
(2017) 01 KL CK 0045
In the High Court Of Kerala
Case No : Election Petition No. 9 of 2016

Shaji A.K.

APPELLANT

Vs

K.C. Joseph

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Representation of The People Act, 1951 — Section 123(2)

Citation : (2017) 1 KLT 586

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

Bench : Single Bench

Advocate : Sri. Rajan Vishnuraj; Sri. V. Harish; Sri. A. Jayasankar and Sri. Manu Govind, Advocates, for the Petitioner; Sri. Bechu Kurian Thomas (Sr.) Advocate, Sri. Paul Jacob (P), Advocate, and Sri. Murali Purushothaman, SC, Election Commission, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. B. Kemal Pasha, J.—The petitioner, who contested as a candidate in the election to the Kerala Legislative Assembly from No.009 Irikkur constituency, has come up by challenging the election of the respondent, who is the returned candidate, on the grounds under Sections 80, 80A, 81, 83, 84, 100(1) (b), 100(1) (d)(i), 100(1)(d)(ii), 100(1)(d)(iv), 123 and 125A read with Section 117 of the Representation of the People Act, 1951(hereinafter referred to as "the Act"). The petitioner could secure 103 votes only and the respondent secured 72,548 votes.

2. The pleadings in the election petition reveal that the petitioner has got a specific case that respondent had furnished a false address as his address in the nomination paper and that the said false information furnished by the respondent has materially affected the result of the election and the same is nothing but a corrupt practise. In this election petition, in its entirety, the said fact has been pleaded as one which constitutes undue influence, which is a corrupt practise under Section 123(2) of the Act. According to the petitioner, the respondent has stated that he is a resident of "Karuvellithara House, Congress House, Indira

Bhavan, Sreekandapuram P.O.-670 631". It is the case of the petitioner that the said information as such is false and that the respondent is a permanent resident of "Karuvelithara House, Vadavathoor P.O., Kottayam District."

3. It has also been pleaded that the respondent has shown a less market value for his properties in the records filed along with the nomination. In ground No.F, the petitioner has reproduced Section 100 of the Act and as a passing remark, it has been pleaded, "Also the improper acceptance of Annexures-A1 to A3 by the returning officer would also make the election of the respondent liable to be set aside". In paragraph No.1 of the election petition, the petitioner has pleaded, "The suppression of material facts and non-compliance of provisions of the Act and Rules and orders thereunder has materially affected the result of the election of the respondent. The act of the respondent also amounts to corrupt practise under the RP Act which also has materially affected the result of the election of the respondent and hence the respondent's election is liable to be declared void."

4. The respondent has filed a preliminary objection challenging the maintainability of the election petition. According to the respondent, the petitioner ought to have made a concise statement of the material facts on which the petitioner relies, within the meaning of Section 83(1)(a) of the Act. It has also been contended that in the case of corrupt practise, the petitioner shall set forth the full particulars of such corrupt practise including a full statement of the names of the parties alleged to have committed such corrupt practise and the date and place of the commission of such corrupt practise. It has also been contended that in order to bring out undue influence coming under the category of corrupt practices enumerated in Section 123(2) of the Act, the petitioner ought to have specifically pleaded the manner in which the respondent had allegedly interfered with the electoral right of the voters. The further contention is that the respondent has not shown his address in Irikkur constituency as his permanent residential address; whereas he has shown the said address as his residence in the Irikkur constituency. It has also been contended that for the last 8 terms, the respondent was the returned candidate in the Assembly Elections in the said constituency, and the respondent usually resides in the address shown by him in the nomination.

5. Heard Sr.Adv. Sri. Bechu Kurian Thomas, the learned Senior Counsel for the respondent and Adv. Sri. A. Jayasankar, the learned counsel for the petitioner.

6. During the course of hearing the learned counsel for the petitioner has fairly conceded that even though the petitioner has pleaded undue influence by way of corrupt practise allegedly committed by the respondent, the allegations will not constitute undue influence within the meaning of Section 123(2) of the Act. As per Section 123(2) of the Act, in order to constitute undue influence, there should be interference in the free exercise of any electoral right. Within the meaning of Section 79(d) of the Act, "electoral right means the right of a person to stand or not to stand as, or [to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;". In fact, there are no

pleadings of facts with regard to such interference in the electoral right of any of the voters by the respondent. When it has been fairly conceded that the ground under Section 100(1)(b) of the Act is not being pressed, much discussion is not required to conclude that there is no question of any corrupt practise as against the respondent.

7. The learned Senior Counsel for the respondent has argued that in order to sustain the ground under Section 100 (1)(d)(i) of the Act, the petitioner ought to have specifically pleaded that there was improper acceptance of nomination and further that the result of the election, in so far as it concerns the returned candidate, has been materially affected on account of such improper acceptance. The learned Senior Counsel has mainly argued with regard to undue influence pleaded by way of corrupt practise by the petitioner. It seems that all along in the election petition, the petitioner has forwarded the allegation that the respondent has filed a false affidavit showing his false address and also has shown a false address in the nomination and thereby, the respondent has committed corrupt practise by way of undue influence in order to influence the voters of the Irikkur constituency, by falsely showing that he is a permanent resident of the Irikkur constituency. The learned Senior Counsel has pointed out that presently, he has taken by surprise in the argument forwarded by the learned counsel for the petitioner that the petitioner is relying on improper acceptance of nomination.

8. It is true that on a reading of the election petition one can understand the case of the petitioner as one complaining undue influence and not any other thing. It has not been specifically pleaded that the acceptance of nomination was nothing but improper acceptance, which has materially affected the election of the returned candidate. The pleadings are in the lines of raising a ground of undue influence by way of corrupt practise, which has materially affected the election of the returned candidate.

9. As rightly pointed out by the learned Senior Counsel for the respondent, Article 19(1)(e) of the Constitution of India confers right on all citizens to reside and settle in any part of the territory of India. Section 5(c) of the Act makes it clear that if a person is an elector for any assembly constituency in the State, he is qualified to contest an election to the seat in the Legislative Assembly of the State. It is true that the respondent is a permanent resident of Kottayam constituency. It has also been pointed out that the respondent has nowhere stated that he is a permanent resident of Irikkur constituency; whereas he has stated that he is a resident of Irikkur constituency. The address has also been given.

10. Learned counsel for the petitioner has pointed out that the petitioner has obtained information from the Sreekandapuram Municipality under the Right to Information Act, and the said information was shocking, when it has revealed that there is no such building in existence as claimed by the respondent by way of his residence. The learned Senior Counsel for the respondent has invited the

attention of this Court to Ext.A6 application by which the petitioner had sought for information from the Sreekandapuram Municipality. Item No.1 information sought for was "Indira Bhavan(Indian National Congress Office) situated in Ward 17 under you is registered in which category", and Item No.2 information sought for was "By which category tax is being collected for the said office". By pointing out Ext.A6 it has been argued that even the petitioner has no case that there is no such building; whereas the petitioner wanted to know in which category the said building was registered. Ext.A7 is the information furnished by the authority which reveals that the answer to item No.1 is that "not registered". Answer to item No.2 is that "the tax is not being collected". There is absolutely nothing to show that there is no such building in existence. At the same time, from the admissions in Ext.A6 it can be seen that there is a building in which Indian National Congress office is housed and the building is known as Indira Bhavan. The mere fact that the building has not been registered at the local authority, it cannot be said that the respondent has not been residing there. When the respondent has not averred in any records that he is a permanent resident of Irikkur constituency, it cannot be said that the said information furnished by the respondent was false.

11. In *Rajendra Kumar Meshram v. Vanshmani Prasad Verma and another* [(2016) 10 SCC 715] 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.

12. 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 to plead and prove that the result of the election in so far as it concerns the returned candidate has been materially affected.

13. 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".

14. 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.

15. The learned counsel for the petitioner has relied on the decision of the Apex Court in *Sri Mairembam Prithviraj @ Prithviraj Singh v. Shri Pukhrem*

Sharatchandra Singh in Civil Appeal No.2649 of 2016 wherein it was held that the lack of pleading that the improper acceptance of the nomination has materially affected the election of the returned candidate is of not much relevance in a case wherein only two candidates contested the election. It is true that when only two candidates are there to contest an election and the nomination of one of the returned candidates was improperly accepted, any further pleading is not required that such improper acceptance of the nomination has materially affected the election of the returned candidate. It is because of the fact that in case of rejection of the nomination of the only other contesting candidate, the other candidate will have to win the election. Therefore, in such cases any further pleading that the improper acceptance of the nomination has materially affected the election of the returned candidate need not be pleaded in *stricto sensu*.

16. Here, in this election petition, a total number of 10 candidates contested the election. Therefore, the decision in *Sri Mairembam Prithviraj* (*supra*) has no application as far as the present case is concerned. On a scrutiny of the election petition it seems that the petitioner has raised the said ground just as a ground to invite undue influence coming under the category of corrupt practices and not as one for improper acceptance of nomination. Regarding Section 100(1)(d)(iv) of the Act also it has to be noted that there should be non-compliance with the provisions of the Act or any Rules or Orders made under this Act. When the respondent has not claimed that he is a permanent resident of Irikkur constituency and when he has claimed only that he is residing at Indira Bhavan, Congress House, Sreekandapuram, it cannot be said that it will invite the ground under Section 100(1)(d)(iv) of the Act also. As rightly pointed out by the respondent, even if the matter is proceeded with, there cannot be any fruitful result in the matter and the continuance of the election petition will only be a waste of time. Matters being so, the election petition as such is not maintainable and this election petition is only to be dismissed, and I do so.

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