
(2007) 04 UK CK 0015
In the Uttarakhand High Court

Rajeev Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 329

Representation of the People Act, 1951 — Section 100, 101, 117, 80, 81

Citation : AIR 2007 Utt 69 : (2007) 3 UC 1957 : (2007) 2 UD 259

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of the present election petition, the petitioner has challenged the election to Legislative Assembly Constituency No. Dehradun-14 and to quash the entire election process of the respondent Nos. 7 to 19 on the ground of invalidity of their nomination forms and to declare the petitioner to have been elected to the said election unopposed.

2. The petitioner has further challenged the election of the respondent No. 7 as Chairman of the Uttarakhand Legislative Assembly to be declared as illegal.

3. Admittedly, the election to the State Legislative Assembly was notified in the Official Gazette on 25th January, 2007. The petitioner has alleged that in the legislative assembly constituency No. 14-Dehradun, the respondent No. 7 Harbans Kapoor was declared to have been elected after the counting of votes on 27-2-2007. Disappointed, the petitioner has sent the present petition to this Court by speed post.

4. On receipt of the election petition to this Court, the following defects were noted by the Stamp Reporter on the back of the petition:

1. This petition has been received by post.

2. The petitioner is not present himself before the Registrar General.

3. This petition is in Hindi language and the petition is not in prescribed proforma.
4. Tender of Rs. 2,000/- has not been annexed in petition.
5. Signature of petitioner has not been identified by any learned Counsel.
6. Presentation form has not been enclosed in petition.
7. Paging of petition has not been made.
8. Copies of petition have not been received in such a number as the opposite parties are.
9. Process fee and charges not deposited by the petitioner as per rules of the Court.

5. The Registrar General has endorsed the report to the following effect on 11-4-2007:

See the report of Stamp Reporter. The petition is defective on the grounds mentioned on the report, and it has not been presented by petitioner as per Rule 3 of Chapter XV-A of the High Court Rules.

Hence let the matter be placed before Hon"ble Court as defective.

6. At the very threshold, the Court has to set whether the present election petition should be dismissed under Sub-section (1) of Section 86 for non-compliance of the provisions of Section 81 of the Representation of the People Act, 1951 (for short the Act), Part VI of the Act deals with election, Chapter II provides presentation of election petitions to the High Court while Chapter III deals with trial of election petitions. Chapter V deals with costs and security for costs. A reference to the provisions of Sections 81, 86 and 117 shall be made at appropriate place hereinafter. Thus, the right to challenge an election under the Act is in conformity with the provisions of Section 329(b) of the Constitution of India.

7. The right to challenge an election is a right provided under Article 329 of the Constitution of India which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Section 80 of the Act provides as under:

80. Election petitions--No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

8. Section 81 of the Act provides for presentation of Election Petitions and the same reads as under:

Presentation of petitions.--(1) An election petition calling in question any election

may be presented on one or more of the grounds specified in (Sub-section (1)) of Section 100 and Section 101 to the (High Court) by any candidate at such election or any elector (within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates).

Explanation.--In this sub-section, "elector" means a person who was entitled to vote at the election which the election petition relates, whether he has voted at such election or not

9. It may be noted that Chapter III of Part VI of the Act deals with the trial of the election petitions and the same starts with Section 86 trial of election petitions. Sub-section (1) of Section 86 provides that "the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation appended to Sub-section (1) of Section 86 of the Act provides that an order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under Clause (a) of Section 98.

10. Thus, from a conjoint perusal of Sections 80, 81(1) and 86(1) of the Act read with Article 329(b) of the Constitution of India makes it clear that the provisions contained in Sub-section (1) of Section 81 of the Act are mandatory in nature as u/s 80 of the Act, it has been provided that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. It is provided in Section 86 of the Act that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 as mentioned above. Section 81 provides the presentation of the election petition and if the election petition is not presented according to the provision mentioned under sub-section (1) the petition is liable to be dismissed. Thus, strict compliance of provisions of Section 81 of the Act is mandatory and an election petition must be presented to the High Court by the petitioner in person, I am fortified in my view by the Apex Court verdict in Satya Narain Vs. Dhuja Ram and Others, wherein it was held that "the right to challenge an election is special right conferred under a self-contained special law and the Court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. An election petition cannot be equated with a plaint in a civil suit."

11. In the instant case, the election petition was sent through speed post and since the date of receipt of the election petition till today, neither the petitioner has appeared in person before the Registrar General of this Court nor even before this Court today when the election petition has been taken up for hearing on admission. Since along with the election petition, security for costs worth Rs. 2,000/- has not been deposited, therefore, the provisions of Section 117 of the said Act are also relevant. Relevant extract of Section 117 reads as under:

117. Security for costs. (1) At the time of presenting an election petition; the petitioner shall deposit in the High Court in accordance with rule of the High Court a sum of two thousand rupees as security for the costs of the petition.

12. As mentioned above, the election petition was received in the Registry of this Court through speed post. The petitioner was not present in person to file the election petition either before the Registrar General of this Court or before the Court today. The signatures of the petitioner have not been identified by any counsel. Thus, the filing of the present election petition is not in accordance with Sub-section (1) of Section 81 of the Act. The election petition has to be presented by the candidate himself, meaning thereby that the personal presence of the election petitioner before the Registrar General of this Court is a must.

13. Rule 3 of the Chapter XV-A of the High Courts Rules deals with the special provisions relating to the trial of election petitions and Rule 3 provides for the manner of presentation of election petition. It is provided under Rule 3 that "every election petition shall be presented to the Registrar."

14. Apart from above, in the case at hand, the compliance of Section 117 of the Act is also lacking as the sum of two thousand rupees as security for the costs of the petition had not been deposited. It has been held by the Apex Court in the case of Charan Lal Sahu Vs. Nandkishore Bhatt and Others, that in the event of non-deposit of security along with election petition as required by Section 117, the High Court has no option but to reject the election petition. I am further fortified in my view by the Apex Court verdict in the case of Aeltemesh Rein Vs. Chandulal Chandrakar and Others, , wherein it was held that election petition is liable to be dismissed for non-compliance of Section 117, by virtue of Section 86(1) of the Act.

15. 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 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.

16. Thus, in view of the above facts and circumstances, it is clear that u/s 81(1) of the Act, an election petition calling in question any election has to be presented by any candidate himself and under Rule 3 of the High Court Rules,

the same has to be presented before the Registrar General of this Court. But in the instant case, as mentioned earlier, the election petition was received by speed post, the petitioner has not turned up to present the petition himself before the Registrar General and even today none is present before the Court when the election petition is listed before me and as there is non-compliance of Section 117 of the Act, therefore, there is no option before this Court but to dismiss the election petition at the threshold.

17. The election petition, therefore, is liable to be dismissed and is hereby dismissed under Sub-section (1) of Section 86 of the Representation of the People Act, 1951.