

Supreme Court of India

Sethi Roop Lal vs Malti Thapar on 15 February, 1994

Equivalent citations: 1994 SCC (2) 579, JT 1994 (2) 66

Author: M M.K.

Bench: Mukherjee M.K. (J)

PETITIONER:

SETHI ROOP LAL

Vs.

RESPONDENT:

MALTI THAPAR

DATE OF JUDGMENT 15/02/1994

BENCH:

MUKHERJEE M.K. (J)

BENCH:

MUKHERJEE M.K. (J)

AGRAWAL, S.C. (J)

CITATION:

1994 SCC (2) 579 JT 1994 (2) 66

1994 SCALE (1) 605

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MUKHERJEE, J.- Special leave granted in both the petitions.

2. In these two appeals orders dated November 2, 1992 and May 28, 1993 passed by the High Court of Punjab & Haryana in Election Petition No. 5 of 1992 are under challenge. Facts leading to the filing of these appeals and relevant for their disposal are as under :

3. The appellant and the four respondents herein contested the election of 99 Moga Assembly Constituency polling for which took place on February 19, 1992. When the results were declared it was found that Respondent I had secured the highest number of votes - and thereby won the election followed by the appellant, who secured 7 votes less than her, and the other respondents. The appellant then filed the election petition assailing the election on various grounds as detailed therein. The ground, which is relevant for our present purposes, finds place in paragraph 18 of the

Election Petition which reads as under:

"That twenty-two bogus votes of dead electors by impersonation were cast in favour of Respondent I at the instance of Respondent 1 and her supporters. The relevant details of these dead electors is annexed along with as Annexure P-9."

4. In course of the trial that followed the appellant examined himself to substantiate the allegations made by him in the petition and thereafter moved an application on October 22, 1992 seeking production of Form No. 16 (Ballot- Paper Account) of booth Nos. I to 125 and marked copies of the electoral roll of booth Nos. 8, 35, 44, 56 and 57. After hearing the parties the learned trial Judge allowed the prayer of the appellant so far as it related to the production of Form No. 16 but rejected the other prayer by the impugned order dated November 2, 1992. Thereafter on January 4, 1993 the appellant filed an application praying for amendment of the Election Petition which was rejected by the other impugned order.

5. In rejecting the prayer of the 'appellant for production of the marked copy of the electoral roll the learned Judge first observed that as that document was included in sub- clause (d) of Rule 93(1) of the Conduct of Elections Rules, 1961 ('Elections Rules' for short) it should not be allowed to be produced to maintain secrecy of the election. The other ground which weighed with the learned Judge was that no case had been made out for summoning the document. Having considered the materials on record in the light of the relevant rules and circulars we are unable to sustain either of the above grounds.

6. Rule 93(1) of the Elections Rules provides that while in the custody of the District Election Officer or the Returning Officer, the documents referred to in various clauses thereof shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of the competent Court; and the documents referred to in clause (d) of the above rule include the packets of the marked copy of the electoral roll.

7. The manner in which the marked copy of the electoral roll is to be maintained is provided for in Chapter V of the official handbook issued by the Election Commission of India for use of its officers during election. It is provided therein that as soon as an elector enters the polling station he has to proceed directly to the First Polling Officer who is to be in charge of the marked copy of the electoral roll and responsible for the identification of the electors. After taking requisite steps to locate the name of the elector in the electoral roll and after checking it with the particulars in the relevant entry in the roll, he is to call out the page number, the part number, the serial number and the name of the elector to the hearing of the polling agents and the Second Polling Officer. If there is no challenge as regards the identity of the elector he is required to underline in every case the entry relating to the elector in the marked copy of the electoral roll with him and where the elector is a female to put a () mark also on the left side of the name of the female elector. With such marking the duty of the First Polling Officer ends and the voter is then required to move to the Second Polling Officer whose duty is to supply the ballot-paper and record on the counterfoil of the ballotpaper the electoral roll part number and the serial number of the elector, as entered in the marked copy of the electoral roll. Considering the limited purpose for which the marked copy of the electoral roll is

maintained, namely, to identify the elector, it cannot be said that production thereof would impair the secrecy of the voters.

8. The other observation of the learned trial Judge that no case was made out for summoning the marked copy of the electoral roll is also not borne out by the record. As has already been noticed the appellant has averred in the election petition that against dead voters, votes have been cast and in support of his contention he has not only examined himself but also examined his polling agents of the respective booths wherein, according to him, false votes have been cast. Besides, he has exhibited the electoral roll which those polling agents maintained to ascertain the identity of the electors who had come to vote. It must, therefore, be held that the appellant has made out a prima facie case for production of the marked copy of the electoral roll of the five booths referred to in his application.

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 F.A. Sapa v. Singora 1 :

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

(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.

(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.

(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 a fortiori 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.

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. Sapal and accept the findings of the learned Judge as 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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12. We, therefore, allow these appeals and set aside the impugned orders dated November 2, 1992 and May 28, 1993. The learned Judge will now issue necessary directions for production of the marked copy of the electoral roll as prayed for by the appellant and also dispose of the amendment application on its merits. However, there will be no order as to costs.