

YENDAPALLI SRINIVASULU REDDY

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v.

VEMIREDDY PATTABHIRAMI REDDY & ORS.

(Civil Appeal No. 7951 of 2022)

OCTOBER 19, 2022

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[DINESH MAHESHWARI AND J. K. MAHESHWARI, JJ.]

Representation of the People Act, 1951: Amendment to election petition – Election petition filed by the respondent challenging the election of returned candidate on the grounds of improper acceptance of the nomination papers of returned candidate and improper receipt of invalid votes and improper rejection of valid votes – A year later, the respondent filed the application to amend the election petition to include certain averments – Application allowed by the High Court – On appeal, held: Election petitioner-respondent No.1 never took corrupt practice as a ground to challenge the election of the returned candidate – Pleadings sought to be taken by way of amendment so as to indicate that the nomination form was not to be accepted for non-compliance of the statutory requirements, cannot be said to be of introduction of any new cause of action or new ground of challenge – It cannot be said that the ground as sought to be pleaded does not have any foundation in the petition as filed; or that pleading of such particulars would change the character of the election petition – Thus, the High Court rightly allowed the amendment application.

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Kisan Shankar Kathore v. Arun Dattatray Sawant and others : (2014) 14 SCC 162 : [2014] 7 SCR 258; Krishnamoorthy v. Sivakumar and Others: (2015) 3 SCC 467 : [2015] 4 SCR 987; Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi: 1987 (Supp) SCC 93 : [1987] SCR 369 ; Sethi Roop v. Malti Thapar (Mrs.) and Others:(1994) 2 SCC 579 : [1994] 1 SCR 1002 – referred to.

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Case Law Reference

[2014] 7 SCR 258;

referred to

Para 9

[2015] 4 SCR 987

referred to

Para 12

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- A [1987] SCR 369 referred to Para 12
[1994] 1 SCR 1002. relied on Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7951 of 2022.

- B From the Judgment and Order dated 06.12.2019 of the High Court of Andhra Pradesh at Amaravathi in I.A. No.02 of 2018 in E.P. No.01 of 2017.

P. Vishwanath Setty, Sr. Adv., G. N. Reddy, Hemal Kiritkumar Sheth, Advs. for the Appellant.

- C Byrapaneni Suyodhan, Abhijit Basu, Ms. Tatini Basu, Advs. for the Respondents.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

- D Leave granted.

2. We have heard Mr. P. Vishwanath Setty, learned senior counsel for the appellant and Mr. Byrapaneni Suyodhan, learned counsel for the respondents finally at this stage itself.

- E 3. By way of this appeal, the appellant- returned candidate, whose election has been called into question by the respondent No. 1 by way of Election Petition No. 1 of 2017 before the High Court of Andhra Pradesh, seeks to question the order dated 06.12.2019 whereby, an application for amendment of the petition has been granted.

- F 4. Shorn of unnecessary details, the relevant aspects to be noticed for the purpose of this appeal are that in the election petition filed by the respondent No.1 herein, essentially two broad grounds have been urged. One being of improper acceptance of the nomination of the returned candidate, i.e., the appellant herein, and the second being of improper receipt of invalid votes and improper rejection of valid votes.

- G 5. The second ground as referred hereinabove is not of relevance for the purpose of the present appeal. The relevant part of the matter herein is that in the petition as filed, the appellant has, *inter alia*, prayed for the following relief:

- H “B. Declare the acceptance of the nomination paper filed by the 1st Respondent/the Returned candidate with substantial defects

in the affidavit as illegal, improper and consequently set aside/ A
reject the same.”

6. In relation to the aforementioned relief, the election petitioner (respondent No.1) has stated that the nomination paper of the appellant ought to have been rejected for being not accompanied by a proper affidavit, particularly when the verification part was not carrying the signature of the appellant. The other submissions are that the affidavit was drawn up on certain stamp papers but, one of them was not purchased in the name of the appellant and was purchased by some other person and then, the name of the appellant was inserted by erasing the name of the original purchaser. It had also been submitted that there had been certain blank spaces for which, the affidavit was rendered nugatory and these being the defects of substantial nature, the nomination was required to be rejected. B C

7. It would be apposite to notice that the result of the election in question was declared on 21.03.2017 and the election petition under consideration was filed on 27.04.2017. Leaving aside other proceedings, the relevant aspect for the present appeal is that on 27.03.2018, the election petitioner (respondent No.1) moved an application, being Interlocutory Application No.2 of 2018, seeking permission to amend the election petition, so as to incorporate the averments in the following terms: D E

“8a. It is submitted that as per section 33(A)(i) of the Representation of the People Act, 1951, a candidate shall furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent Jurisdiction. It is further submitted that the returned candidate/1st respondent herein filed a false in Form-26 by not disclosing the criminal case pending against him in which he is accused of an offence punishable with imprisonment for two years or more and a charge has already been framed by the court of competent Jurisdiction as on the date filing his nomination. I respectfully submit that the petitioner has deliberately filed as a false affidavit in Form-26 by not disclosing the criminal case pending against him as the FIR in the said criminal case was filed on 3.10.2011 and the same has been registered as Crime No. 188/2011 on the file of the Gudur Rural Police Station, Nellore District. The F G H

A petitioner has been arrayed as A3. The Court has taken cognizance of the same as C.C. No. 370/2012 and the charges were also framed as on the day of filing nomination. Later the returned candidate/1st respondent herein has been convicted for the offences under Section 143, 147, 148, 447, 290 and 332 r/w. 149 IPC and the details of the sentence and fine imposed on the returned candidate/the 1st respondent herein on 12.01.2018 by the Hon'ble Additional Judicial Magistrate of First Class, Gudur, Nellore District are as follows:

Sl. No.	Provision of Law	Sentence	Fine (Rs)
1	Sec. 143 IPC	6 Months	1000/-
2	Sec. 147 IPC	One Year	1000/-
3	Sec. 148 IPC	Two Years	1000/-
4	Sec. 447 IPC	3 Months	500/-
5	Sec. 332 IPC	Two Years	1000/-
6	Sec. 290 IPC	-----	200/-

The returned candidate/1st respondent herein did not disclose the criminal case pending against him in the election affidavit filed in Form-26 and the non-disclosure of such an important fact has rendered the affidavit defective and invalid in law as per the law laid down by the Hon'ble Apex Court in the case of *Kisan Shankar Kathore vs Arun Dattatray Sawant* and others reported in (2014) 14 SCC 162.

8b. It is submitted that as per the Section 33 of the Representation of the People Act, 1951, a nomination paper complete in the prescribed Form, signed by a candidate and by an elector of the constituency as proposer should be delivered to the returning officer within the prescribed period. A candidate has to file an affidavit along with his nomination paper as prescribed in Form 26. The petitioner has deliberately filed a false affidavit in Form-26 by not disclosing the criminal case pending against him as the FIR in the said criminal case was filed on 3.10.2011 and the same has been registered as Crime No.188/2011 on the file of the Gudur Rural Police Station, Nellore District. The petitioner has been arrayed as A3. The Court has taken cognizance of the same as C.C. No. 370/2012 and the charges were also framed as on the day of filing nomination. As per Section 33(A) of The

Representation of the People Act, 1951 it was incumbent upon every candidate, who is contesting election, to give information about his assets, criminal antecedents and other affairs, which requirement is not only essential part of fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution of India. The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Under our Constitution Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. Voter may think over before making his choice of electing law breakers as law-makers.

8c. It is submitted that the solemnity of the affidavit has been ridiculed by suppressing the material information resulting in disinformation and misinformation to the voters. The sanctity of true disclosure to be made by the candidate has failed to comply with said obligation in its letter and spirit. The result of the election in so far as it concerned the returned candidate/1st respondent herein has therefore been materially affected by improper acceptance of his information and the election result of the returned candidate therefore is required to be declared void under U/s. 100(1)(d)(i) of the Representation of the People Act, 1951.

8d. It is further submitted that the respondents herein who is the returned candidate has failed and neglected to disclose the information of pending criminal case against him in which the charges have already been framed in the affidavit in Form-26. The non-disclosure is a material lapse on the part of the returned candidate/1st respondent herein. The non-disclosure to the voters is fatal and amount to suppression of vital and material information rendering the affidavit defective and the election of the returned candidate/1st respondent herein is liable to be set aside."

8. The aforesaid application seeking leave to amend was contested by the present appellant, essentially with the submissions that after expiry

A of the period of limitation for filing of election petition, it was not permissible for the election petitioner (respondent No. 1) to amend the petition so as to include any other and new ground of challenge to the election. It was also submitted that the alleged non-disclosure of offence of the petty nature was neither intentional nor wanton and any such omission was not of any material bearing on the matter.

B 9. The High Court examined the rival contentions and particularly with reference to the decision of this Court in the case of *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*: (2014) 14 SCC 162, proceeded to allow the petition, *inter alia*, with the following observations:

C “11. There is no dispute that the 1st respondent figured as an accused in a criminal case, which ended in conviction. But the contention of the respondents’ counsel is that by virtue of the suspension of the judgment of conviction and sentence of the appellate court, the respondents need not furnish the information as sought for. The argument of the 1st respondent’s counsel is based on the premise that the column No.5 in nomination form seeks only information with regard to the conviction of the candidate. But the information required by clause 5 of the nomination form is not with regard to whether the candidate is convicted, but it is with regard to whether the candidate is an accused in any offence. Hence, it *prime facie* appears to be a case of suppression of the facts, which were to be mentioned in the nomination form.

12. xxx xxx xxx

F 13. The counsel for the respondents argues that the involvement of the candidate in a criminal case would not make his application liable for rejection. The said contention need not be dismissed as incorrect. But as per the above judgment, it is not the fact that he was involved in a criminal case that renders the application liable for rejection, but it is the suppression of the fact of his involvement in the criminal case that renders the application liable for rejection, which, *prima facie*, is proved to have occurred in this case.”

G 10. In the petition preferred in challenge to the order aforesaid, notice was issued on 14.02.2020 by this Court and operation of the impugned order was stayed. We have been informed that further proceedings in the election petition having not been stayed, the same H have progressed further in recording of evidence. Be that as it may,

having regard to the nature of proceedings, we have considered it appropriate to hear the matter finally at this stage itself. A

11. The learned counsel for the appellant has taken us through the provisions of Sections 33A, 86(5), 100(1) and 125A of the Representation of the People Act, 1951 (hereinafter referred to as the “Act of 1951”) and has emphatically argued that the amendment as sought for by the respondent No.1 relates to the allegations of corrupt practice and for the fundamental reason that there had not been any allegation of corrupt practice in the petition as originally filed, no averments in that regard could be inserted by way of amendment. B

12. The learned counsel has particularly referred to the decision of this Court in the case of *Krishnamoorthy v. Sivakumar and Others*: (2015) 3 SCC 467 with emphasis on the submission that non-disclosure of the particulars concerning offence is referable to corrupt practice within the meaning of Section 100(1)(b) of the Act of 1951. Learned counsel has also referred to the decision of this Court in the case of *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*: 1987 (Supp) SCC 93. The emphasis has been that any amendment for inserting the ground of corrupt practice could not have been allowed after the expiry of the period of limitation for filing the election petition. C D

13. *Per contra*, learned counsel for the respondents has particularly referred to the provisions of Section 100(1)(d)(iv) of the Act of 1951 to submit that when the result of the election is materially affected by non-compliance of any provisions of the Constitution or the Act of 1951, that remains a ground alongside the akin ground of improper acceptance of any nomination in terms of Section 100(1)(d)(i) of the Act of 1951. The learned counsel submits that respondent No.1, in his election petition has admittedly not taken any ground pertaining to corrupt practice but then, even by way of amendment, no fact was sought to be pleaded so as to be referable to the ground of corrupt practice. The submission has been that the amendment essentially concerns the ground similar to that of improper acceptance of nomination which has already been pleaded. The learned counsel has particularly referred to the decision of this Court in *Sethi Roop v. Malti Thapar (Mrs.) and Others*: (1994) 2 SCC 579. E F G

14. We have given thoughtful consideration to the rival contentions and have examined the material placed on record.

15. The relevant provisions read as under: H

- A “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—
- B (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;
- C (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.
- D (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).
- E (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.”
- “86. Trial of election petitions.-.....
- F (5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.
- G”
- “100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion —
- H (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 A

(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 B

(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 C

(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, D

the High Court shall declare the election of the returned candidate to be void.

.....” E

“125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or F

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.” G H

A 16. In the case of *Krishnamoorthy* (supra), in the referred paragraph, this Court has declared the law in the following terms:

“94. In view of the above, we would like to sum up our conclusions:

B 94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

C 94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

D 94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

E 94.5. The question whether it materially affects the election or not will not arise in a case of this nature.”

F 17. However, in the case of *Sethi Roop Lal* (supra), this Court has, while distinguishing the case of introduction of material fact from that of material particulars, and the operation of the principles of Order VI Rule 17 of the Code of Civil Procedure, 1908 in the trial of the election petitions subject to the provisions of Act 1951 has, *inter alia*, observed and held as under:

G “9. Coming now to the other impugned order, we find that the learned Judge has rejected the prayer for amendment of the petition principally on the ground that by the proposed amendment the appellant was seeking to introduce ‘material fact’ as distinguished from ‘material particulars’ of a corrupt practice which was impermissible. In so doing the learned Judge drew sustenance from the following observations made by this Court in the case of

H F.A. Sapa v. Singora:(1991) 3 SCC 375:

“(i) Our election law is statutory in character as distinguished from common law and it must be strictly complied with. A

(ii) There is a clear and vital distinction between ‘material facts’ referred to in Section 83(1)(a) and ‘particulars’ in relation to corrupt practice referred to in Section 83(1)(b) of the Act. B

(iii) Section 86(5) of the Act empowers the High Court to allow particulars of any corrupt practice which has already been alleged in the petitions to be amended or amplified provided the amendment does not seek to introduce a corrupt practice which is not previously pleaded. C

(iv) By implication amendment cannot be permitted so as to introduce ‘material facts’.”

10. The fasciculus of sections appearing in Chapter III of Part VI of the Act lays down the procedure for trial of election petitions. Sub-section (1) of Section 87 thereof provides that subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure (‘Code’ for short). That necessarily means that Order VI Rule 17 of the Code which relates to amendment of pleadings will afortiori apply to election petitions subject, however, to the provisions of the Act and of any rules made thereunder. Under Order VI Rule 17 of the Code the Court has the power to allow parties to the proceedings to alter or amend their pleadings in such manner and on such terms as may be just and it provides that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. But exercise of such general powers stands curtailed by Section 86(5) of the Act, when amendment is sought for in respect of any election petition based on corrupt practice. Since Section 87 of the Act — and, for that matter, Order VI Rule 17 of the Code — is subject to the provisions of the Act, which necessarily includes Section 86(5), the general power of amendment under the former must yield to the restrictions imposed by the latter. D
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11. Indubitably, therefore, if the amendment sought for in the instant case related to corrupt practice we might have to consider the same in conformity with Section 86(5) of the Act as interpreted by this Court in the case of F.A. Sapa and accept the findings of the learned Judge as H

A recorded in the impugned order; but then, the learned Judge failed to notice that the amendments, the appellant intends to bring in his election petition, do not relate to any corrupt practice and, therefore, it has to be considered in the light of Section 87, and de hors Section 86(5) of the Act. For the foregoing reasons the impugned order dated May 28, 1993 cannot also be sustained.”

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18. Applying the principles aforesaid to the facts of the present case with reference to the pleadings already taken in this matter, we are unable to find any fault in the approach of the High Court in allowing the amendment as prayed for. This is for the simple reason that the election petitioner (respondent No.1) had never taken “corrupt practice” as a ground to challenge the election of the appellant. The grounds, as noticed above, have precisely been of improper acceptance of the nomination form of the returned candidate and improper acceptance of invalid votes as also improper rejection of valid votes. That being the position, the pleadings sought to be taken by way of amendment so as to indicate that the nomination form was not to be accepted for yet another reason, that is, for non-compliance of the statutory requirements, cannot be said to be of introduction of any new cause of action or new ground of challenge. It cannot be said that the ground as sought to be pleaded does not have any foundation whatsoever in the petition as filed; or that pleading of such particulars would change the character of the election petition.
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That being the position, we are at one with the High Court that the amendment as prayed for was required to be allowed.

19. For what we have discussed as above, this appeal fails and is, therefore, dismissed.

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20. It goes without saying that we have not made any comment on the merits of the case as sought to be pleaded by way of amendment or any other aspect relating to the merits of the issues involved in election petition.