

G. Mallikarjunappa And Another vs Shamanur Shivashankarappa & Others on 4 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1829, 2001 AIR SCW 1599, 2001 AIR - KANT. H. C. R. 2947, 2001 (4) SCC 428, (2001) 3 RECCIVR 643, (2001) 3 SCALE 217, (2001) 2 CIVLJ 872, (2001) 3 SUPREME 276

Bench: Chief Justice, R.C. Lahoti, Doraiswamy Raju

CASE NO.:

Appeal (civil) 4172-73 of 1999

PETITIONER:

G. MALLIKARJUNAPPA AND ANOTHER

Vs.

RESPONDENT:

SHAMANUR SHIVASHANKARAPPA & OTHERS

DATE OF JUDGMENT:

04/04/2001

BENCH:

CJI, R.C. Lahoti & Doraiswamy Raju

JUDGMENT:

DR. A.S. ANAND, CJI L...I...T.....T.....T.....T.....T.....T.....T...J Election from 6th Davanagere Constituency to the 12th Lok Sabha was held on 22nd of February, 1998. The result of election was declared on 2nd March, 1998. First appellant besides respondents 1 to 7 were candidates at the election. The second appellant is the son of the first appellant. He is an elector of the Constituency, who had also acted as the election agent of the first appellant. The first respondent was declared elected by a margin of 11,332 votes. The election of first respondent was challenged by filing an election petition by both the appellants on various grounds of commission of corrupt practices. According to the appellants, it was to meet a procedural objection raised by the Registry of the High Court that two sets of court fee were paid and the original joint election petition was bifurcated into two separate election petitions being Election Petition Nos. 4 and 5 of 1998. Besides seeking setting aside of the election of the first respondent, the appellants also sought a declaration to the effect that the first appellant be declared elected. After respondents were served, the first respondent filed an application (I.A.1) under Order 7 Rule 11 read with Section 151 C.P.C. praying for dismissal of Election Petition in limine under Section 86 of the Representation of People Act firstly on the ground

that the affidavit filed in support of the Election Petition, was not in the proper format and there was, thus, violation of Section 83(2) of the Representation of the People Act. It was also alleged that verification of the affidavit and the Election Petition did not tally and the election petitions were liable to be dismissed in limine. The other objection raised was the alleged incapacity of appellant No.2 to maintain an Election petition on the ground that the name of appellant No.2 as given in the Election Petition did not tally with the name of appellant, as contained in the form for appointment of election agent and because of "difference of identity" the Election Petition could not proceed to trial and was liable to be rejected at the threshold. Some other objections were also raised but those touch upon the merits of the case and we are not concerned with those at this stage.

The appellants resisted the application and asserted that Election Petition could not be dismissed in limine under Section 86(1) of the Representation of People Act on the alleged grounds mentioned in I.A.1. A learned Single Judge of the High Court of Karnataka vide order of 3rd November, 1998 allowed the application (I.A.1) and dismissed both the Election Petitions (Election Petition Nos. 4 and 5 of 1998) in limine. It was held that there had been non-compliance with Rule 94-A of the Rules inasmuch as the affidavit filed in support of the allegations of corrupt practices with the Election Petitions did not comply with the requirements of the format as prescribed in Form No.

25. As regards the other objection to the maintainability of the Election Petitions, namely, that appellant No.2 was shown as "G.M. Siddheshwarappa" in the election petition whereas in the election agent form, the election agent of appellant No.1, namely, appellant No.2, had signed his name as "Siddheshwar" and not as "G.M. Siddheshwarappa". The learned single Judge found that there was "difference of identity" of the petitioner in the Election Petition and the election agent form, rendering the election petitions as not maintainable. Order of the learned Single Judge dismissing both the election petitions has been put in issue before us in these appeals.

Mr. A.K. Goel, learned senior counsel appearing on behalf of the appellants, submitted that the High Court fell in error in dismissing the Election Petition for alleged non-compliance with Section 83(2) of the Representation of the People Act and that even if there was some defect in the affidavit on its verification, it was a curable defect and Election Petition did not merit dismissal in limine. Reliance in this behalf was placed on *F.A. Sapa and others vs. Singora and others*, 1991(3) SCC 375. Mr. Goel submitted that affidavit did not suffer from any defect and that even if it was defective and not in accordance with Rule 94A as alleged, non-compliance with provisions of Section 83(2) of the R.P. Act, did not attract Section 86(1) of the Act and the election petitions could not be dismissed in limine. Mr. Goel further submitted that the name of appellant No.2 is G.M. Siddheshwarappa. He is an elector of the Constituency and his name also appears in the voters' list as G.M. Siddheshwarappa. That he is the son of appellant No.1 but the mere fact that in the form for appointment of appellant No.2 as an election agent of appellant No.1, he had signed as "Siddheshwar" is wholly immaterial and of no consequence and there was no "crisis of identity" or "difference of identity" as held by the learned single Judge of the High Court.

Mr. G.L. Sanghi, learned senior counsel for first respondent, on the other hand submitted that verification of the affidavit was not at all proper and that the affidavit filed by the appellants was also not in the format (Form No.25) prescribed under Rule 94-A of the Act. He submitted that since

an Election Petition making allegations of corrupt practices is required to be supported by an affidavit, defect in the affidavit would render such an Election Petition incompetent and it was liable to be dismissed in limine.

We have given our thoughtful consideration to the submissions made at the Bar. An election petition is liable to be dismissed in limine under Section 86(1) of the Act if the election petition does not comply with either the provisions of 'Section 81 or Section 82 or Section 117 of the R.P. Act'. The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly 'defective' affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

In F.A. Sapa case (supra), a three Judge Bench of this Court specifically dealt with an issue concerning defects in the verification of an election petition as well as of defects in the affidavit accompanying an election petition wherein allegations of corrupt practice are made. After considering the provisions of Sections 83 and 86 of the Act, as also the requirements of Form No.25 prescribed by Rule 94-A of the Rules and relevant provisions of the Code of Civil Procedure, the Court opined: "From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and

(iv) the defect in the affidavit in the prescribed Form 25 can be cured....."

Again in Dr. Vijay Laxmi Sadho v. Jagdish, JT 2001(1) SC 382, this Court opined: "We are in respectful agreement with the view expressed in F.A. Sapa's case (supra) and in view of settled law the conclusion becomes irresistible that defect in verification of an affidavit is curable and does not merit dismissal of an election petition in limine under Section 86 (1) of the Act."

Thus, we have no hesitation in holding that the view of the learned single Judge to the contrary is unsustainable. In so far as the second ground on which the Election Petitions were dismissed namely the alleged "difference of identity", the least said the better. In fairness to learned senior counsel, Mr. Sanghi appearing for the first respondent, we must record that he did not pursue the challenge to the maintainability of the Election Petition on that ground. The learned Single Judge of the High Court, in our opinion, was in error in holding that there was any "difference of identity" of appellant No.2 and that the Election Petitions were not maintainable on that ground. An Election

Petition challenging the election of a returned candidate can be filed not only by other candidate/candidates at the election but also by a voter. Appellant No.2, the son of appellant No.1, who had also acted as an agent of appellant No.1, challenged the election of first respondent in his capacity as a voter. There is no dispute that the name of the second appellant as given in the election petition tallies with his name as appearing in the voters list. There was, thus, no discrepancy in the name of appellant No.2 in the election petition let alone any "difference of identity". The High Court was in error in finding that since there was difference in the name of the appellant No.2 as given in the Election Petition and the voters' list from the one given in the form for his appointment as an election agent, the defect was "fatal". The view is clearly erroneous. As a result of the above discussion we find that the order of the learned Single Judge cannot be sustained. The election petitions could not have been dismissed on either of the two grounds in limine. The impugned order is, therefore, set aside. Both these expressions of opinion on the merits of other objections raised in the written statement filed by the returned candidate, succeed and are allowed. The Election Petitions are remanded to the High Court for their disposal on merits in accordance with law. We clarify that our order shall not be construed as any expression of opinion on the merits of other objections raised in the written statement filed by the returned candidate. Petitions expeditiously. We request the High Court to dispose of the Election There shall be no order as to costs so far as these appeals are concerned.