

(2000) 08 KAR CK 0083

In the Karnataka High Court

Case No : Election Petition No. 9 of 1999

Shivashankar Somalingappa Malagali

APPELLANT

Vs

Malagi Shivaputrappa Chanabasappa and Others

RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15

Representation of the Peoples Act, 1951 — Section 117, 81, 81 (3), 82, 83

Citation : (2000) 3 KCCR 2348

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Ravi B. Naik and Jagdish Patil, for the Appellant; M.N. Pramila, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The Petitioner has filed this petition u/s 86 of the Representation of Peoples Act (hereinafter referred to as "the Act") challenging the election of first Respondent Malagi Shivaputrappa Chanabasappa from Bagewadi Assembly Constituency in Belgaum District in the elections held on 11.9.1999 on various grounds.

2. The first Respondent has filed two applications u/s 86(1) of the Act to summarily dismiss the election petition for non-compliance of Section 81(3) of the Act and I.A.II u/s 87 of the Act seeking extension of time to file written statement to the election petition after.

3. Instead of referring to the grounds urged in I.A.I on which the election petition is sought to be dismissed summarily and the denial made in the counter, I straight away proceed to consider them in order to avoid repetition with reference to the relevant provisions of the Act.

4. In the affidavit filed in support of the application the first Respondent contends that as per Section 81 of the Act certain obligation is casted upon the Petitioner

which is mandatory. It is alleged that the mandatory requirements are not complied with and consequently the election petition is liable to be rejected as provided u/s 86 of the Act. According to the first Respondent, Section 81 of the Act stipulates that every copy of the election petition shall be attested by the Petitioner under his own signature as "true copy of the petition". It is alleged that the copy of the petition served on him is not the true copy as the Petitioner has not attested the same as stated above. Therefore, the election petition is liable to be dismissed for non-compliance of Section 81(3) of the Act. The copy of the election petition and the notice served upon the first Respondent have been produced along with a memo dated 26.5.2000 in proof of the various defects on which the election petition is sought to be dismissed. Learned Counsel for the first Respondent vehemently urged to dismiss the election petition for non-compliance of Section 81(3) of the Act by placing reliance (sic) 339 (Rajendra Singh v. Smt. Rani and Ors.) and Jagat Kishore Prasad Narain Singh Vs. Rajendra Kumar Poddar and Others, . Reliance is also placed upon the decision reported in Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, , the relevant paragraphs are extracted hereunder:

16. In T.M. Jacob Vs. C. Poullose and Others, a Constitution Bench of this Court was considering a judgment in the case of Dr. (Smt.) Shipra, etc. etc. Vs. Shanti Lal Khoiwal, etc. etc., wherein on the basis of non-compliance with Section 81(3) the election petition was dismissed at the threshold u/s 86(1) of the Act. Then considering the provisions of Sections 81, 82, 83, 86(1) and 86(5) of the Act the Court said: (SCC p. 291, para 38).

That apart, to our mind, the legislative intent appears to be quite clear since it divides violations into two classes- those violations which would entail dismissal of the election petition u/s 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, 573 and Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad, cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure.

18. The case of Dr. (Smt.) Shipra, etc. etc. Vs. Shanti Lal Khoiwal, etc. etc., was considered by the Constitution Bench in the case of T.M. Jacob Vs. C. Poullose and Others, . In Dr. Shipra case a preliminary objection was raised that a copy of the notice together with the affidavit in support of the election petition on the allegation of with the affidavit in support of the election petition on the allegation of corrupt practices did not contain the verification by the Notary and hence the election petition was not maintainable in accordance with Section 83(1)(c) of the Act. The objection was upheld by the High Court and appeal against that was dismissed by this Court. The question thus raised before this Court for its

consideration was whether the copy of the election petition accompanied by the supporting affidavit served on the Respondent along with Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961 without the attestation part duly verified by the District Magistrate/Notary/Oath Commissioner could be said to be "true and correct copy" of the election petition as envisaged in Section 81(3) of the Act. Explaining the judgment in Dr. Shipra case the Constitution Bench in T.M. Jacob case observed: (SCC Headnote)

The defect found in the "true copy" of the affidavit in Dr. Shipra case was not merely the absence of the name of the Notary or his seal and stamp but a complete absence of "notarial endorsement" of the verification as well as absence of an "affirmation" or "oath" by the election Petitioner. It was in that context that the Bench had found in Dr. Shipra case that the returned candidate would have got the impression on a perusal of the "true copy" of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election Petitioner. It was precisely on account of this "fatal" defect that K. Ramaswamy, J. opined that the principle of substantial compliance cannot be accepted in the fact situation. Thus the judgment in Dr. Shipra case is confined to the fact situation as existing in that case....

19. In Dr. Shipra case this Court held: (SCC pp. 190-91, para 12):

Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the Court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the Court is required to go into the question and decide the preliminary objection. In case the Court does not uphold the same, the need to conduct trial would arise. If the Court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the Court is left with no option except to dismiss the same.

5. In the statement of objections filed by the Petitioner to this application, the stand taken by the first Respondent is denied. It is stated that there is verified attestation and an affidavit is filed verifying the contents of the petition. It is further stated that the true xerox copy of the petition with signature of the Petitioner on each page is served on the first Respondent. Pleading that there is due compliance of Section 81(3) of the Act, the Petitioner has prayed for the dismissal of the application.

6. The matter requires to be examined bearing in mind the rival contentions and the relevant provisions of the Act and the law on the subject. Sub-section (3) of Section 81 of the Act 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.

The second part of the above provision which is underlined mandates that every copy of the election petition shall be attested by the Petitioner as "true copy of the petition" under his own signature. I have perused the copy of the election petition served on the first Respondent, which has been produced along with memo dated 26.5.2000 and found that it is the same copy of the election petition. But the Petitioner has not attested it as "true copy" as stipulated in Section 81(3) of the Act. Thus, there is non-compliance of the statutory and mandatory requirement and on this solitary ground the election petition is liable to be dismissed as provided u/s 86(1) of the Act, which reads as under:

(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

In view of this specific provision, and since it is found that there is non-compliance of Section 81 of the Act, as rightly contended by Smt. Pramila Nesargi, learned Counsel for the first Respondent and as per the law laid down in the decisions cited supra, the election petition is liable to be dismissed. The justification sought to be made-out by the Petitioner in the statement of objections that the signature made by the Petitioner on the copy is the proof that it is a "true copy", cannot be accepted. Sub-section (3) of Section 81 do not stipulate mere signature of the Petitioner but it specifically stipulates that the attestation of the Petitioner must be made as "true copy of the petition". Since the words "true copy" is not found on the election petition, it has to be held that there is non-compliance of the requirement prescribed u/s 81(3) of the Act and that renders the election petition to be dismissed as stipulated in Section 86 of the Act.

7. It is pertinent to note that I.A.I was filed on 2.3.2000 pointing-out the aforesaid defect. On 3.7.2000 learned Counsel for the Petitioner made an attempt to serve an additional copy of the election petition duly verified by the Petitioner as "true copy" on each page along with memo dated 25.6.2000 on the Counsel for the first Respondent for being served on the first Respondent. Counsel for the first Respondent has returned the same subject to objections. The Counsel also filed objections to the said memo stating that it is nothing but assigning the Counsel the task of Process Server. In my view, the return of the memo and the additional copy of the petition by the counsel may be justified. But, I am not agreeable with the objection raised that the Counsel has been asked to discharge the duties of a Process Server. It is true that the wordings in the memo dated 25.6.2000 to the effect "to be served on the 1st Respondent" may not be correct. Normally, when applications, memos, documents and other papers are filed in open Court, copies would be served on the Counsel appearing for the parties. Such action is being done since the Counsel appear on behalf of the parties. So, in the memo, the wordings "to be served on the 1st Respondent" could have been avoided by the Counsel for the Petitioner or the words "for reference" could have been mentioned. Be that as it may, that is not the point or issue to be resolved in this case. The important aspect that is to be taken note of

is, according to the Petitioner he has fulfilled or complied with the requirements of Section 81(3) of the Act. If the Petitioner is so confident about this, there was no occasion to serve additional copy on the Counsel for the Respondent. It is implied that after filing I.A.I pointing-out non-compliance of the requirement, an attempt has been made to rectify it by furnishing additional copy of the election petition. In other words, the Petitioner was convinced that there was defect in the copy of the election petition served upon the first Respondent. To over-come the same a futile attempt has been made to cure the defect. The defect contained in the election petition was incurable. Learned Counsel for the first Respondent rightly returned the additional copy of the petition. It follows that the copy of the petition served on the first Respondent is defective in as much as there is non-compliance of Section 81(3) of the Act, which is fatal to the petition as held by the Apex Court in the cases referred to above. For this reason also the election petition is liable to be dismissed summarily.

8. Another defect pointed-out in I.A.I is in respect of Annexure-D. In the Index of the election petition at Sl. No. 6 it is shown as Annexure-D, List of counting statistics. Though it is same in the petition filed into the Court, in the copy served on the first Respondent at Page 25 Annexure-C has been marked as Annexure-D. In the original petition Annexure-D starts from page No. 28 to 41. But these page numbers are not marked as Annexure-D in the copy served on the first Respondent. On the other hand, it is shown as Annexure-D starts from page 25 and ends at page 41. Thus, Annexure-D in the copy served is not properly arranged and the pagination is wrong. Added to this, Page No. 44, which is a letter dated 9.9.1999 submitted by an Election Agent of Indian National Congress Party to the Election Commissioner, is again marked as Annexure-D. In the original file the same is marked as Annexure-E. The mistake in marking the Annexures continues thereafter in the copy served on the first Respondent. Thus, there is discrepancy in Annexures and the pagination between the original petition and the copy served on the first Respondent. There is no Annexure-F in the copy served on Respondent-1. While Page No. 44 is the typed copy and Page Nos. 45 and 46 is original of Annexure-G in the original petition, in the copy served on Respondent-1 the typed copy is not produced. On the other hand, the first page original of Annexure-G is marked as Annexure-J and the second page is marked as Annexure-I. There is no reference to Annexure-I in the Index of both the petitions, viz., in the original petition as also in the copy served on Respondent-1. While Page No. 48 is marked as Annexure-J in the Court file, it is left blank in the copy served. There is lot of variation between the original petition and the copy served upon the first Respondent in relation to the Index, pagination and the Annexures. This creates a lot of confusion and quite naturally the first Respondent is unable to understand the case properly in view of wrong narration of Annexures, pagination etc.

9. Sub-section (2) of Section 83 of the Act stipulates as under:

(2) Any schedule or annexure to the petition shall also be signed by the

Petitioner and verified in the same manner as the petition.

In the application after pointing the discrepancies in the arrangement of Annexures and the pagination as noted above, it is stated that the Annexures which form an integral part of the petition are not verified in accordance with law.

10. I have perused the Annexures furnished along with the copy of petition served on Respondent-1. I find that all of them are xerox copies. They contain the attestation made in the originals but none of the copies are attested in the manner prescribed in Sub-section (2) of Section 81 of the Act extracted above. Therefore, I have to hold that there is non-compliance of this provision also, viz., Section 81(2) of the Act which has been held to be mandatory by the Apex Court.

11. Section 83(c) of the Act stipulates that the verification of the statements of the petition shall be made in the manner laid down in the Code of Civil Procedure, 1908. Clause (2) of Order 6, Rule 15 CPC prescribes the method of verifying the pleadings as under:

(2) The person 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.

I have also perused the verification made in the election petition as also the verifying affidavit accompanying it. The Petitioner has stated that the statements made in paragraphs 1 to 47 are true to his personal/best of his knowledge, information and belief. It is not stated statements made in which paragraphs are of his personal/best of knowledge, which are based upon information and which statement he believes to be true. Since the verification of the statements of the petition is not as prescribed under Clause (2) of Order 6, Rule 15 CPC it has to be held that the verification made is not in consonance with Section 83(c) of the Act. Therefore, the petition is also liable to be dismissed summarily for non-compliance of mandatory requirement of Section 83(c) of the Act.

12. The vehement arguments of learned Counsel for the Petitioner in justification of the proper election petition and the decisions relied upon by him will not be helpful to the Petitioner for the reasons already stated. Therefore, I.A.I deserves to be allowed.

13. Accordingly, I.A.I is allowed. Consequently, the election petition stands dismissed for non-compliance of the mandatory requirements of Section 81(3) of the Act.