

K. Babu vs M. Swaraj on 12 February, 2024

Author: Sanjay Kumar

Bench: Sanjay Kumar, Aniruddha Bose

2024 INSC 103

Non-Reporta

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5975 OF 2023

K. Babu

... Appellant

Versus

M. Swaraj and others

... Respondents

JUDGMENT

SANJAY KUMAR, J

1. The short question in this appeal is whether the election petition filed against the appellant by the first respondent herein was liable to be rejected at the threshold? The High Court of Kerala at Ernakulam answered this question in the negative, prompting the appellant to come before us.

2. Having heard the appeal in part on 18.01.2024, we stayed further proceedings in the election petition.

3. The appellant and the six respondents herein contested in the election to the 15th Kerala Legislative Assembly, held on 06.04.2021, from 081-Tripunithura Legislative Assembly Constituency. The appellant was declared elected on 02.05.2021, having polled 992 votes more than the next candidate, viz., the first respondent. Thereupon, Election Petition No. 8 of 2021 was filed by the first respondent before the High Court of Kerala at Ernakulam under Sections 80, 81, 83, 84, 100, 101 and 123 of the Representation of the People Act, 1951 (for brevity, 'the Act of 1951'), seeking a declaration that the election of the appellant was void and, in consequence, to declare him duly

elected.

4. The appellant filed preliminary objections in the election petition. Therein, he contended that the petition was liable to be dismissed under Section 86 of the Act of 1951 for non-compliance with Section 81 thereof. He claimed that a complete election petition, after the curing of defects, was placed before the Court beyond the period of limitation and, further, sufficient number of copies, as required under Rule 212 of the Rules of the High Court of Kerala, 1971 (for brevity, 'the Rules of 1971'), were not filed. He also claimed that the copy of the election petition furnished to him was not a true copy of the petition filed.

5. The second ground urged by the appellant in his objections was in relation to Section 83 of the Act of 1951, which requires an election petition to contain a concise statement of material facts and full particulars of any corrupt practice, including the names of the parties alleged to have committed such corrupt practice along with the date and place of commission of each such practice. The appellant asserted that the pleadings in the election petition lacked material facts and particulars of the corrupt practices attributed to him and, therefore, the election petition did not disclose a cause of action. He prayed that the election petition be dismissed at the threshold under Order VII Rule 11 CPC.

6. By the impugned order dated 29.03.2023, a learned Judge of the High Court of Kerala at Ernakulam accepted the plea of the appellant to some extent but ultimately found that sufficient cause of action was made out for trial of the election petition to decide whether the election of the appellant on 06.04.2021 was null and void. The learned Judge accordingly held that the election petition would be proceeded with in respect of the identified issue alone and granted time to the respondents in the election petition to file their objections/further objections, if any.

7. Perusal of the impugned order reflects that the learned Judge was of the opinion that the defects pointed out by the appellant were not in relation to Section 81(3) of the Act of 1951 but pertained only to Rule 212 of the Rules of 1971. The learned Judge, therefore, held that the lapses in that regard did not amount to non-compliance with Section 81(3) of the Act of 1951 and the election petition was not liable to be rejected by invoking the provisions of Section 86(1) thereof.

8. Further, upon considering precedents on the issue, the learned Judge held that the statements allegedly made by the appellant and his election agents did not amount to a corrupt practice, as defined in Sections 123(2)(a)(ii) and 123(3) of the Act of 1951. However, apropos the allegation that the appellant had used a religious symbol to further his prospects in the election and thereby committed a corrupt practice within the sweep of Section 123(3) of the Act of 1951, the learned Judge found that the slips distributed by the appellant and his election agents depicted a picture of Lord Ayyappa and voiced an appeal to vote for the appellant. Thereupon, the learned Judge opined, prima facie, that use of the picture of Lord Ayyappa in the slips distributed by and on behalf of the appellant constitutes a corrupt practice under Section 123(3) of the Act of 1951 and that the election petition, with respect to this aspect, was liable to be tried.

9. Aggrieved by the aforesaid order, the appellant filed the present case. In his grounds, he raised mainly two issues. He contended that the election petition was not in compliance with Section 83 (sic 81) of the Act of 1951, as sufficient number of copies of the petition were not filed at the time of its presentation. He further stated that copies of the documents served on the respondents in the election petition were not true copies and had not been attested as true copies. According to him, the defects pointed out in the election petition were not cured within time and were rectified after expiry of the period of limitation prescribed for filing of an election petition. He reiterated his plea that the election petition, filed without complying with statutory provisions, was liable to be rejected summarily. He again asserted that the election petition was lacking in material facts and particulars. According to him, facts relating to printing and publishing of the slips with the religious symbol were not furnished to the extent required and the election petition also did not disclose the source of information regarding distribution of such slips by and on behalf of the appellant. He, therefore, prayed for rejection of the election petition on these grounds.

10. We may first take note of the relevant provisions in the Act of 1951. Section 86 is the first provision in Chapter III of the Act of 1951, titled 'Trial of Election Petitions'. Section 86(1) alone is relevant for the purposes of this case and it reads thus: -

'86. Trial of election petitions.-

(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 turn, Section 81(3), which is presently pertinent, falling in Chapter II of the Act of 1951, titled 'Presentation of Election Petitions to High Court', reads thus: -

'81. Presentation of petitions.-

(1).....

(2).....

(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.....' Section 83, falling in the same Chapter, deals with the contents of an election petition and, to the extent relevant, it is extracted hereunder: -

'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).....’

11. Before us, arguments were advanced only upon non-compliance with Section 81(3) of the Act of 1951, warranting invocation of Section 86(1) thereof, and not on the other issue regarding lack of material facts and particulars in the pleadings, as required by Section 83 of the Act of 1951. In any event, it is well settled that non-compliance with the requirements of Section 83 of the Act of 1951 is not fatal, as Section 86(1) thereof only speaks of non-compliance with Sections 81, 82 or 117 being the basis for dismissal of an election petition at the outset. Defects in an election petition that constitute non-compliance with Section 83 of the Act of 1951 have been held to be curable defects (See *T. Phungzathang vs. Hangkhanlian and others*¹; *Umesh Challiyill vs. K.P. Rajendran* ²; *Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and others* ³; *G.M. Siddeshwar vs. Prasanna Kumar*⁴; and *A. Manju vs. Prajwal Revanna alias Prajwal R and others*⁵). Further, once the High Court opined that a triable issue under Section 123(3) of the Act of 1951 is made out, we find no grounds to interfere therewith.

12. As regards the appellant’s primary ground, i.e., non-compliance with the requirements of Section 81(3) of the Act of 1951, warranting (2001) 8 SCC 358 (2008) 11 SCC 740 (2012) 7 SCC 788 (2013) 4 SCC 776 (2022) 3 SCC 269 peremptory rejection of the election petition, it may be noted that it was never the case of the appellant that the election petition was not accompanied by as many copies as there were respondents in the petition. His complaint was that sufficient number of authenticated copies were not furnished as required under Rule 212 of the Rules of 1971. This Rule is contained in Chapter XVI of the Rules of 1971, titled ‘Election Petitions’. Rule 212, to the extent relevant, reads as follows: -

‘212. Copies of petitions etc., to be furnished.-

(1) Every petition shall be accompanied by 3 authenticated copies of the application for the use of the court and twice the number of additional copies as there are respondents to be produced along with the application for service along with summons as per rules 210 and 211.....’

13. It is obvious from a plain reading of the aforesaid Rule that the three authenticated copies are for the use of the Court only. Further, copies of petitions to be furnished under this Rule are clearly in addition to what is required to be filed under Section 81(3) of the Act of 1951. Though the appellant also made a bald statement in his preliminary objections that the copy of the petition furnished to him was not a true copy of the election petition, he did not elaborate on what he meant by that. More importantly, a specific allegation was never made by him that the copy of the petition furnished to him was not attested by the first respondent under his own signature to be a true copy of the election petition.

14. In his grounds in the present case, the appellant stated that copies of the documents served on the respondents in the election petition were not true copies and had not been attested as such. However, a precise averment was not made by the appellant even before us that the copy of the petition supplied to him was not attested by the first respondent under his own signature to be a true copy of the election petition. Significantly, the copy of the petition furnished to him was neither produced before the High Court nor before us to substantiate this plea. In effect, the only point urged by the appellant is that the election petition is liable to be rejected for non-compliance with the requirement of Rule 212 of the Rules of 1971.

15. Though it has been argued before us that the requirements of Rule 212 of the Rules of 1971 must be imported into and combined with those prescribed by Section 81(3) of the Act of 1951, we are not impressed. When the statutory provision unequivocally stipulates as to what is required to be done to comply with the mandate thereof, it is not permissible in law to read something more into that provision. Rule 212 of the Rules of 1971 introduces additional requirements prescribed by the High Court and the same cannot, by any stretch of imagination, be read into and be made part and parcel of Section 81(3) of the Act of 1951.

16. Viewed thus, the objections raised by the appellant against the maintainability of the election petition filed by the first respondent had no merit and the order of the High Court holding to that effect warrants no interference.

The appeal is accordingly dismissed.

Interim order dated 18.01.2024 shall stand vacated. Pending miscellaneous application(s) shall stand dismissed. Parties shall bear their own costs.

.....,J (ANIRUDDHA BOSE)J (SANJAY KUMAR) February 12, 2024;

New Delhi.