

## Sahodrabai Rai vs Ram Singh Aharwar on 2 February, 1968

**Equivalent citations: AIR1968SC1079, 1968(16)BLJR810, [1968]3SCR13, AIR 1968 SUPREME COURT 1079, 1968 ALL. L. J. 782, 1968 BLJR 810, 1968 JABLJ 877, 1968 2 SCJ 650, 1968 MAH LJ 397, 1968 MPLJ 713, 1968 SCD 920**

**Bench: K.S. Hegde, M. Hidayatullah, R.S. Bachawat**

### JUDGMENT

Hidayatullah, J.

1. This is an appeal against the judgment of the High Court of Madhya Pradesh at Jabalpur, dated September 21, 1967, dismissing the election petition filed by the appellant on the preliminary ground that a proper copy of the election petition was not served upon the answering parties. The facts of the case are as follows :

2. The appellant was a candidate for election to the Sagar Lok Sabha Scheduled Castes constituency No. 24. The election took place on February 20, 1967. There were three other contesting candidates of whom the first respondent secured the largest number of votes and was declared elected. The appellant secured the second largest number of votes, her votes being less by just under 300 than the successful candidate's votes. An election petition was thereafter filed by the appellant on April 5, 1967. In this election petition the appellant challenged the election of the first respondent on four grounds. They were (a) wrongful acceptance of his nomination paper, (b) corrupt practice inasmuch as he appealed to religion through a pamphlet, marked Annexure 'A', (c) undue influence, and (d) breaches of the Act and Rules. The pamphlet to which reference is made was styled Bhayankar Vajraghat and was published by Sarvadaliya Goraksha Mahabhiyan Samiti, Deori Kalan Branch. It charged the party of the appellant namely the Congress with encouraging cow-slaughter and offending the Hindu Sentiment. Details were given in it of the number of animals slaughtered every day in Madhya Pradesh and elsewhere and blamed the Congress with being a party to the practice. In the body of the election petition a translation in English of the Hindi pamphlet was incorporated. The original pamphlet was attached to the election petition and was marked Annexure 'A'. The election petitioner proceeded to say in her petition "it forms part of the petition".

3. When parties appeared the first respondent filed his written statement in great details. He dealt with this pamphlet and answered the allegations of the election petitioner in relation thereto paragraph by paragraph. As a result of these pleas a number of issues were raised on July 18, 1967. No issue was raised in regard to the service of a defective copy of the election petition upon the respondents in general and the first respondent in particular. However, on August 3, 1967, a special

objection was made by the first respondent claiming that the copy of the pamphlet had not been annexed to the copy of the election petition served upon him and therefore the election petition was liable to be dismissed in accordance with the provisions of s. 86 of the Representation of the People Act. A detailed reply to this objection was given by the election petitioner. She stated that this was an after-thought inasmuch as the translation of the pamphlet was incorporated in the election petition and the allegations regarding the pamphlet had been answered in detail by the answering respondent. The Court thereupon framed an additional issue on August 4, 1967. The issue ran as follows :

"Whether the election petition is liable to be dismissed for contravention of s. 81(3) of the Representation of the People Act, 1951 as copy of Annexure A to the petition was not given along with the petition for being served on the respondents".

4. Parties first filed a number of affidavits pro and con. Later the Court ordered attendance of the deponents for cross-examination. In this way the appellant and her counsel who had filed affidavits earlier were examined. Their case was that the copies of the election petition had been properly put together including in each copy an original pamphlet for service on the respondents. On the other side the first respondent and two others filed affidavits stating that when the copy of the election petition was received it was not accompanied by the pamphlet. In their examination in Court all maintained the same position and were cross-examined. The learned Judge trying the case also ordered the attendance of the Reader of the Deputy Registrar of the High Court who had dealt with the election petition and he was examined as Court witness No. 1. He stated that the copies of the petition were complete except that the pamphlet was not annexed to each copy. He stated that he had noted at the time this fact but had treated the pamphlet as a document and not as an Annexure to the election petition.

5. The learned Judge, on an appraisal of this material held that the copies of the election petition served upon the respondents were not accompanied by the pamphlet which was an Annexure to the election petition. After examining the law on the subject the learned Judge came to the conclusion that the election petition should be dismissed under s. 86 of the Representation of the People Act and he accordingly dismissed it with costs. No other issue which was struck between the parties was gone into because the election petition failed at the very threshold.

6. In this appeal it is contended that the learned Judge was in error in thinking that the pamphlet ought to have accompanied the copies of the election petition or that the law required that it should have been annexed to the copy of the election petition served on the respondents. In this connection our attention was drawn to the provisions of the Representation of the People Act to which we shall refer presently. On the other side it was contended that whatever the meaning of the expressions "the election petition", "annexures" or "schedules" in the Act, the election petitioner by her own conduct had made this document a part of the election petition and therefore it was incumbent upon her to have served the whole of the election petition and not only a part of it as she did and therefore the order now appealed against was correct. Before we come to these rival contentions we find it necessary to refer first to the relevant provisions on the subject.

7. Section 81 of the Representation of the People Act occurs in Chapter II which is headed "Presentation of Election Petition to Election Commission". It provides as follows :

"Presentation of Petitions :

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation :- In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

.....

(3) Every election petition shall be accompanied by as many copies thereto 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."

8. The first respondent draws pointed attention to the third sub-section which says that 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. The dispute therefore is whether the pamphlet could be described in this case as a part of the election petition. The answering respondent says that it is so and was considered to be so by the election petitioner herself when she stated that it was to be read as a part of the election petition.

9. The matter, in our opinion, is not to be resolved on how the election petitioner viewed the matter but from the point of view of the requirement of the law on the subject. For this purpose we have to turn to s. 83 of the Representation of the People Act which provides what the contents of the election petition shall be. It reads as follows :-

(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.

10. The answering respondent herein again draws pointed attention to the fact that the schedules and the annexures to the petition are mentioned and they have to be signed and verified in the same manner as the petition meaning thereby that as the election petitioner had made the pamphlet a part of the election petition she was required to sign and verify the pamphlet and also to serve a copy of it as required by sub-s. (3) of s. 81 when the election petition was served. He then relies upon s. 86 which provides that the High Court shall dismiss an election petition which does not comply with the provisions of s. 81, s. 82 or s. 117.

11. An argument was raised in this case as to whether s. 86(1) is mandatory or merely directory. We need not go into this aspect of the case. In our opinion, the present matter can be resolved on an examination of the relevant facts and the contents of the election petition as detailed in s. 83 reproduced above. It may be pointed out here that the trial of election petition has to follow as far as may be the provisions of the Code of Civil Procedure. We are therefore of opinion that it is permissible to look into the Code of Civil Procedure to see what exactly would have been the case if this was a suit and not a trial of an election petition.

12. Under the Code of Civil Procedure a suit is commenced by a plaint. This is provided by O. IV, r. 1 which says that every suit shall be instituted by presenting a plaint to the Court. After the plaint is received O. V. provides the summoning of the defendants in the case and r. 2 of that order says that every summons shall be accompanied by a copy of the plaint, and if so permitted, by a concise statement. We then turn to the provisions of O. VII which deals with the contents of a plaint. The first rule mentions the particulars which must be in a plaint. It is not necessary to refer to them. The plaint has to be signed and verified. Rule 9 then provides that the plaintiff shall endorse on the plaint and annex thereto a list of documents, if any, which he has produced along with it and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants unless the Court by reason of the length of the plaint or the number of defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claims made etc. It will be noticed here that what is required to be provided are copies of the plaint itself or the concise statement according to the number of defendants. There is no mention here of any other documents of which a copy is needed to be presented to the Court for service to the defendants. Then we come to r. 14 which states that where a plaintiff sues upon a document in his possession or power he shall produce it in court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint. It will be noticed that he is required to file only one copy of the document and not as many copies as there are defendants in the

case. It would therefore follow that a copy of the document is not expected to be delivered with the copy of the plaint to the answering defendants when summons is served on them. In the schedules to the Code of Civil Procedure we have got Appendix B which prescribes the forms for summons to the defendants. There is only one form of summons in Appendix B, (Form No. 4) in which the copy of the negotiable instrument is to accompany the copy of the plaint. That is so, because of the special law applying to the negotiable instruments and the time limit within which pleas to that document have to be raised and this is only in summary suits. No other form makes any mention of any document accompanying the summons with the copy of the plaint. We need not go into more details. It is clear that the documents which are filed with the plaint have to be accompanied by one copy of those documents. This is because the copy is compared with the original and the copy is endorsed by the clerk of court and the document is sometimes returned to the party to be produced into Court later. The copy takes the place of the document concerned and is not to be sent out to the parties with the plaint.

13. We may now see whether the election law provides anything different. The only provision to which our attention has been drawn is sub-s. (3) of s. 81 and sub-s. (2) of s. 83. The first provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and that every such copy shall be an authenticated true copy. The words used here are only "the election petition". There is no mention of any document accompanying the election petition. If the matter stood with only this sub-section there would be no doubt that what was intended to be served is only a copy of the election petition proper. Assistance is however taken from the provisions of sub-s. (2) of s. 83 which provides that any schedule or any annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. It is contended that since the pamphlet was an annexure to the petition it was not only necessary to sign and verify it, but that it should have been treated as a part of the election petition itself and a copy served upon the respondents. In this way, non-compliance with the provisions of s. 86(1) is made out. In our opinion, this is too strict a reading of the provisions. We have already pointed out that s. 81(3) speaks only of the election petition. Pausing here, we would say that since the election petition itself reproduced the whole of the pamphlet in a translation in English, it could be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore the pamphlet was served upon the respondents although in a translation and not in original. Even if this be not the case, we are quite clear that sub-s. (2) of s. 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For examples, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence

in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far as averments are concerned. When the election petitioner said that it was to be treated as part of her election petition she was merely indicating that it was not to be thought that she had not produced the document in time. She was insisting upon the document remaining with the petition so that it could be available whenever the question of the election petition or its contents arose. It would be stretching the words of sub-s. (2) of s. 83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper. In this particular case we do not think that the pamphlet could be so treated. We are, therefore, of the opinion that whether or not s. 86(1) is mandatory or directory there was no breach of the provisions of the Representation of the People Act in regard to the filing of the election or the service of the copies thereof and the order under appeal was therefore erroneous.

14. We accordingly set aside the order and remand the case for trial from this stage. The costs of the appellant will be costs in the cause. The respondent will bear his own costs.

15. Appeal allowed and case remanded.