

A. Manju vs Prajwal Revanna @ Prajwal R on 13 December, 2021

Author: Sanjay Kishan Kaul

Bench: M.M. Sundresh, Sanjay Kishan Kaul

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1774 OF 2020

A. MANJU

... App

Versus

PRAJWAL REVANNA @ PRAJWAL R & ORS ...Respondents

JUDGMENT

SANJAY KISHAN KAUL, J.

Facts:

1. The moot point for consideration in the present appeal is whether an election petition can be thrown out at the threshold on a plea of the respondent/elected candidate that the petition is not supported by an affidavit in Form 25, as prescribed under Rule 94A of Conduct of Election Rules, 1961, even though the petition is based on allegations of corrupt practices.
2. The appellant was a candidate from 16 Hassan (General) Parliamentary Constituency (for short 'Constituency') in the 2019 elections and was stated to have been sponsored by the Bharatiya Janata Party. Respondent No.1 was sponsored by Janatha Dal Secular Party and was also a candidate from the Constituency. Respondent Nos. 2 to 6 were sponsored by local/regional parties but, as transpired from the elections, were not serious contestants in real terms. The Election Commission of India issued a notification on 12.01.2019 appointing a Returning Officer to the Constituency where elections were held on 18.04.2019. The appellant secured 5,35,282 votes while respondent no.1 secured 6,76,606 votes. The other respondents secured only marginal votes.

3. The appellant preferred an election petition under Section 81 of the Representation of People Act, 1951 (hereinafter referred to as the 'RP Act') on 26.06.2019 challenging the election of respondent no.1. The appellant sought a declaration that respondent no.1's election was liable to be declared void on account of respondent no.1 having filed a false affidavit and consequently the appellant should be declared as duly elected on account of his having secured the second highest votes. This petition was resisted by respondent no.1 at the threshold who filed an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code') and Section 86(1) of the RP Act seeking dismissal of the election petition on account of non-compliance of Section 81(3) and the proviso to Section 83(1) of the RP Act.

4. In order to appreciate the rival submissions of the learned counsel for the parties, it would be appropriate to extract the relevant Sections of the RP Act. Chapter II under Part VI of the RP Act deals with the Presentation of Election Petitions to the High Court. The presentation of petitions has to be as per Section 81 of the RP Act. The contents of an election petition are as set out in Section 83. The relevant provisions read as under:

“81. Presentation of petitions.— xxxx xxxx xxxx xxxx [(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.]”

“[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.]” Chapter III under Part VI of the RP Act deals with trial of election petitions. The relevant portion of Section 86 is extracted as under:

“[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.”
Submissions of Respondent No.1 before the High Court:

5. In the conspectus of the aforesaid provisions, we first set out the pleas of respondent no.1 which it raised in its application before the High Court and on the basis of which the election petition was sought to be dismissed at the threshold. The grievance in a nutshell is set out below:

(a) non-compliance of Section 81(3) of the RP Act on the ground that the election petition was not attested by the appellant under his own signature as a true copy. Respondent no.1 sought to rely on the mandatory nature of such compliance as enunciated in *Sharif-ud-din v.*

*Abdul Gani Lone*¹ and the consequence of non-compliance was rejection of the election petition under Section 86 of the RP Act. The object of this rule is to ensure that the petitioner takes full responsibility of its contents and then the respondent in turn receives a true and accurate copy of the petition.

(b) Respondent no.1 alleged that the appellant had made allegations against him in the election petition which would constitute an allegation of “corrupt practice”. The proviso to Section 83(1) of the RP Act mandates that all allegations of corrupt practice must be accompanied by an affidavit in the prescribed form in support of the allegations. The form of affidavit is as set out in Form 25 as per the mandate of Section 94A of the Conduct of Election Rules, 1962 (hereinafter referred to as the ‘Election Rules’). The mandatory requirement of the filing of such an affidavit has formed part of the observations in *B.R. Patil v. Rajeev Chandrashekhar & Ors.* 2 of the (1980) 1 SCC 403 ILR 2007 Kar 317 Karnataka High Court and *Purushottam v. Returning Officer, Amravati & Ors.* 3 of the Bombay High Court.

Submissions of the Appellant before the High Court:

6. On the other hand, the appellant sought to contest this application filed by respondent no.1. It was urged that the appellant had in any case substantially complied with Section 81(3) by ascribing his signature and duly verifying every page of the election petition, including on the copies furnished to respondent No.1. Further, the index and synopsis of the petition were not required to be attested as they were not part of the election petition by their very description. In any case this was stated to be substantial compliance in terms of Section 81(3) of the RP Act, which required an election petition to be admitted in light of the observations of the Supreme Court in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad & Ors.*⁴

7. On the second plea advanced by respondent No.1, the appellant contended that the question of filing Form 25 would arise only if there are any allegations of corrupt practice as defined by Section 123 of the RP Act. The appellant pleaded that the

election petition actually fell AIR 1992 Bom 227 AIR 1964 SC 1027 within the purview of Section 33A of the RP Act as inserted by Act 72 of 2002 which required certain information to be furnished by a candidate.

Section 33A of the RP Act reads as under:

“33A. Right to information.— (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-

section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.” The allegation in the election petition dealt with suppression of information. The appellant did not allege Section 123 of the RP Act against Respondent No.1 and the specific averment to corrupt practice made in para 32 was simply alluding to the observations of this Court in Krishnamoorthy v. Sivakumar & Ors.⁵, opining that non-disclosure of assets and income amounts to corrupt practice.

The decision of the High Court:

8. The learned single Judge of the High Court allowed the application filed by respondent no.1 by the impugned judgment dated 17.01.2020.

The learned Judge analysed the circumstances under which the election petition could be dismissed at the threshold by referring to the observations of this Court in H.D. Revanna v. G. Puttaswamy Gowda & Ors.⁶ and T. Phungzathang v. Hangkhanlian & Ors. ⁷ setting out only two circumstances in which the petition could be dismissed in limine: (i) non-compliance of Sections 81, 82 and 117 of the RP Act; and (ii) non-compliance of Section 83 only when the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of the said Code.

9. In the conspectus of the pleas advanced, it was opined that a substantial compliance of Section 81(3) of the RP Act saves an election (2015) 3 SCC 467 AIR 1999 SC 768 (2001) 8 SCC 358 petition from dismissal. We may add here that the only issue here was about the index and the synopsis not being signed by the appellant. In the given facts, the appellant had attested the election petition with his endorsement that it was a correct copy of the election petition and hence had substantially complied with the requirements.

10. The more crucial issue examined by the High Court which resulted in an adverse order against the appellant was qua the requirement of submission of Form 25. The submission of respondent no.1 that filing of Form 25 would arise only if the allegations made in the election petition pertained to Section 123 of the RP Act was repelled by the learned Single Judge. The learned Single Judge held that the use of the phrase “any corrupt practice” in the proviso to Section 83 of the RP Act covers allegations of every manner of corrupt practice envisaged under the RP Act. In any case, the High Court was of the view that the appellant had alleged undue influence and improper acceptance of respondent No.1’s nomination under Sections 123 and 100 of the RP Act respectively. Accordingly, the appellant’s submission that the allegations against respondent No.1 were confined only to Section 33A of the RP Act was liable to be rejected.

11. The High Court thereafter proceeded to examine the consequences of non-submission of Form 25 and opined that in view of the dictum laid down in Ponnala Lakshmaiah v. Kommuri Pratap Reddy & Ors.,⁸ the absence of an affidavit or an affidavit in a form other than the one stipulated, would not itself cause prejudice to the election petitioner so long as the deficiency was cured. However, in the case at hand the appellant had not filed any affidavit. Thus, the Ponnala Lakshmaiah⁹ case would not come to the aid of the appellant. However, a closer case on facts would be of G.M. Siddeshwar v. Prasanna Kumar¹⁰ where a Three Judge Bench enumerated triple principles: (i) total non-compliance of Section 83 of the RP Act means that a petition cannot be described as an election petition and must be dismissed at the threshold; (ii) if defects are curable, then the petition cannot be dismissed summarily as Section 86 of the RP Act sanctioned dismissal only for non-compliance with Sections 81, 82 & 117 of the RP Act; and (iii) a determination of the gravity of defects would have to be made in the facts of each case, to determine whether there had been non-compliance with an integral part of Section 83 or not. The High Court opined that Form 25 was an AIR 2012 SC 2638 (supra) (2013) 4 SCC 776 integral part of the election petition and its complete absence would mean that there was total non-compliance of Section 83 of the RP Act. The election petition was, thus, held as not maintainable.

12. In the conspectus of the aforesaid finding the scope of arguments before this Court became narrower.

Appellant’s submissions before the Supreme Court:

13. Learned counsel for the appellant sought to contend that the grounds in the election petition were specific to Section 100(1)(d)(i) and

(iv) of the RP Act. Section 100(1) of the RP Act reads as under:

“100. Grounds for declaring election to be void. – [(1) Subject to the provisions of sub-section (2) if [the High court] is of opinion--

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]”

14. It was, thus, contended that the allegations deal with the improper acceptance of the nomination and non-compliance with statutory provisions. The allegations of corrupt practice are contained in Section 123 and Section 100(1)(d)(ii) of the RP Act and the election petition does not relate to either of these provisions. Thus, the submission of Form 25 was not necessary.

15. It was further sought to be urged by referring to Section 83 of the RP Act that the signing and verification of pleadings in terms of Section 83(1)(c) of the RP Act if not complied with, cannot be fatal and the circumstances in which a petition could be thrown out at the threshold in terms of Section 86(1) of the RP Act were only non-compliance of Sections 81, 82 and 117 of the RP Act. This issue was urged not to be res integra in view of the judgment of this Court in Ponnala Lakshmaiah¹¹ case, wherein this Court opined against the rejection of an election petition at the threshold stage on hyper-technical grounds. The observations in this case by the Supreme Court have received the imprimatur of a larger Bench of three Judges in G.M. Siddeshwar¹² case, where the relevant portion from Ponnala Lakshmaiah¹³ case has been extracted as under:

“43. More recently, the issue was again considered in Ponnala Lakshmaiah and relying upon Sardar Harcharan Singh Brar v. Sukh Darshan Singh, (2004) 11 SCC 196 it was held: (Ponnala Lakshmaiah case SCC p. 799 para 22) “22. Even otherwise the question whether non-compliance with the proviso to Section 83(1) of the Act is fatal to the election petition is no longer res integra in the light of a three-Judge Bench decision of this Court in Sardar Harcharan Singh Brar v. Sukh Darshan Singh. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support (supra) (supra) (supra) of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.”

44. The issue having been considered several times by this Court must now be allowed to rest at that.”

16. Lastly it was contended that in any case non-filing of an affidavit or non-filing of proper verification is a technical defect which is curable and at best the High Court ought to have given an opportunity to cure the defect by allowing the appellant to file a proper affidavit. Dismissal of the election petition under Order VII Rule 11 of the said Code at the threshold was not warranted.

Respondent's submissions before the Supreme Court:

17. Learned counsel for respondent no.1, however, contended that there could not be any waiver of the non-compliance of a mandatory affidavit in the prescribed Form 25 as provided under Section 83(1) of the RP Act, especially when grave charges of corrupt practices have been made. The plea of the appellant in the election petition was based on the submission of a false affidavit vide Form 26 by respondent no. 1 at the stage of filing nomination papers, amounting to non-disclosure of assets, which in turn constituted corrupt practice under Section 123 of the RP Act. No such affidavit had been filed and this defect could not be cured at a later stage as observed in Ravinder Singh v. Janmeja Singh & Ors.¹⁴

18. In substance the submission of learned counsel for respondent No.1 was that the absence of an affidavit stands on a different footing from submission of a defective affidavit, as recognised in the G.M. Siddeshwar¹⁵ case which opined that total non-compliance of Section 83 of the RP Act cannot be cured. It was urged that permitting an affidavit to be filed at a later stage would provide an opportunity for embellishment of the case and defeat the statutory requirement of an affidavit. The nature of allegations made by the appellant against the respondent, it was urged, were in the nature of undisclosed profits from commercial operations through a partnership, and receipt of money from a sitting Rajya Sabha member. The allegations were made without disclosing any sources of

information by way of an affidavit in Form 25. Conclusion:

19. We must begin at the inception by stating that intrinsically, election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is (2000) 8 SCC 191 (supra) sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the appellant is largely that success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they are not hyper- technical, as observed in the Ponnala Lakshmaiah¹⁶ case. We have considered the aforesaid aspect by quoting the observations made therein which have received the imprimatur of a larger Bench.

20. In the conspectus of the aforesaid, if we examine the facts of the present case, the hyper-technical view sought to be taken of non-signing and verification of the index and the synopsis has been rightly rejected by the High Court.

21. Thus, the real and core question before us is that in view of the allegations of the alleged non-disclosure of assets in Form-26 by respondent No.1 being cited as “corrupt practice”, would it be mandatory (supra) for the election petitioner to file an affidavit in Form-25 and what would be the consequences of not filing such an affidavit.

22. We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore¹⁷ which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner’s petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar¹⁸ case to come to a conclusion that non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied, i.e., even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of respondent No.1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.

AIR 1964 SC 1545 : (1964) 3 SCR 573 (supra)

23. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah¹⁹ case which have received the imprimatur of the three Judges Bench in G.M. Siddeshwar²⁰ case appear not to have been appreciated in the correct perspective. In fact, the G.M. Siddeshwar²¹ case has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed

by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge, i.e. Ponnala Lakshmaiah²² as well as G.M. Siddeshwar²³, ought (supra) (supra) (supra) (supra) (supra) to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.

24. The arguments of learned counsel for respondent No.1 were predicated on the distinction between the absence of an affidavit and a defective affidavit. This pre-supposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of respondent No.1.

25. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by respondent no.1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.

26. The result of the aforesaid is that the impugned order of the learned single Judge dated 17.1.2020 is set aside and the application filed by respondent no.1 under Order 7 Rule 11, S. 151 of the said Code and S. 86(1) of the RP Act would stand dismissed with liberty to the appellant to file an appropriate affidavit in Form 25 within fifteen (15) days from today. The further proceedings in the election petition are required to be taken up urgently as almost two and a half years have gone on the preliminary skirmishes rather than the meat of the matter, which we are sure the learned single Judge of the High Court would so do.

27. The appeal is accordingly allowed leaving the parties to bear their own costs.

.....J. [Sanjay Kishan Kaul]J. [M.M. Sundresh] New Delhi.

December 13, 2021.