
(1992) 02 GAU CK 0017

In the Gauhati High Court

Case No : Miscellaneous Case No. 1/92, in Election Petition No. 7/89 (G) and 1/91 (A/B)

Shri Saingura

APPELLANT

Vs

Shri F. Sapa and Others

RESPONDENT

Date of Decision : 21-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 16 Rule 1, Order 7 Rule 14(1), Order 7 Rule 14(2), Order 7 Rule 18
Representation of the People Act, 1951 — Section 87

Citation : AIR 1992 Guw 83

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : B.L. Wadehra, A.K. Bhattacharyya, C.C. Deka, R.C. Borpatragohain, A.K. Das and K. Agarwal, for the Appellant; A.M. Mazumdar, M.K. Sarma, S.S. Dey, K.P. Pathak, M. Nath, M. Ahmed and N. Saikia, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—The petitioner filed the election petition alleging that the first respondent is guilty of corrupt practice within the meaning of Section 123 of the Representation of the People Act, 1951. The first respondent appeared on receipt of notice and filed written statement. However, he took several adjournments for filing the written statement, which compelled this Court to fix the case for ex parte hearing. Ultimately, the first respondent filed the written statement with a petition for setting aside the ex parte order and to accept the written statement. After hearing the parties, this Court set aside the ex parte order of hearing and accepted the written statement.

2. Thereafter, issues were framed and the case was posted for hearing. Meanwhile, the first respondent raised some preliminary objections as to the maintainability of the election petition and this Court rejected the preliminary objections by order dated 3-9-90. Against that order, the first respondent moved the Supreme Court. The Supreme Court admitted the petition and stayed further

proceedings. By order dated 22-8-91 the Supreme Court disposed of the appeal with a direction to rectify the defects. This Court, thereafter, fixed 6-1-91 for trial of the cases at Aizwal, Mizoram.

3. In the meantime on 16-11-91 the election petitioner filed an application praying for issuance of summons to produce certain documents. In this petition, he inter alia, stated that his case was conducted by a counsel practising and residing in New Delhi. Due to long and hazardous distance between Aizawl and New Delhi and other difficulties, he could not meet his counsel. Having faced with such difficulties, the election petitioner engaged another set of counsel practising at Guwahati to conduct the case. These newly engaged counsel appeared on 19-9-91. Thereafter, on scrutiny of the records it was found that there had been omissions to call for the original manuscript of the documents described in the Schedule to the petition due to oversight and inadvertence. The petitioner further stated that all the documents except the documents mentioned in serial Nos. 11, 12 and 13 were already annexed to the election petition and copies thereof were furnished to the respondents. Besides, these documents listed in the Scheduled were required to be produced by the persons who were cited as witnesses on behalf of the election petitioner in the list of witness already filed. The documents listed and mentioned in Schedule were in power and possession of the persons mentioned in Column (3) of the Schedule. The petitioner further stated that this application was filed at the earliest opportunity after detection of the omissions. According to the election petitioner his case mainly based on these documents and if the documents were not called for, the petitioner would be denied fair trial which would cause serious prejudice to him.

4. The election petitioner filed a similar application on 17-12-91 also praying for issuance of summons to produce documents.

5. Again on 20-1 -92 the election petitioner filed yet another petition praying for issuance of summons to witnesses whose names were not mentioned in the list of witnesses already filed before this Court. In this petition, he had, inter alia, stated that a list of witnesses to be examined by the election petitioner was already filed and the same was on record, it was further stated that issues were settled on 6-12-90 and the list of witnesses was prepared by the counsel in consultation with petitioner's representatives on 7-12-90. The petitioner's representatives wanted to verify the names of the witnesses and, therefore, he intended to visit Guwahati. However, the list could not be filed as the representative of the petitioner failed to turn up for verification. Ultimately on 8-1-91, the petitioner's counsel filed additional list of witnesses. The name of one witness, viz. Sri Oscar Fernandes was not mentioned in the list of witnesses filed earlier. This witness was a material witness for the petitioner in view of the fact that he wrote a letter dated 15-12-88 to the Chief Electoral Officer, Mizoram, Aizawl and the petitioner could obtain a certified copy of the letter only on 18-1-91 and filed the same on 20-1-91. He further stated that the said letter was not available to the petitioner on the date of filing the list of witnesses on 8-1-91,

and, therefore, the name of Sri Oscar Fernandes could not be included in the list of witnesses. He also stated that the letter dated 15-12-88 was an important document having a great bearing upon the merit of the petitioner's case, especially in view of the stand taken by the first respondent in his written statement. The petitioner further stated that he was not guilty of any deliberate laches or negligence for omission to mention the name of Sri Oscar Fernandes in the list of witnesses and the situation was beyond his control. The evidence in the present case was yet to be recorded, and, therefore, respondents would not suffer any loss or prejudice, if this Court issued summons to the witness to prove the contents of the said letter and his signature. Therefore, for the ends of justice, it was necessary for this Court to summon the said witness Sri Oscar Fernandes and other witnesses mentioned in the Schedule-A to this petition.

6. The first respondent filed objection against the application praying for issuance of summons to produce documents. The respondent stated that the election petitioner ought to have produced or at least filed an application praying for issuance of summons of documentary evidence on which the election petitioner intended to rely on or before the issues were framed by this Court. But even after framing of issues on 6-12-90 neither he produced any documents nor he filed any application for issuance of summons, nor he filed any list of witnesses as required under the provisions of Code of Civil Procedure. The first respondent also stated that the case was listed for hearing at Aizwal and Sri Joginder Singh an Advocate from Guwahati appeared for the election petitioner. But he did neither produce any document nor he filed any application praying for issuance of summons to produce documents. He also stated that the petitioner having sued on the documents mentioned in the Schedule to the application, ought to have produced the documents and the same having not been produced at the time of presentation of the election petition, the documents were inadmissible at that stage. He also denied that there was any lack of communication between the counsel at Delhi and the petitioner in view of the fact that the petitioner had a local counsel practicing at Guwahati. The election petitioner deliberately delayed the production of the documents and the filing of the application for issuance of summons to produce the documents. He stated that the election petitioner was negligent in conducting his case, and, therefore, the prayer made at the belated stage should not be allowed.

7. The first respondent also filed an objection against the prayer for issuance of summons to witnesses. The witnesses mentioned in Schedule A to the application are at variance to the list of witnesses already submitted by the election petitioner, therefore, the petitioner had tried to bring some more witnesses by filing the petition. Besides, the first respondent also stated that if the summons were issued to the witnesses mentioned in Schedule-A to the application, it would affect the case of the respondent and would" frustrate the cause of justice. Therefore, the prayer of the election petitioner should be rejected.

8. I have heard both sides.

Mr. Mazumdar, learned counsel on behalf of the first respondent has submitted that these petitions are not maintainable in view of fact that the petitions have been filed at a belated stage and contrary to the provisions of the Code of Civil Procedure. Besides, there have been suppression of some material facts. However, so far the suppression of material facts are concerned, Mr. Mazumdar has not elaborated. According to him, even though the CPC is not applicable in Mizoram, but the Representation of the Peoples Act, in short the R. P. Act, is applicable. He has referred to Section 87 of the R.P. Act. Section 87 of the R. P. Act runs thus: --

"Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908".

According to this, the CPC is applicable subject to provisions of R. P. Act and if any provisions contrary to CPC are provided in the R.P. Act, only then the CPC would be inapplicable. Otherwise, the CPC is applicable.

9. Mr. Bhattacharjee, learned counsel appearing on behalf of the petitioner has drawn my attention to the provision of Order XVI Rule 1 of the Code of Civil Procedure. According to him, the petitions should be entertained following the spirit of Order XVI, Rule 1 of the CPC (C.P.C.) Mr. Mazumdar, learned counsel for the first respondent on the other hand, has submitted that while disposing of the petition, provision of Order VII, Rules 14 and 18 and also Order XIII Rules 1 and 2 should be looked into. In the light of submissions made by the learned counsel, it will be apposite to look into the said provisions of the C.P.C.

10. Under Sub-Rule(I) of Rule 14 of Order VII of C.P.C. the plaintiff is required to file all the documents on which he sues along with the plaint, and he is also required to file a list of documents which he relies on (whether in his possession or power or not). From the plain reading of this sub-rule of Rule 14 indicates that there are two types of documents, i.e. the documents on which the plaintiff sues; these are required to be filed along-with the plaint, and the documents on which the plaintiff relies in support of his claim, he is required to give a list of such documents. The effect of non-compliance of Sub-Rules (1) and (2) of Rule 14 of Order VII is that such documents shall not be received in evidence without the leave of the Court under Rule 18 of the said order. Therefore, Rule 18 is a penal provision for non-compliance of Order VII, Rule 14. The object of Rule 18 is prevent suspicious and fraudulent document or document which is not genuine or doubtful about the existence at the time of filing, and, therefore, duty casts on the Court to see whether leave should be granted or not. While granting leave, it is the duty of the Court to see the document sought to be evidenced as required of Rule 14, is a genuine document or not. If the document appears to be a genuine document, the Court should always be lenient towards granting leave.

11. Under Order 13 (1)(2), the parties should produce documentary evidence of

any description in their power and possession at and before settlement of issues. If the documents are not filed at that time, the Court shall normally not receive such documents at a later stage unless good cause is shown. If any good cause is shown, under Sub-Rule (2) of Rule 1 of Order XIII empowers the Court to accept such document.

12. Under Order XVI Rule 1 requires the parties to present a list of witnesses whom they propose to call either to give evidence or produce documents. This must be done on any date appointed by the Court and not later than 15 days after the settlement of issues. It may be mentioned here that in the present case no date was fixed for filing of documents and list of witnesses after the filing of written statement or before settlement of issues. In Sub-Rule (3) of Rule 1 of Order XVI, however, empowers the Court to allow any witness to be summoned and examined by the parties, whose names do not appear in the list if any sufficient cause is shown.

13. Mr. Bhattacharjee states that copies of documents were already filed and the original documents and manuscript were not in his possession. Therefore, the production of documents in a manner contemplated under Order VII, Rule 14 and/or Rule 1 of Order XIII do not apply in the instant case. His case squarely covers by the spirit of Order XVI, inasmuch as, according to him, he has shown sufficient cause for not furnishing the list of witnesses within the time as envisages under Order XVI. Following the spirit of Order XVI, according to Mr. Bhattacharjee, the petitioner's prayer for issuance of summons to witness and for production of documents should be allowed.

14. Mr. Bhattacharjee relies on the following decisions : (i) AIR 1953 Assam 40 (Si) Dr. Jagjit Singh Vs. Giani Kartar Singh and Others,

15. In Dr. Jagjit Singh Vs. Giani Kartar Singh and Others, the Supreme Court observed thus (at page 779):--

".....The charges of corrupt practice are in the nature of quasi criminal. The proof of the charge has a double consequence; the election of the returned candidate is set aside, and he incurs subsequent disqualification as well. Therefore, when a charge of this kind is framed against a returned candidate, it has to be proved satisfactorily..."

Relying on this decision Mr. Bhattacharjee submits that in an election petition all opportunities should be given to the parties to prove their case. On technical ground such as delay in filing of list of witnesses, the party should not be allowed to suffer.

16. The other decisions referred to by the counsel for the petitioner, viz.; in The Tripura Modern Bank Ltd. v. Sushil Chandra Dutta AIR 1953 Assam 40 in D Athubon v. G. Choba Koboi 1973 ALR 151 in Jai Prakash Singh v. Ram Narayan Singh (1987) 1 GLR 372 etc., are all relating to filing of documents at a later stage. This Court in the above mentioned cases held that if good and sufficient

cause is shown, documents should be accepted.

17. Mr. Mazumdar, learned counsel for the respondent has relied on the following decisions: (i) AIR 1952 TC 445 (ii) AIR 1957 AP 784 (iii) Sahodrabai Rai Vs. Ram Singh Aharwar,

18. In Sahodrabai Rai Vs. Ram Singh Aharwar, the Supreme Court observed as follows (at page 1081):

"....It may be pointed out that the trial of election petition has to follow as far as may be the provisions of the Code of Civil Procedure. We are therefore of opinion that it is permissible to look into the CPC to see what exactly would have been the case if this was a suit and not a trial of an election petition...."

Other decisions cited by Mr. Mazumdar are related to filing of documents. As per these decisions, the policy underlying Rule 18 is to exclude document the genuineness of which may be suspected and the existence of which at the filing of the suit is doubtful. However, these decisions also indicate that a Court has wide discretion in the matter for production of documents which were not entered in the list as required by Order 7 Rule XIV. If the genuineness of the documents is not challenged, and good cause is shown, in that case the Court may accept these documents.

19. From the petitions as well as the written objections, it appears to me, that the documents sought to be called for by issuing summons are original documents which are not in the possession of the election petitioner and the copies of those documents were already filed along with the election petition. The first respondent in his objection also did not challenge the genuineness of the documents. His objection is that prayer for introduction of documents by summoning witnesses was filed at a belated stage without proper explanation, and if such documents are allowed to be introduced in evidence, the first respondent would be highly prejudiced.

20. In my opinion, the prayers of the petitioner for issuance of summons to the witnesses and for issuance of summons to produce documents do not come under the purview of Order 7, Rule 14(1)(2). Therefore, the question of application of the penal provision of Rule 18 does not arise. The documents sought to be introduced in evidence by summoning the witnesses are not in possession of the petitioner, and, therefore, the provisions of Order XIII also do not attract. The petitioner only very recently has filed these two petitions for summoning the witnesses to give evidence and to produce documents as per the Schedule annexed thereto. It is true that the list of witnesses ought to have been filed within the stipulated date after filing the written statement. As stated earlier, this Court did not fix any date for filing the list of witnesses. At any rate, the petitioner ought to have filed the list of witnesses within 15 days from the date of settlement of the issues if the CPC is strictly applied. The petitioner has explained the reasons for late filing of the list of witnesses on 8-1-91. From the reasons given by the election petitioner appear to me that he failed to file the list

of witnesses within time for sufficient cause. Besides, the provisions of CPC should not be strictly followed in an election case, more so, in a case from Mizoram, which is situated at Eastern corner of the Country. As stated, in Mizoram, only the spirit of the CPC is applicable.

21. Considering all the aspects of the matter, I think it proper to allow the petitioner to issue summons to witnesses for giving evidence and for production of documents, as prayed for. It may be mentioned here that the trial has not yet been begun and the first respondent will not be prejudiced if the witnesses are summoned and the documents are produced as prayed for by the petitioner.

22. In view of the above, it is ordered that summons shall be issued to the witnesses for giving evidence and also for production of documents as prayed for by the petitioner.

In the result the petition is allowed. However, the petitioner shall pay a cost of Rs. 200/- (Rupees two hundred) as costs.