

(2003) 08 KAR CK 0111

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2980 of 2003

Smt. Reena Janardhana

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 32, 33, 38
Representation of the Peoples Act, 1951 — Section 83 (1) (a)

Citation : (2004) 3 KarLJ 493 : (2003) 4 KCCR 233 SN

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, for Caveator-Respondent - 4, for the appearing parties; T. Jayaprakash, for Respondent - 8, for the Respondent

Judgement

S.R. Nayak, J.—This appeal filed u/s 38 of the Karnataka Municipal Corporations Act, 1976 (for short, the "Act"), is directed against the judgment dated 17-4-2003 passed in E.P. No. 37 of 2001 on the file of the VI Additional City Civil Judge, Bangalore City (CCH 11), Bangalore (for short, the "Trial Court"). By the impugned judgment, the Trial Court has allowed the petition filed by Smt. Nagarathna, 4th respondent herein, u/s 33 of the Act declaring that the declaration of the appellant herein as elected from ward No. 73 as Councillor of the bangalore Mananagara Pahke (BMP) on 12-11-2001 and published in the Official Gazette on 17-11-2001 as null and void and setting aside the same.

2. The facts of the case, in brief, are as follows:

The Karnataka State Government notified the elections to 100 Wards within the limits of BMP for electing Corporators. The election was held on 11-11-2001, votes were counted on 12-11-2001 and the results were declared on the same day. The result of the election was published in the Official Gazette on 17-11-2001 as required under the provisions of the Act. The appellant contested the election for Ward No. 73 i.e., Airport constituency as Indian National Congress Party candidate. The 4th respondent also contested the election for

Ward No. 73 as Bharathiya Janatha Party (BJP) candidate. The appellant was elected as a Corporator for Ward No. 73.

3. The 4th respondent filed Election Petition No. 37 of 2001 in the Trial Court assailing the election of the appellant on the ground that the appellant had only attained the age of 19 years as on the date of filing her nomination/election.

4. The facts pleaded by respondent 4 in her election petition are as follows:

"The petitioner herein contested the election by filing her nomination for Ward No. 73 i.e., Airport constituency and her candidature was sponsored by Bharathiya Janatha Party (BJP). Similarly, the respondents 4 to 7 also filed their nominations for Ward No. 73. The 4th respondent who is aged 19 years also filed her nomination as an Indian National Congress Party candidate for the same Ward. She was not entitled to contest the elections since she had not attained the age prescribed in the Karnataka Municipal Corporations Act for contesting the elections of a Councillor/Corporator. Section 26(j) of the KMC Act prohibits the persons aged less than 25 years from contesting the elections to the council. In fact in her application she has categorically written that she is aged 19 years. The petitioner further submits that she was married to Mr. Janardhan very recently and after her marriage her name was got included only with a view to get her elected to the council. Even in the voter list her age is shown as only 19 years and her name is shown at Sl. No. 531 in part 255 of the voters list".

5. The 4th respondent in her election petition took several other contentions to assail the election of the appellant while filing the election petition. However, the 4th respondent subsequently gave up all the contentions initially taken in the election petition, except the contention that the appellant was aged 19 years only on the date of the election and, therefore, she was not entitled to contest the election.

6. The election petition was opposed by the appellant herein by filing written statement denying all material allegations made in the election petition. Since the 4th respondent gave up all other contentions except the one noted above, all the defences taken by the appellant in the written statement need not be mentioned in this judgment. Suffice it is to State that in the written statement the 4th respondent, inter alia, contended that the election petition filed by the 4th respondent does not show the "cause of action" and, therefore, the same is liable to be dismissed in limine; the 4th respondent has not pleaded the material facts and particulars as required under Sub-section (4) of Section 34 of the Act with regard to the age of the appellant, except stating that she is aged 19 years as per the voters' list; the averments made in the election petition with regard to the age of the appellant are vexatious and liable to be struck off. It was also contended by the appellant that she has attained the age of 21 years and she is not disqualified for being elected as Councillor of BMP.

7. The Trial Court on the above pleadings, framed the following issues:

"1. Whether the petitioner proves that respondent 4 did not attain the age of 21 years on the date of filing nomination papers and was eligible to contest the election?

2. Whether the petitioner proves that the respondent 4 adopted unethical methods of luring the voters?

3. Whether the petitioner proves that respondent 4 illegally used the ballots?

4. Whether the respondent 4 proves that the petitioner has not placed the material fact and precise statement of malpractice and in view of that petition is not maintainable?

5. Whether the respondent 4 was illegally declared as elected?

6. What order or decree?

The 4th respondent in support of her case, examined five witnesses as P.Ws. 1 to 5 and marked 16 documents as Exhibits P. 1 to P. 16. On behalf of the appellant herein, she herself examined as R.W. 1 and examined four more witnesses as R.Ws. 2 to 5 and marked three documents as Exhibits R. 1 to R. 3.

8. The Trial Court, on appreciation of the entire evidence on record, answered the 1st issue in the positive and he did not record any finding on the remaining Issues 2 to 5 inasmuch as recording of findings on those issues did not arise because of the fact that respondent 4 gave up the contentions relating to those issues. The Trial Court, in the premise of the finding recorded on Issue 1, partly allowed the election petition and set aside the election of the appellant as Councillor of Ward No. 73 by the impugned judgment. Hence this appeal by the aggrieved party.

9. We have heard Sri G.V. Shantharaju, learned Senior Counsel appearing for the appellant and Sri B.C. Seetharama Rao, learned Counsel for the contesting respondent 4.

10. Sri Shantharaju would first contend that the averments made in the election petition are bald and vague and bereft of material facts; respondent 4 has not pleaded the material facts, viz., the date of birth, place of birth and particulars of the appellant and has vaguely pleaded that the age of the appellant is 19 years based on the voters' list prepared in the year 1998. Sri Shantharaju would also contend that the Trial Court seriously erred in law in not adhering to the well-settled principle of law that evidence beyond pleadings should not be considered. According to Sri Shantharaju, since in the instant case respondent 4 has not pleaded the exact date of birth of the appellant, the Trial Court ought not to have conducted a roving and fishing enquiry with regard to the date of birth of the appellant and such a course is totally impermissible particularly in election law. Assailing the impugned judgment on merit, Sri Shantharaju would contend that the finding of the Trial Court that the date of birth of the appellant is 3-12-1980 and not 3-10-1980 is perverse and not based on legal evidence. In support of his

submission Sri Shantharaju would place reliance on the judgments of the Supreme Court in the case of Vadivelu v Sundaram and Ors., and Samant N. Balakrishna v George Fernandez and Ors.

11. Sri B.C. Seetharama Rao, learned Counsel for the contesting respondent 4, on the other hand, at the threshold would point out that the plea of the appellant now put forth by her Counsel with regard to vagueness in the pleadings is untenable in the light of the judgment of this Court dated 23rd September, 2002 in Writ Petition No. 35054 of 2002. Sri Seetharama Rao would point out that in the above writ petition, the appellant herein had sought for quashing of the election petition on the ground that election petitioner has not concisely pleaded the material facts on which the 4th respondent relies and that contention was negated by a learned Single Judge of this Court in the above writ petition and the said judgment was allowed to become final. Even otherwise, Sri Seetharama Rao would contend that the pleadings with regard to the actual age of the appellant on the date of filing nomination could not be regarded as the one lacking in material facts. Sri Seetharama Rao would maintain that material particulars are different from material facts. What is required in law is that in election petition, the petitioner should plead material facts and non-pleading of material particulars is not fatal. Be that as it may, Sri Seetharama Rao would maintain that in the instant case, the 4th respondent has pleaded both material facts and material particulars and, therefore, there is no merit in the contention of the learned Senior Counsel for the appellant. Sri Seetharama Rao would also maintain that the factual findings recorded by the Trial Court on merit are based on substantive legal evidence.

12. Sri G.V. Shantharaju, in reply, would highlight that the details such as when the appellant's name was entered in the voters' list, the actual age of the appellant on the date of filing nomination and her actual date of birth are undoubtedly "material facts" within the meaning of that term and failure to plead those facts in election petition is fatal and only on that ground the election petition should have been dismissed in limine.

13. Having heard the learned Counsels for the parties, the following points arise for our consideration and decision:

(I) Whether the Trial Court ought to have dismissed the election petition for want of material facts in the pleading of the 4th respondent?

(II) If not, whether the factual finding recorded by the Trial Court on merit with regard to the age and date of birth of the appellant is unsustainable for want of legal evidence?

14. Point No. (I):

Section 33(1) to (4) of the Act reads as under;

"33. Election petition.--(1) No election of a Councillor shall be called in question except by an election petition presented for adjudication to the District Court

having jurisdiction, within thirty days from the date of the publication of the result of election u/s 32.

(2) An election petition may be presented on one or more of the grounds specified in Section 35.--

(a) by any candidate at such election; or

(b) by any voter of the division concerned.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) 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 (Central Act 5 of 1908) for the verification of pleadings.

xx xx xx".

As could be seen therefrom, the election petition could be presented u/s 33 of the Act on one or more of the grounds specified in Section 35. Clause (a) of Sub-section (1) of Section 35 provides that if the Court is of the opinion that on the date of his election, a returned candidate was not qualified or disqualified to be chosen as the Councillor under the Act, the Court shall declare the election of the returned candidate to be void. Although, initially the 4th respondent assailed the election of the appellant on several grounds and since those grounds except the one with regard to the age of the appellant were given up subsequently by filing a memo, the only ground urged by her squarely falls within Clause (a) of Sub-section (1) of Section 35 of the Act. In other words, according to respondent 4, the appellant was disqualified to contest the election because she was underage and she did not attain the prescribed age of 21 years on the date of filing nomination. Therefore, the question to be considered is whether all the material facts with regard to the said ground taken in the election petition to invalidate the election of the appellant are pleaded or not. In terms of Section 33(4)(a) of the Act, it is mandatory that the election petition shall contain a concise statement of the material facts on which the petitioner relies.

15. We have already extracted the relevant pleading in the election petition. In the pleading, the 4th respondent has specifically pleaded that the appellant was aged 19 years only and despite that she filed her nomination as Indian National

Congress Party candidate for Ward No. 73. Having pleaded so, the 4th respondent has further stated that the appellant was not entitled to contest the election for she had not attained the age prescribed under the Act. It is also pleaded by respondent 4 that the appellant herself in her application has categorically mentioned her age as 19 years. The question to be considered is whether the above facts disclosed in the pleadings of the 4th respondent are material facts and whether any other material fact(s) in the context of the case is/are not pleaded.

16. It is true that if the Court were to find that the pleading lacks in any material facts, only on that ground the election petition is liable to be dismissed. In *Avtar Singh v. Harcharan Singh Brar*, the Punjab and Haryana High Court has held that failure to plead even a single "material fact" amounts to disobedience of the mandate of Section 83(1)(a) of the Representation of People Act, 1950 (for short, "R.P. Act"). It needs to be noticed that Clause (a) of Sub-section (1) of Section 83 of the R.P. Act is in pari materia with Clause (a) of Sub-section (4) of Section 33 of the Act. The crux of the allegation in the instant case is that the appellant on the date of filing of her nomination for Ward No. 73, did not attain the age prescribed under the Act. The prescribed age under the Act is 21 years. It is true that in the pleading, the 4th respondent, has stated only that the appellant did not attain the age prescribed under the Act, but, she has not specified the actual age and date of birth of the appellant. It is also true that though in the pleading it is stated that in the voters' list the age of the appellant is shown as 19 years, the 4th respondent did not state when that entry was made in the voters' list. But, if the entire pleading with regard to the age of the appellant is cumulatively taken into account, the pleading of the 4th respondent is sufficiently clear and precise to state that the appellant on the date of filing of the nomination did not attain the age of 21 years prescribed under the Act.

17. The Supreme Court in *Harish Chandra Bajpai and Anr. v. Triloki Singh and Anr.*, observed thus:

"It is no doubt true that pleadings should not be too strictly construed, and that regard should be had to the substance of the matter and not the form".

In para (27) of the same judgment, the Supreme Court, however, has hastened to add:

"... But then, public interests equally demand that election disputes should be determined with despatch".

It is true that in terms of Section 33(4)(a) of the Act, it is mandatory that the election petition shall contain a concise statement of the "material facts" on which the petitioner relies. The provision of Section 33(4)(a) is in pari materia with the provision of Section 83(1)(a) of the R.P. Act as per which also an election petition shall contain a concise statement of material facts on which the petitioner relies. Neither Section 33(4)(a) of the Act nor Section 83(1)(a) of the R.P. Act require the election petition to contain statement of "material

particulars". There is a distinction between "material facts" and "material particulars". For example, if an election petition contains an allegation of corrupt practice, then, in terms of Clause (b) of Sub-section (1) of Section 83 of the R.P. Act, the petitioner is required to set forth full particulars of such corrupt practice that he has alleged 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. In other words, if corrupt practice as alleged in the election petition is a ground for annulling the election, the petitioner is required to state not only "material facts" but also "material particulars" envisaged under Clause (b) of Sub-section (1) of Section 83 of the R.P. Act.

18. The distinction between "material facts" and "material particulars" is now well-understood. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are "material facts". "Material particulars", on the other hand, are the details of the case set up by the party and it would mean all the details which are necessary to amplify, refine and establish the "material facts" already pleaded in the petition. The Supreme Court in *Raj Narain v. Smt. Indira Nehru Gandhi*, in the context of "material facts" and "material particulars" to be stated in an election petition where corrupt practice is alleged, was pleased to observe thus: (para 19)

"Section 83 requires that the petition must contain a concise statement of the material facts on which the petitioner relies and the fullest possible particulars of the corrupt practice alleged. "Material facts" and "particulars" may overlap but the word "material" shows that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present as full a picture of the cause of action as to make the opposite party understand the case he will have to meet"

In the case of *Udhav Singh v. Madhav Rao Scindia*, also, the Supreme Court made a distinction between "material facts" and "material particulars". The Supreme Court said that the distinction between "material facts" and "material particulars" was important because different consequences may flow from a deficiency of such facts or particulars in the pleadings. According to the Apex Court, failure to plead even a single material fact would lead to an incomplete cause of action and incomplete allegations of such charge are required to be struck-off. But, if material particulars are lacking, they may be supplied at a later date.

19. In this case, the election of the appellant was not assailed on the ground of any corrupt practice. The election of the appellant was assailed only on the ground that she had not attained the age prescribed under the Act on the date of filing the nomination. In other words, according to respondent 4, appellant was disqualified to contest the election for Ward No. 73 as a Corporator because she was underage on the date of filing the nomination. Therefore, Clause (a) of Sub-section (4) of Section 33 of the Act is attracted with regard to the pleading.

Clause (a) of Sub-section (4) of Section 33 of the Act only requires that the election petition shall contain a concise statement of "material facts" on which the petitioner relies. In the first place, Clause (a) does not speak about "material particulars" at all. Even the "material facts" are required to be stated in a concise form. The word "Concise" as per Webster's New World Dictionary means - "Cut off, brief, brief and to the point, short and clear".

20. It is trite, the CPC applies to all trials of election petitions. Order 6, Rule 2 of the CPC provides that - "Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. . . ". The earlier part of Order 6, Rule 2 of the CPC is similar to Clause (a) of Sub-section (1) of Section 83 of the R.P. Act and Clause (a) of Sub-section (4) of Section 33 of the Act. In the premise of the statutory provisions noticed above, the point that arise for our consideration is;

"Whether necessary material facts are stated in the election petition filed by the 4th respondent herein?"

21. The allegation made by the 4th respondent with regard to the underage of the appellant on the date of filing of her nomination, in our considered opinion, is sufficiently clear and precise to bring home the said charge to the appellant. However, it is the contention of Sri Shantharaju that it is not enough if the election petition discloses only some "material facts", in order to validly maintain an election petition, the petitioner should state all material facts and if the Court were to find non-disclosure of even one material fact with regard to the disqualification alleged against the elected candidate, only on that ground the election petition is liable to be dismissed. That is why Sri Shantharaju would maintain that non-disclosure of facts such as actual date of birth of the appellant on the date of filing the nomination, the date on which her name was entered in the voters' list are also material facts and the omission to mention those facts in the pleadings is a fatal flaw warranting dismissal of the election petition in limine,

22. The Supreme Court in *Manphul Singh v. Surinder Singh*, while dealing with the contention of the learned Counsel for the appellant therein that the election petition should contain not only the "material facts", but also the evidence on which he relies to prove those material facts, was pleased to observe thus:

". . . The CPC applies to all trials of election petitions and to require that a party should not only state the material facts on which he relies, which the respondent had done more than amply in this case, but also that he should state the evidence on which he relies is not a proposition which can be accepted either as correct in law or as one which justice requires. The evidence by which they are to be proved, if included in the election petition, as contended by Mr. Garg, it would be directly contrary to the provisions of law".

In that case, the pleading was covered by Clause (a) of Sub-section (1) of Section 83 of the R.P. Act.

23. If Sri Shantharaju's contention is accepted strictly in terms and construed in extremity, it tantamounts saying that it was not enough if the petitioner were to state the elected candidate was underage on the date of filing nomination but she ought to have stated the evidence on the basis of which such allegation was made against the elected candidate. The plea that the elected candidate was underage on the date of filing nomination is a "material fact" which is, admittedly, pleaded. The evidence by which that plea could be established or proved cannot be confused or equated with the concise statement of "material facts" which an election petition is required to contain in terms of Section 33(4) (a) of the Act. Non-disclosure of details such as the actual age and date of birth of the appellant on the date of filing nomination, the date on which her name was entered in the voters' list cannot be regarded as "material facts" within the meaning of that term. They are "material particulars" and if established, they may form pieces of evidence to prove the charge that the appellant was underage on the date of filing nomination. The election petition, as pointed out supra, is required to contain only a concise statement of "material facts". This being equivalent to a cause of action, the entire evidence in support of such, material facts is not required to be set out in the pleading, if such pleading is governed by Clause (a) of Sub-section (4) of Section 33 of the Act. From the contents of the election petition filed by the 4th respondent, it is not possible to hold that a concise statement of "material facts" is not to be found in the petition.

24. From the pleading in the election petition, any prudent reasonable man could understand that the specific allegation against the appellant is that on the date of filing of her nomination, she was underage thereby meaning that she did not attain the age prescribed under the Act, thereby meaning she did not attain the prescribed age of 21 years. Procedure is the handmaid and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. This rule demands the construction which would promote this cause. In conclusion, we answer the first point in the negative.

25. Point No. (II).--This point need not detain us for long. The 4th respondent-election petitioner in order to prove that on the date of filing of nomination the appellant did not complete the age of 21 years, examined herself as P.W. 1 and examined four other witnesses and produced as many as 16 documents marked as Exhibits P. 1 to P. 16. Admittedly, the date of birth of the appellant is mentioned as 3-12-1980 in the school record and this fact is admitted by R.W. 2-father of the appellant. R.W. 2 in his cross-examination admits--"(I) myself gave date of birth of Reena in school while admitting in her school. I had knowledge of the correct date of birth of Reena at the time of admitting the school As I had knowledge about the date of birth, I gave the same date of birth in school". The Supreme Court in *Birad Mal Singhvi v. Anand Purohit*, has held that:

"If the entry in the school's register regarding the, date of birth is made on the basis of information given by parents, the entry would have evidentiary value. . .".

Therefore, entry in the school registers coupled with admission of R.W. 2 clearly establishes that the actual date of birth of the appellant is 3-12-1980. In addition, the school certificates at Exhibits P. 2, P. 3, P. 9(a) and P. 14 issued by the school authorities also declare the date of birth of the appellant as 3-12-1980.

26. According to us, on the face of the above evidence, the Court below has rightly disbelieved the inconsistent version of R.W. 2 that he had given "the date of birth of the appellant as 3-10-1989, but the school authorities might have entered her date of birth as 3-12-1980 due to confusion", The Court below has also discussed the documents produced by the respondent 4 and has given cogent and acceptable reasons to discard the same. Above all, the appellant herself, in the nomination form Ex. P. 1 has mentioned her age as 19 years as per voters' list and 21 years "hali chalthi 21 years" thereby meaning she was running 21 years of age. She did not state her date of birth; she did not state that she completed 21 years of age. That statement cannot be equated to saying that on the date of filing nomination she had completed 21 years of age. What is required under the Act is that the appellant, in order to be eligible for contesting election, should have attained the age of 21 years prescribed under the Act. As per Black's Law Dictionary, 5th Edition, the word "attain", as a verb, means "To reach or come to by progression or motion; to arrive at; as, to attain a ripe old age". As per WESTS Legal Thesaurus Dictionary, word "attain", as a verb means: "To arrive at or accomplish (attain the age of majority). Realize, actualize, procure, consummate, complete, reach, earn, achieve, perfect, effectuate, secure, effect, acquire, reap, win".

In *Re. Sheering Savory v. Sheering*, it was observed:

"A person attains the age of twenty-one years, or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be".

In *Aher Malda Dada v. State of Gujarat*, Gujarat High Court held.--

"The expression "attained the age of eighteen years" used in Section 4(d) of the Saurashtra Children Act, 1954, means "completed the age of eighteen years".

Thus, it is quite clear even according to the appellant herself, when she filed nomination paper for the election she did not complete twenty-one years of age. This is made very clear by her own language "hali chalthi 21 years".

27. Be that as it may, in the premise of clinching documentary evidence and admission of R.W. 2, it is satisfactorily established that the actual date of birth of the appellant is 3-12-1980 and not 3-10-1980. We do not find any flaw factual or legal on the part of the Court below either in appreciating the evidence on record or in the reasoning. The factual finding recorded by the Court below is based on substantial legal evidence. The Supreme Court in *Dr. Jagjit Singh v. Giani Kartar Singh and Ors.*, in para 7, has held:

". . . Naturally, as a Court of Appeal, the High Court would not interfere with the

findings of the fact recorded by the Tribunal which are based merely on appreciation of oral evidence".

Consequently, we answer Point No. (II) also in the negative.

28. In the result and for the foregoing reasons, we dismiss the appeal with costs. Advocate's fee fixed at Rs. 1,000/-.