

(1996) 09 GAU CK 0041

In the Gauhati High Court

Case No : Election Petition No. 7 of 1995 (Gau) /1 of 1995 (IMP)

S.L. Paokhosei

APPELLANT

Vs

Ngamtheng Haokip and Another

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11
Representation of the People Act, 1951 — Section 81, 83, 83(1), 83(2), 86

Citation : (1997) 1 GLR 370

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Premananda and Kh. Ibobi, for the Appellant; A. Nilamani Singh and N. Ibotombi, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—This Election petition has been filed by the unsuccessful candidate in the Election held on 16.2.1995 to the Manipur Legislative Assembly from 51-Saitu (ST) Assembly Constituency, seeking a declaration of the election of the returned candidate Mr. Ngamthang Haokip as void on the ground of corruption charges, and further for a direction to conduct fresh election of the said constituency.

2. General Election of the Manipur Legislative Assembly was held on 16.2.1995. Petitioner along with other 7 (seven) candidates contested from 51-Saitu (ST) Assembly Constituency. Result was declared on 23.2.1995, declaring the Respondent No. 1 elected. The votes secured by each of the contestants are as follows:

(a)

AlarThoitak

7303

(b)

Haakholet

5765

(c)

John

12

(d)

Lundolung

31

(e)

NgamthangHaokip

9678 (Respondent No. 1)

(f)

PanmeiBonthaofung

106

(g)

S.L. Paokhosei

2199 (Petitioner)

(h)

Thomas

26

3. The grounds on which the election of the Respondent No. 1 sought to be declared as void has been setforth in paragraphs 8 and 9 of the petition. Paragraphs 8 and 9 reads:

That, the Petitioner asserts that the election of the Respondent No. 1 is void and is liable to be declared void on the following grounds:

(1) That, the Respondent No. 1 himself and through his election agents and other persons acting with his active consent and connivance committed the corrupt practice of undue influence in the form of-

(a) Terrorising and extending threats, and harassing to get submission of all voters, through the hostile/militant elements armed with fire arms, and Village Chiefs including armed persons employed by the Respondent No. 1;

(b) Kidnapping, beating and other criminal and coercive measures, taken against the innocent and law abiding voters residing in the said Constituency;

(c) Employment of hostile/militant persons armed with sophisticated fire arms, to terrorise and obtain submission, as well as to prevent entry of the candidates, election agents of other candidates in several area covered by several Polling Stations. The detailed particular are set out below in part of the annexures;

9. That the Respondent No. 1 himself and through his agents, election agents and oilier persons employed by him, acting with his consents committed the corrupt practices of bribery in the form of-

(a) Giving money in cash, in kind, etc., to several persons, including Village Chiefs, Clubs, etc.,

(b) Paying/distributing money to the electors who would vote for him;

(c) Entertaining with meats, sweets, lunches, dinner, breakfast, etc., in large scale to several thousands of voters with the object of securing their votes, etc.

The detailed particulars and instances are set out below in part 1 of the annexure to the petition.

In support of the allegations made in paragraphs 8 and 9 detailed statement has been set out in statement No. 1 paragraphs 2 to 9.

4. Counter on behalf of the Respondent No. 1 has been filed. Respondent No. 1 specifically denied the each of the allegations contained in the details of Statement No. 1. On the basis of the application and the written statement, as many as eight issues have been framed on 14.5.1996. This Court also held that, Issue No. 1 and 2 are in the nature of preliminary objection with regard to the maintainability of Election petition, and directed to be posted for hearing as a preliminary issues, Issue No. 1 and 2 reads:

1. Whether the election petition is liable to be rejected for not setting forth full particulars of the alleged corrupt practice as required u/s 83(1)(b) of R.P. Act, 1951?

2. Whether the election petition is liable to be rejected for non compliance on the part of the Petitioner with the provisions of Section 83(1)(c) and Section 83(2) of the R.P. Act, 1951?

The sole question that arises for determination at this stage is, whether Election petition is liable to be rejected on account of non-disclosure of material facts as required by Section 83 of the Representation of the People Act, 1951 (herein after the Act). Section 83 of the Act, reads:

83. Contents of petition (1) An election petition-

(a) shall contain a concise statement of the material facts on which the Petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;

and

(c) shall be signed by the Petitioner and verified in the manner laid down in, the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings; (Provided that where the Petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice, and the particulars thereof.)

)(2) Any schedule or annexure to the petition shall also be signed by the Petitioner and verified in the same manner as the petition.

6. I have heard Mr. Y. Premananda, learned Counsel for the Petitioner as well RS Mr. A. Nilamani Singh, learned Counsel for the Respondent No. 1.

7. It is contended by Mr. A. Nilamani Singh that the Petitioner failed to disclose material facts in support of the allegations as visualized u/s 83 of the Act, and therefore, the Election Petition is liable to be dismissed at the threshold. In support of his contention, Mr. Nilamani Singh has referred to the decision of the Supreme Court in Azhar Hussain Vs. Rajiv Gandhi, There it was held by the Supreme Court as under:

An election petition can be and must be dismissed under the provisions of CPC if the mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with. The CPC applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable the Court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a). Therefore that Section 83 does not find a place in Section 86 of the Act which authorizes dismissal of election petitions in certain contingencies docs not mean that powers under the CPC cannot be exercised. An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the CPC and it is settled law that the omission of a If single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all.

8. In Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, it was pointed out that if an election petition does not disclose cause pf action it can be dismissed summarily at the threshold of the proceeding under Order 7 Rule 11 of the Code of Civil Procedure.

9. In U.S. Sasidharan Vs. K. Karunakaran and Another, it was pointed out in para 12 of its judgment as under:

It is apparent from Clauses (a) and (b) of Section 83 that an election petition shall contain a concise statement of the material facts and also set forth full particulars of any corrupt practice. These two requirements are also mandatory in nature. So, whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material fact on which the Petitioner relies and also must set forth full particulars of the corrupt practice alleged by the Petitioner.

10. In *Lalit Kishore Chaturvedi Vs. Jagdish Prasad Thada and others*, similar view was taken.

21. Section 83 of the Act, as quoted above requires concise statement of the material facts on which the Petitioner relies in an election petition filed u/s 81. Clause (b) further mandates a petition to set forth full particulars of any corrupt practices that the Petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date of commission of each such practice. Consequences of lack of such allegations of material facts are fatal because on such allegations, if proved, an election petition has the effect of declaring an election of returned candidate void. It is therefore, vital that the corrupt charges against the Respondent should be full and in complete statement of material facts so that the returned candidate effectively put up the defence.

12 In the back ground of the settled principle of law, let us now examine as to whether the petition of the Petitioner contains a concise statement of the material facts on which the Petitioner relies and set forth full particulars of any corrupt practice the Petitioner alleges including as full a statement as possible and the names of the parties alleged to have committed such practices and the date and place of the commission of each such practice.

13. Corruption charges in paragraphs 8 and 9 of the petition are sought to be supported by the details of statement No. 1. Para 2 of the statement No. 1 alleged that the older brother of the Respondent No. 1 committed offence of bribery by giving a sum of Rs. 4,000/- in cheque and Rs. 1,000/- in cash to the Motbung Gorkha Youth Club and its members on 14.2.95 to secure their votes in the election in favour of the Respondent No. 1. It is further alleged that on 23.2.95, the Respondent No. 1 took back the said cheque and gave Rs. 3,300/- in full settlement of the said cheque. It is further alleged that the said Motbung Gorkha Youth Club and its members canvassed vigorously in Motbung area in favour of the Respondent No. 1 and voted in his favour.

14. A reading of the allegations as mentioned above, it does not disclose the full cause of action. The names and the place and the particulars of the Secretary, and who are the members of the Club said to have been involved in the alleged transaction and canvas vigorously in favour of Respondent No. 1 are not disclosed. This apart, the Annexure-2 is the alleged acknowledgement of the receipt of Rs. 3,300/- to which the reliance has been placed by the Petitioner is

dated 23.2.95. As already said, the election was held on 16.2.95, and the result was declared on 23.2.95. It therefore, clearly appear that acknowledgement receipt marked as annexure-2 has been fabricated and after thought after the declaration of the result. Also on the body of the annexure-2, it bears the signature of the Secretary of Gorkha Youth Club Motbung, but it does not bear the date.

15. Pare 3 of the detail statement No. 1 is the allegation that the Respondent himself and through his election agent terrorised, threatened and harassed voters, to get submission of all voters through the hostile and militant agents armed with fire arms and Village Chief including the armed persons employed by the Respondent No. 1. It is further alleged that the Respondent No. 1 and through his men committed Kidnapping, bating and other criminal and coercive measures against the innocent persons. It is further alleged that on 12.2.95, around 6 P.M. Shri letkhojang (sic) S/o (L) Paekhohen (sic) the younger brother of the Petitioner p kidnapped at gun point by 5 (five) persons who were relatives and active workers of the Respondent No. 1, etc. The aforesaid allegations are very vague. The names and other relevant particulars of the agent Village Chief, his men relatives and active workers who are alleged to have been involved in the election complaint the Petitioner, and the place or places where such acts were said to have been committed have not at all been disclosed.

16. Para 4 of the detail statement No. 1 containing the allegation that several Government employees canvassed and actively participant in the election campaign in favour of the Respondent No. 1. It is further alleged that some of the Government employees even took part in kidnapping and threatening the voters.

17. The allegations as referred to in para 4 of the statement No. 1 do not amount to any statement of material facts of corrupt practices. It is not disclosed as to who are those government employees who canvassed and actively participated in the election campaign, when and where they canvassed and participated in the election campaign.

18. The allegation in para 5 of the Statement No. 1, that the Respondent No. 1, (sic) agents, through his armed gangs at a meeting at Saitu located in the said constituency on 25.1.95 and passed various Resolutions against the Model Code of conduct. This allegation is also very vague, because as to who are his agents, who are the armed gangs, not disclosed. Further, there is no allegation that the Respondent No. 1 himself participated and took active part in conducting the meetings.

19. The allegation in para 6 of the Statement No. 1 that the Petitioner was prevented from entering and campaigning in the said villages for the said election. The Petitioner also cannot enter and appoint any villagers as his agents/workers in the said villages being prevented by the respective village Chiefs through instigation of the Respondent No. 1 inspite the several residents of the

villages were anxious to work and campaign on behalf of the Petitioner are all vague. It does not disclose as to who are the particular Chiefs the villagers whom the Petitioner contacted or approached for employing his agents/workers, and those residents of the villages who were anxious to work and campaign for the Petitioner.

20. The allegation contained in para 1 of the detail Statement No. 1 that the Respondent No. 1 in excess of maximum permissible limit distributed money with a view to buy voters to further his election prospects are also vague, because it does not disclose as to where, when, the money, if any, has been distributed. Similarly the allegation contained in para 8 of the detail Statement No. 1 that, the Respondent No. 1 employed and used 7 (seven) Jeeps for 15 to 30 days for the election duty by paying daily hiring charges of Rs. 500/- per day plus 30 litres of petrol per day is also very vague. It is not supported by full material facts on which date and the places where the said 5 (five) Jeeps were used by the Respondent No. 1 for the election duty and the payment of Rs. 500/- as hiring charges and who are the owners of the vehicles.

21. The allegation made in para 9 of the dated statement No. 1 that, the Respondent No. 1 and the armed personnel/militants employed by him threatened and attempted to kill Mr. Thangeha Vaiphei, the election agent of the Petitioner posted at Polling Station No. 51/22 Khunkho Kuki J.B. School after the Poll are also very vague. There is no disclosure of the names and other particulars of the armed militants employed by the Respondent No. 1, who threatened and attempted to kill Mr. Thangeha Vaiphei, the election agent of the Petitioner.

22. From the aforesaid facts and circumstances as discussed above, it clearly appears that the Petitioner does not furnish cause of action required u/s 83 of the Act.

23. For the reasons aforesaid, this election petition is dismissed under Order 7 Rule 11 of Code of Civil Procedure. Looking into the facts and circumstances of the case, parties are asked to bear their own costs.