

Madhya Pradesh High Court

Dr. Govind Singh vs Mr. Jyotiraditya M. Scindia on 17 March, 2023

Author: Deepak Kumar Agarwal

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IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

EP No. 2 of 2020

(DR. GOVIND SINGH Vs MR. JYOTIRADITYA M. SCINDIA)

Dated : 17-03-2023

Shri Anoop George Chaudhary, Shri June Chaudhary, learned

Counsel with Shri Kuber Boddh, Mr. Yash Kumar and Shri Manas D  
counsel for election petitioner- Dr. Govind Singh.

Shri Naman Nagrath, learned Senior Counsel with Shri  
Pawaiya, for respondent No.1/returned candidate Mr. Jyotiradit

Scindia.

Respondents no. 2 and 3 have already been deleted. Shri Nitin Agrawal with Shri Karan Virwani,  
learned counsel for respondent No.4- Shri Sumer Singh Solanki.

Shri Sanjay Shukla, learned counsel for respondent No.5- Shri Digvijay Singh.

None for respondent No.6 Shri Phool Singh Baraiya, despite service of notice.

Matter is listed today for hearing on IA No. 1390 of 2003, an application u/S 151 of CrPC filed on behalf of election petitioner for taking additional documents on record, IA 1399 of 2023, an application u/S. 151 read with Section 152 of CPC filed on behalf of election petitioner for clarification of order dated 27-01-2023 and modification of order dated 03-03-2023 passed by this Court, IA No. 1400/2023, an application Order XIV Rule 1 r/w Section 151 of CPC filed on behalf of election petitioner for framing proposed issues in election matter and IA No.1078 of 2023, an application under Section 340 of CrPC filed on behalf of election petitioner for initiation of proceedings under Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM Section 195 of CrPC against returned candidate respondent no.1 for offences under Sections 193, 200 and 463 of IPC.

Before advertng to the arguments of rival parties on aforesaid IAs, this Court thinks it appropriate to narrate the facts of the case.

Instant election petition under Sections 80, 100(1)(b) and (d) and 123 of Representation of the People Act, 1951 [hereinafter referred to as the "Act 1951"] is filed by election petitioner- Dr. Govind Singh challenging the candidature of respondent No.1 as returned candidate of Bhartiya Janata Party (BJP) from State of MP in Biennial Election for membership of Rajya Sabha (Council of States) held on 19-06-2020 on the ground that while submitting nomination paper along with affidavit, returned candidate respondent no.1 has not disclosed particulars or information regarding

registration of FIR vide Crime No.176 of 2018 lodged against him and others on 27-09-2018 at Police Station Shyamla Hills, Bhopal for commission of offences punishable under Sections 465, 468, 469, 471, 472, 474, 120-B of IPC. So far as knowledge of returned candidate respondent no.1 regarding the registration of FIR against him and others is concerned, in all national & State newspapers, the aforesaid news of registration of FIR has been published as well as circulated. As per provisions of aforesaid Act 1951, it is mandatory for the contesting candidate to disclose or furnish all the requisite correct facts or details or particulars as required in the nomination form along with affidavit in Form 26 under Rule 4-A in support of declaration made by him in nomination form. It is the contention of the election petitioner that the returned candidate has suppressed the aforesaid facts by not disclosing same which amounts to fraud and corrupt practice and the aforesaid election be declared as null and void. To buttress his Signature Not Verified contentions, learned Senior Counsel appearing for election petitioner has relied Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM on the judgments of Hon'ble Apex Court in the matter of Baban Singh & Another vs. Jagdish Singh & Others, 1966 3 SCR 552.

In reply to the contentions made by election petitioner, it is submitted on behalf of respondent no.1 that it is true that by order dated 26-09-2018 while deciding the application filed under Section 156(3) of CrPC a direction was given by learned Special Judge (MP and MLA), Bhopal, MP for registration of FIR which does not amount to taking cognizance. In terms of Chapter XII of CrPC, a simply direction for registration of FIR does not amount to taking cognizance under Section 190 and/or Section 200 of CrPC. In this situation, mere registration of FIR does not come within the category of "pending criminal case". Besides this, as per the provisions of Act of 1951, it is not mandatory or necessary that a candidate, who is contesting the election in question, should disclose registration of FIR. At the time of submission of nomination form, respondent no.1 had neither any knowledge about the registration of FIR nor any notice under Section 41-A of CrPC has been issued to him. Since he is having no knowledge about registration of FIR, therefore, there is no occasion for him to disclose the same. In such a situation, the election petition filed by election petitioner deserves to be dismissed on this preliminary objection raised by respondent no.1 that mere non-disclosure of information or particulars regarding registration of FIR amounts to fraud and corrupt practice as mandate by provisions of the Act of 1951.

IA No. 1390 of 2023 While hearing the arguments on aforesaid IA, it is contended on behalf of election petitioner that earlier appointed counsel Shri Ankur Mody (learned Additional Advocate General) cannot appear for the respondent no.1 in the Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM present election matter as per Madhya Pradesh Law and Legislative Affairs Department Manual because as Section 8 of Law Manual as well as Rule 10, he be debarred from accepting brief from any private person in any criminal case in any Court because he shall not either give any legal advice to any private person on the matters in which his interest is adverse to the Government or challenging the decision regarding a candidate to the local body or to the State Legislature of Parliament. The election petitioner on 01-03-2023 has filed an application (complaint) along with Circular or aforesaid Manual to the State Bar Council vide Annexure-A in this regard.

During the course of argument, since Shri Nagath, learned Senior Counsel made a submission that Shri N.K.Mody recuses to appear on behalf of respondent no.1, therefore, he be discharged.

Accordingly, Shri N. K. Mody is discharged from appearing on behalf of respondent No.1.

In view of above, there is no need to pass any order on aforesaid IA No. 1390 of 2023 and the same stands rejected as infructuous.

IA No. 1399 of 2023 By filing aforesaid IA, it is contended on behalf of election petitioner that he seeks modification of the order dated 27-01-2023 and the order dated 03-03- 2023 passed by this Court.

It is the contention of election petitioner that respondent No.1 has not chosen to file any application under Order VII Rule 11 of CPC meaning thereby that he has chosen to waive of his right to raise the issue of maintainability of election petition by not filing any application under Order VII Rule 11 of CPC. Further contention of election petitioner is that present election petition is at the stage of framing of issues which deserve to be framed. The respondent No.1- Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM returned candidate has deliberately denied the fact on oath or affidavit mentioning that he has no knowledge about the registration of FIR. It is further contended that from the order dated 27-01-2023, it is evident that the issues have not yet been framed and on 23-02-2023, earlier Counsel Shri N. K. Mody had sought time to argue on the point as to whether registration of FIR amounts to "pendency of criminal case" or not ?

Before deciding the aforesaid application, it would be necessary for this Court to reproduce order dated 27-01-2023 and order dated 03-03-2023 as under:-

Order dated 27-01-2023:-

"During the course of arguments, learned counsel for respondent No.1 made submission that petitioner has filed this election petition on the sole ground that while filing nomination paper respondent No.1 has not disclosed regarding pendency of criminal cases as per Form 26 under Rule 4A, while as per Annexure P/14 an FIR bearing crime No.176/2018 has been lodged against him and others at police Station Shyamla Hills, Bhopal, for the offence punishable under Sections 465, 468, 469, 471, 472, 474, 120-B of IPC on 27.9.2018. Thus, now it is only to be seen as to whether registration of FIR amounts to pendency of criminal case or not and seeks time to argue on this point." Order dated 03-03-2023:-

"Learned counsel for the petitioner made a submission that Mr. Mody appointed by M.P. State Government, cannot appear in the election petition.

Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM Learned Additional Advocate General seeks time to argue on this point as well as issues framed on 27.01.2023 for point of determination." On going through the aforesaid orders dated 27-01-2023

and 03-03- 2023, it is evident that the Counsel for respondent no.1 along with reply made a submission on the point of preliminary objection stating therein that there was no criminal case pending against the respondent no.1 and mere registration of FIR vide Crime No.176 of 2018 at Police Station Shyamla Hills, Bhopal for offences punishable under Sections 465, 468, 469, 471, 472, 474 and 120-B of IPC at the time of submission of nomination paper and affidavit does not come within the purview of pending criminal case. On the basis of arguments advanced by respondent no.1, matter was fixed for determination on the aforesaid point of preliminary objection.

It is true that no issues were framed and only on the point of preliminary objection, the matter was posted considering the arguments advanced on behalf of respondent no.1. In such a situation, the order dated 03-03-2023 is hereby modified as well as deleted.

IA 1399 of 2023 stands closed.

IA No. 1400 of 2023 By filing aforesaid IA, election petitioner has proposed various issues as under in the present matter:-

(1) Whether the Respondent No.1's act and conduct of not disclosing his criminal antecedents as per section 33-A of the Representation of Peoples Act, 1951 amounts to an electoral offence as defined in Section 125-A of the Representation of Peoples Act, 1951?

Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM (2) Whether the Respondent no.1 has committed corrupt practice within the meaning of Section 123(2) of the Representation of Peoples Act, 1951 ?

(3) Whether the Respondent no.1 was having any knowledge/information ( also includes personal or special) about the registration of the FIR no. 176/2018 under Sections 465, 468, 471, 472, 474 &120-B of IPC at Police Station Shyamala Hills Bhopal against him as well as against Shri Kamal Nath and Shri Digvijay Singh ?

(4) Whether the Respondent no.1 was having knowledge/information (also includes personal or special) thgat the Ld. Special Jude (MP & MLA), Bhopal, Madhya Pradesh has directed police officer to register an FIR against him?

(5) Whether the Respondent No.1 by deliberate suppression of information, in regard to FIR No. 176/2018 registered at Police Station Shyamla Hills, Bhopal, has committed an act of fraud ?

(6) Whether the act of Respondent nbo.1 in defending himself/tweeting with regard to FIR no. 176/2018 at any forum including print and electronic media amounts to knowledge and information of FIR no. 176/2018 which was registered agt Police Station Shyamla Hills, Bhopal ?

(7) Whether the Respondent no.1 was having full knowledge/information about the orders/directives issued by the Election Commission of India, that all the contesting candidates

have to furnish all the requisite correct details mentioned as required in the Nomination Form along with an affidavit in Form 26 in support of his declaration made by Signature Not Verified him in the nomination form?

Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM (8) Whether the Respondent no.1 in swearing a false affidavit and submitting false details/ information has committed perjury ?

(9) Whether any result of the election in respect of Respondent no.1 is affected by corrupt practice, adopted by him?

(10) Whether Respondent No.1's election is liable to be declared as null and void under Section 100(10) of the Representation of Peoples Act, 1951, for adopting corrupt practice?

(11) Relief and Costs?

Looking to the grounds of election petition as well as controversy involved therein, the core issue is as to whether registration of FIR at Crime No.176 of 2018 against respondent no.1 at Police Station Shyamla Hills, Bhopal for commission of offences punishable under Sections 465, 468, 469, 471, 472, 474 and 120-B of IPC comes within the purview of "pendency of criminal case" or not, as per Form 26 under Rule 4A of the Act of 1951? This issue shall be decided as preliminary issue as Question No.1.

Accordingly, IA stands closed.

IA No. 1078 of 2023 By filing aforesaid IA, it is contended on behalf of election petitioner that respondent no.1 has made false statement on oath/affidavit with solemn affirmation willingly and knowingly for which, he is liable to be held guilty for the act of forgery and in this situation, criminal proceedings should be initiated against him as per the provisions of Section 340 of CrPC for commission of offences under Sections 193, 200 and 463 of IPC.

The sole contention of election petitioner by filing aforesaid IA is that in Para B of written submission/ reply it is admitted by respondent No.1 about the Signature Not Verified Signed by: MAHENDRA BARIK Signing time: 3/20/2023 5:58:34 PM date of registration of FIR i.e. 26-09-2018. Despite this, in Clause-iv of Para 17 of the reply, it is mentioned by him that he was not aware of fact of lodging aforesaid FIR at the time of submission of nomination form along with affidavit. This fact came to his notice or knowledge only when an objection was raised by Mr. Digvijay Singh against his nomination form on 16-03-2020 before Returning Officer. Therefore, respondent no.1 has made false statement along with affidavit before this Court.

Since the aforesaid issue framed by this Court also covers up the preliminary issue, therefore, no order is required to pass on the aforesaid IA and accordingly, IA stands rejected and closed.

Matter may be listed for hearing on 5th April, 2023 on the following preliminary issue:-

"Whether registration of FIR vide Crime No.176 of 2018 against the respondent No.1 at Police Station Shyamla Hills, Bhopal for commission of offences punishable under Sections 465, 468, 469, 471, 472, 474 and 120-B of IPC comes within the purview of "pendency of criminal case" or not, as per Form 26 under Rule 4-A of the Act, 1951?

(DEEPAK KUMAR AGARWAL) JUDGE MKB Signature Not Verified Signed by:  
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