# Dr. Vijay Laxmi Sadho vs Jagdish on 5 January, 2001

## Equivalent citations: AIR 2001 SUPREME COURT 600, 2001 AIR SCW 223, 2001 (1) SCALE 63, (2001) 2 JAB LJ 1, (2001) 2 MAD LJ 120, (2001) 2 SCJ 449, 2001 (2) SCC 247, (2001) 1 SUPREME 41, (2001) 1 SCALE 63(2), (2001) 1 UC 379, (2001) 1 JT 382 (SC)

## Bench: S.V.Patil, R.C.Lahoti

CASE NO.:
Appeal (civil) 2720 of 2000

PETITIONER:
DR. VIJAY LAXMI SADHO

Vs.

RESPONDENT:
JAGDISH

DATE OF JUDGMENT: 05/01/2001

BENCH:
S.V.Patil , R.C.Lahoti

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J This appeal by special leave is directed against an order of the High Court of Madhya Pradesh dated 4th February, 2000 rejecting applications (I.A. Nos. 2806/99 and 5957/99) filed by the appellant, the returned candidate, seeking rejection of an electio petition filed by the respondent challenging his election on various grounds contained in those applications.

In the elections to the Madhya Pradesh Legislative Assembly, held in 1998, the appellant was declared elected from Assembly Constituency No. 290, Maheshwar. The defeated candidate (Respondent herein) filed an election petition challenging his election n various ground of commission of corrupt practices, detailed in paragraphs 5 to 17 of the election petition. The election petition had been drawn-up in Hindi language. The affidavit filed in support of the election petition was also drawn up in Hindi anguage. The main objection projected by the appellant in IA 2806/99 to the maintainability of the election petition was that since the affidavit filed in support of allegations of corrupt practice was not drawn up in the manner prescribed by Section 83(1) of t e Representation of the People Act, 1951 (hereinafter referred to as 'the Act') read with Rule 94-A

(hereinafter 'the Rules') in the prescribed form No.25, the defect was fatal and the election petition was liable to be dismissed under Section 86(1) of t e Act for non-compliance with the provisions of Section 83 of the Act. The precise objection raised in I.A. No.5957 of 1999 was to the effect that since election petition had been drawn-up in Hindi language and not English language the same was liable to be dismissed not having been drawn up in English language as required by Rule 2(b) of the Madhya Pradesh High Court Rules (hereinafter referred to as 'the High Court Rules'). Both applications were resisted by the election petitioner. Vide order dated 4th February, 2000 a learned Single Judge of the High Court rejected b th applications.

Mr. G.L. Sanghi, learned senior counsel appearing for the appellant, submitted that there was material difference between the verification of the affidavit filed in support of the election petition and the verification of the election petition which rend red the election petition defective and thus liable to be dismissed. Elaborating the objection, it was submitted that in the affidavit dated 11th January, 1999 filed along with the election petition in paragraph KA, the election petitioner had verifie the facts relating to commission of corrupt practice stated in paragraphs 5 to 17 of the petition as true to his "personal knowledge" but in paragraph KHA of the same affidavit, the election petitioner had verified the contents of same "information received by him". It was submitted that this variation in verifying the same facts, both on "personal knowledge" and on "information received", being self-contradictory, rendered the affidavit as paragraphs 5 to 1 of the election petition as being based on "no affidavit" in the eye of law and such a defective affidavit could not be taken into account for trying allegations of corrupt practice in an election petition and, therefore, the election petition was liable to be dismissed in limine under Section 8 of the Act. A perusal of the record reveals that the election petitioner had later on, (possibly to meet the objection regarding defective affidavit) filed an additional affidavit in support of the allegations of corrupt practice verifying the facts stated in parag aphs 5 to 17 as based on his 'personal knowledge' and not on the basis of 'information received' from any other source. That affidavit appears to have been taken on record. According to learned counsel for the respondent on the other hand, none of the grounds raised by the appellant in both the applications could warrant dismissal of an election petition under Section 86 (1) of the Act and the High Court thus rightly dismi sed both the applications. We have given our thoughtful consideration to the submissions made at the bar and for what follows we are unable to persuade ourselves to agree with the submissions of learned counsel for the appellant. An election petition is liable to be dismissed in limine under Section 86(1) of the Act only if the election petition does not comply with either the provisions of 'Section 81 or Section 82 or Section 107 of the Act'. The requirement of filing an affi avit 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. Thus an election petition is not liable to be dismissed in limine under Section 86 of the Act, for all ged non-compliance with provisions of Section 83(1) of the Act or of its proviso. What other consequences, if any, may follow from the an allegedly 'defective' affidavit, is to be judged at the trial of an election petition but Section 86(1) of the Ac in terms cannot be attracted to such a case. In F.A. Sapa and others vs. Singora and others :

> (1991) 3 SCC 375 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 el ction 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 rocedure , it was held :
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> "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 elieved 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 prescr bed Form 25 can be cured....."

This judgment was followed by a Division Bench of this Court in H.D. Revanna vs. G. Puttaswamy Gowda and others : (1999) 2 SCC 217. 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 n limine under Section 86 (1) of the Act. The learned Single Judge of the High Court was, therefore, perfectly justified in dismissing I.A. No.2806 of 1999.

This now takes us to consideration of the objections raised in I.A. No.5957 of 1999 seeking dismissal of the election petition on the ground that the election petition and the affidavit filed in support thereof had been drawn-up in Hindi language and not in English language. The argument raised in the High Court and reiterated at the Bar before us by Mr. Sanghi is that Rule 2(b) of the High Court Rules provides that every election petition shall be written in English language and since the election peti ion filed by the respondent was written in Hindi and not English language, the same was liable to be dismissed for non-compliance with the said rule, in limine.

The Madhya Pradesh High Court has framed Rules for trial of election petitions under Article 225 of the Constitution. Under Rule 9 thereof it is provided that the Rules of the High Court shall apply, in so far as they are not inconsistent with the Repre sentation of the People Act, 1951 or the rules, if any, made thereunder or the Civil Procedure Code in respect of all matters. The import of Rule 9 (supra) was considered in Prabhu Narayan vs. A.K. Srivastava : (1975) 3 SCC 788 and this Court opined:

> "Moreover, it appears to us that the provisions of Rule 9 of the Madhya Pradesh High Court Rules regarding the election petitions framed by the Madhya Pradesh High Court by reference to Rule 7 of the Madhya Pradesh High Court Rules found in Chapter III r garding affidavits cannot be made use of for this purpose. The former set of rules are made under Article 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate merely to pro edural matters unlike rules made under Section 122 of the Code

> of Civil Procedure." (Emphasis supplied) Rejecting the preliminary objection to the maintainability of the election petition for non-compliance with the High Court Rules, in Prabhu Narain's case this Court held :
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> "Further more according to Section 86 of the Representation of People Act only petition which do not comply with the provision of Sections 81 or 82 or 117 are liable to be dismissed. We, therefore, over-rule the preliminary objection."

To appreciate the effect of non-compliance with Rule 2(b) of the High Court Rules, it is appropriate to notice some of the relevant statutory provisions at this stage. Rule 2 of the High Court Rules provides:

> "2. Every Election petitions shall be -
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> (a) typewritten or printed fairly and legibly on white foolscap size paper of reasonable quality, one side of the paper only being used, leaving a quarter margin on the left and at least 1/2 inches open space on the top and bottom of each sheet; (b) written in the English language, numbering separately the paragraph thereof; (c) couched in proper language, and in conformity with section 81, 82 and 83 of the Representation of the People Act, 1951."

Article 329(b) lays down:

> "329. Bar to interference by courts in electoral matters -
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> (a) ... ... ...
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> (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any l w made by the appropriate Legislature."

Article 348 (1) provides :

> "348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc. (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-
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> (a) all proceedings in the Supreme Court and in every High Court .....

shall be in the English language."

Article 348(2) provides as follows:-

"Notwithstanding anything in sub-clause (a) of clause

(l), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

Rules framed by the High Court relating to trial of election petitions are only procedural in nature and do not constitute "substantive law". Those Rules have to be read alongwith other statutory provisions to appreciate the consequences of non-complia nce with the High Court Rules. Article 329(b) mandates that no election to either House of Parliament or to either House of the State Legislature can be called in question except through an election petition presented to such authority and in such mann r as is provided for by or under any law made by the legislature. Section 81 of the Act deals with the presentation of an election petition while Section 82 deals with parties to the election petition and Section 83 with contents of such a petition.

Article 348 expressly deals with the language to be used in the Supreme Court and the High Courts and lays down in Article 348 (1) (a) that all proceedings in the Supreme Court and every High Court shall be in the English language. Article 348(2) (supra ), however, carves out an exception to the above general rule.

The non-abstante clause with which Article 348(2) opens, unmistakably shows that the Governor of a State, with the previous consent of the President may authorize the use of Hindi or any other language in proceedings in the High Court having its princip al seat in that State, save and except that "judgment, decree or order passed or made by such High Court", shall be in the English language as required by Article 348(1). By a Notification dated 18th September, 1971 issued by the Governor of Madhya Pradesh, in exercise of the powers conferred by clause (2) of Article 348 of the Constitution of India, with the previous consent of the President of India, authorised the use f Hindi language in all proceedings of the High Court other than for drawing up decrees, orders and judgments of the High Court, subject to certain conditions. Under the said Notification, appeals, petitions etc. could thus, be presented in the High Cou t of Madhya Pradesh drawn-up in the Hindi language, notwithstanding the provisions of High Court Rules. Rule 2(b) of the High Court Rules cannot be so construed as to render the constitutional provisions contained in Article 348(2) as 'meaningless'. ule 2(b) of the High Court Rules has to be read along with the Notification issued by the Governor on 18th September, 1971 under Article 348(2) of the Constitution and when so construed, it follows that an election petition may be filed in Hindi language and it cannot be dismissed at the threshold under Section 86 of the Act for alleged non-compliance with Rule 2(b) of the High Court Rules. The question whether an election petition drawn up in Hindi language is

> maintainable or not came up for consideration before a learned Single Judge of the High Court of Madhya Pradesh in Election Petition No. 9 of 1980 titled Devilal s/o. Shriram Khada vs. Kinkar Narmada Prasad and others. While rejecting the challenge to the maintainability of the election petition drawn up in Hindi language, it was said :-
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> "Now it is true that Rule 2(b) of the aforesaid Rules does provide that every election petition shall be written in the English language. But in the absence of any provision in the Act or the Rules made thereunder, non compliance with Rule 2(b) of the a oresaid Rules cannot be a ground for dismissal of the petition under Section 86 of the Act."

A contrary view was, however, expressed by another Single Judge of that High Court in Jai Bhansingh Pawaiya vs. Shri Madhavrao Scindia. In this case it was held that an election petition filed in Hindi language being violative of Rule 2(b) of the Ru es, relating to filing of election petitions, was not maintainable and was liable to be dismissed under Section 86 of the Act. The learned Single Judge opined :

> "The Special Rules framed by the High Court, in the circumstances, taking into account the implications arising under Article 329(b) of the Constitution of India read with Section 80 of the Representation of the People Act, 1951, relating to election pet tions prescribing the manner for presentation of the election petition by necessary implication stand clothed with such a statutory character which could not be deemed to have been affected by an order relating to authorization contemplated under Article 348 (2) of the Constitution of India so as to take away statutory rigour of the Rules prescribing a requirement of an election petition to be written in English language, numbering separately the paragraphs thereof as provided in rule 2 of the aforesaid ules relating to election petitions."

The interpretation placed on rule 2 of the High Court Rules, giving it almost primacy over Article 348(2) of the Constitution, in Jai Bhansingh's case to our mind is fallacious. The learned single Judge appears to have lost sight of the position that R les framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only rules of procedure and do not constitute substantive law and those rules cannot effect the import of constitutional provisions contained in Articl 348(2) of the Constitution. The high pedestal on which Rule 2(b) of the High Court Rules has been placed in Jai Bhansingh's case, not only violates clear constitutional provisions but also introduces a clause in Section 86 of the Act which does not xist. The entire approach to consideration of the effect of the notification issued under Article 348(2) appears to be erroneous. That apart, the defect of not fling an election petition in accordance with Rule 2(b) of the Rules is not one of the defec s which falls either under Sections 81, 82 of 117 of the Act so as to attract the rigour of Section 86 of the Act as rightly held in Devilal's case (supra). Whether any other consequences may follow on account of the alleged defects would depend upon ther factors to be determined at the trial of the election petition but to hold that Section 86(1) of the Act would be attracted for non-compliance with Rule 2(b) of the High Court Rules is not correct. The learned

Single Judge of the High Court was rig t in rejecting application, I.A. No. 5957 of 1999 and holding that an election petition filed by the respondent could not be dismissed under Section 86(1) of the Act for alleged non-compliance with Rule 2(b) of the High Court Rules relating to presentati n of election petitions.

It appears that the earlier judgment of the learned Single Judge in Devilal's case (supra) was brought to the notice of the learned Single Judge hearing Jai Bhansingh's case. The learned Judge in the later case noticed the identical nature of the two ca ses, but did not share the view of the Bench in Devilal's case and a contrary view was expressed. It was observed: "It may be noticed that although like cases should be decided alike but this principle is not in absolute rule nor of universal application. It does admit exceptions. Where there is no discussion regarding applicability of the relevant statutory provis ons and the decision has been reached by a Bench in the absence of knowledge of a decision binding on it or a statute and in either case it is shown that had the Court had the said material before it, it must have reached a contrary decision, it is clear y a case of a decision per incuriam which has no binding effect. This principle does not extend to a case where if different arguments had been placed before the said Bench or a different material had been placed before it, it might have reached a diffe ent conclusion." (Emphasis supplied) We are unable to appreciate as to how the judgment in Devilal's case could be styled as "per incuriam". That apart, the ground on which the judgment in Devilal's case (supra) has been distinguished does not stand to reason. We have not been able to appreciate the logic of the observations of the learned Single Judge in Devilal's case (supra) that the cont oversy in Jai Bhansingh's case was "quite different" and not confined to the applicability of section 86 of the Act alone. A reference to paragraph 41 of the judgment in Jai Bhansingh's case dismissing the election petition in limine, brings out the fal acy of the "difference", as perceived by the learned Single Judge. It was observed :

> "In view of what has been indicated hereinabove, I have no hesitation in holding that the present election petition as framed is not at all entertainable. Since even the limitation for filing a fresh election petition in accordance with law and in the anner prescribed has also run out, it is not possible or permissible to permit the petitioner to remove the defect in the presentation of the election petition, the present election petition in the circumstances is not at all triable."

(Emphasis supplied) How could it then be said that the controversy in the two cases was, "different" is not understandable ? We are of the considered opinion that the view expressed in Devilal's case was correct view of law and the contrary view expressed in Jai Bhansingh's case does not lay down correct law. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret an d distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it s appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal p opriety forms the basis of judicial procedure and it must be respected at all costs. Before parting with this aspect of the case, we wish to recall

what was opined in Mahadeolal Kanodia vs. Administrator-General of W.B. : [1960] 3 SCR 578 : "...If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decision. If one division bench of a High Court is unable to distinguish a previous decision of another division bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know h w to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court..."

These salutary principles appear to have been over looked by the learned Judge deciding Jai Bhansingh's case. Thus, for what we have said above, we are not persuaded to take a view different than the one taken by the High Court in the present case. This appeal has no merits. It fails and is accordingly dismissed but with no order as to costs.

We request the High Court to expeditiously dispose of the election petition. .....CJI.