dismissed in limine u/s 86 of the Representation of the People Act, 1951. Costs easy.

33. All pending applications stand disposed of.