

Supreme Court of India

Mithilesh Kumar Pandey vs Baidyanath Yadav And Ors on 2 January, 1984

Equivalent citations: 1984 AIR 305, 1984 SCR (2) 278

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

MITHILESH KUMAR PANDEY

Vs.

RESPONDENT:

BAIDYANATH YADAV AND ORS.

DATE OF JUDGMENT 02/01/1984

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

REDDY, O. CHINNAPPA (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1984 AIR 305 1984 SCR (2) 278

1984 SCC (2) 1 1984 SCALE (1) 1

CITATOR INFO :

F 1990 SC 924 (28)

ACT:

Representation of the People Act , 1951, Section 81(3)-
Construction of the provisions of the section-copy of the
election petition containing several mistakes of vital
character, not found in the original-Election petition is
not maintainable and must be dismissed.

HEADNOTE:

In the general elections held in June 1980, the
appellant fought as a Congress(1) candidate from Harlakhi
Assembly constituency in Bihar and was declared elected. The
respondent who was defeated filed an election petition in
the Patna High Court listing a large number of persons
through whom corrupt practices were alleged to have been
practised by the appellant. Since the copy of the petition,
though attested by the election petitioner under his own
signature to be a true copy, contained several mistakes
which were of a very vital character, the appellant
contested the petition alleging that the mandatory
provisions of section 83(3) of the Representation of People
Act not having been complied with at all, the petition

should be dismissed in limine without going into the merits of the case. Though the High Court found as a fact that a large number of mistakes were there in the copy of the election petition supplied to the appellant. Yet, as they were of a superficial and insignificant nature bordering on clerical or typing mistakes, on the whole, there was a substantial compliance of the provisions of Section 81(3) of the Act. Hence the appeal against the interlocutory order.

Allowing the appeal and dismissing the election petition the Court,

HELD: 1:1 A perusal of Sections 81(3) and 86 of the Representation of the People Act reveals that the statute intended that before an election petition can be entertained, the copy sent to the elected candidate must be a true copy, failing which there would be a serious disobedience of the mandate contained in s.81(3) which would be fatal to the maintainability of the said petition. [281 F]

1:2 It is now well settled by a large catena of authorities of this Court that the electoral process by which the verdict of the people has been given is a sacrosanct one and cannot be lightly set at naught unless the grounds mentioned in the Act for setting aside an election are held to be proved. In these circumstances, it is manifest that the provisions of s.81(3) of the act should be construed to the letter and spirit of the law because if the election petitioner does not give full and complete notice of the allegations made against the returned candidate, he runs the risk of his petition being dismissed in limine. [281 G-H]

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2 On a careful consideration and scrutiny of the law on the subject, the following principles are well established;

- (1) that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway under s.86 of the Act, [283 F]
- (2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof, [283 G]
- (3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of s.81(3) of the Act, [284 A]
- (4) Prime facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true

copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of s.81(3) of the Act, and [284 B]

- (5) As s.81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section [284

Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors. [1964] 3 SCR 573; Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar & Ors. [1971] 1 SCR 821; Satya Narain v. Dhuja Ram & Ors., [1974] 23 SCR 20; Sharif-ud-din v. Abdul Gani Lone, [1980] 1 SCR 1177; M. Karunanidhi etc. etc. v. H.V. Hande & Ors. etc. etc. [1983] 1 SCR 1177; M. Karunanidhi etc. etc. v. H.V. Hande & Ors. etc. etc. [1983] 1 SCALE 344 referred to. [284 D-E, 285 G; 286 A; 285 C]

3. In the instant case, the mistakes in the copy supplied to the returned candidate related to corrupt practices, have to be proved to the hilt just like a criminal charge and any mistake which contains an element of vagueness would immediately vitiate the election petition and merit its dismissal under s.86 of the Act. Among the many more mistakes given in Schedule I, the few selected items themselves are vital and may seriously prejudice the defence of the appellant because it will be very difficult for him to find out the persons, named in the copy supplied to him who are said to have indulged in corrupt practices at his instance. The present case is a much worse case than Murarka Radhey Shyam Ram Kumar's case (supra) where only a slight difference in the title led this Court to hold that the mistake was a vital one was a valid one. Further, the omission of names cannot be said to be a typing mistake but a very vital and serious one which is sufficient to entail the dismissal of the election petition. [284 D-E; 285 G; 286 A; 285 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 5307 of Appeal by Special leave from the Judgment and Order dated the 7th January, 1983 of the Patna High Court in Election Petition S.N. Kacker, L.R. Singh and Gopal Singh for the Appellant.

R. K. Garg and D.K Garg for the Respondent. The Judgment of the Court was delivered by FAZAL ALI, J. By Order dated November 29, 1983 we had allowed the appeal. We now proceed to give the reasons for the said Order.

This election appeal is directed against an interlocutory Order dated January 7, 1983 passed by the Patna High Court overruling a preliminary objection taken by the appellant (elected candidate) that the election petition of the respondent (election petitioner) should be dismissed straightaway under

the provisions of s.86 of the Representation of the People Act, 1951-as amended upto date-(hereinafter referred to as the 'Act') The appellant's case is that in the general election held in June 1980 he fought as a Congress (I) candidate from Harlakhi Assembly constituency in Bihar in which he was declared elected, defeating the respondent who filed the election petition in the High Court. He further submitted that the copy of the election petition served on him contained a large number of mistakes in respect of persons through whom corrupt practices were alleged to have been practised by the appellant during the election, He contended that in view of the very large number of mistakes, which were of a very vital character, the mandatory provisions of s.81(3) of the Act were not complied with at all, which infirmity by itself would be sufficient to dismiss the election petition in limine without going into the merits of the case.

The stand taken by the respondent was that the mistakes were undoubtedly there but they were of a minor and significant nature and did not affect his case on merit.

The learned Judge of the High Court found as a fact that a large number of mistakes were there in the copy of the election petition supplied to the appellant but as they were of a superficial and insignificant nature bordering on clerical or typing mistakes, on the whole there was a substantial compliance of the provisions of s.81(3) of the Act. The learned Judge has entered into a detailed discussion of the various decisions of this Court and also of High Courts and has correctly held that the provisions of s.81(3) are mandatory and if the court finds that they have not been complied with it has no alternative but to dismiss the election petition straightaway. Unfortunately, however, in the process of applying the principles laid down by this Court he has completely glossed over the nature of the mistakes by describing them as merely clerical or typing ones. On a perusal of the aforesaid mistakes (listed at pp. 64-65 of the Paperbook) they do not appear to be so. Section 81(3) of the Act thus:

"81. Presentation of petitions (3) 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 consequence of non-compliance of this section has been mentioned in s.86(3) which may be extracted thus:

"86. Trial of election petitions (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

A perusal of the above reveals that the statute intended that before an election petition can be entertained, the copy sent to the elected candidate must be a true copy, failing which there would be a serious disobedience of the mandate contained in s.81(3) which would be fatal to the maintainability of the said petition.

It is now well settled by a large catena of authorities of this Court that the electoral process by which the verdict of the people has been given is a sacrosanct one and cannot be lightly set at naught

unless the grounds mentioned in the Act for setting aside an election are held to be proved. In these circumstances, it is manifest that the provisions of s.81(3) of the Act should be construed to the letter and spirit of the law because if the election petitioner does not give full and complete notice of the allegations made against the returned candidate, he runs the risk of his petition being dismissed in limine.

In the instant case, it is the admitted case of the parties that the mistakes in the copy supplied to the appellant related to corrupt practices indulged in by him through various persons who have been named at pages 64-65 of the Paperbook. In *Muraka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.*(1) this Court made the following observations:-

"Having regard to the provisions of Part VI of the Act we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person."

In other, words, this Court merely meant to indicate that where the variation is so minimal and insignificant that it is incapable of misleading any person as to the true purport of the allegation, it would be a substantial compliance of the provisions of s.81(3) of the Act. The High Court has largely relied on the ratio of this particular case.

There can be no dispute regarding the principle laid down by this Court but the main difficulty arises when we approach the facts of a particular case in order to find out whether the copy supplied to the returned candidate is really a true copy or not.

In *Jagat Kishore Prasad Narain Singh v. Rajendra KUMar Poddar & Ors.*(2) the same principle was laid down. In this case, the mistake was that in the election petition it was stated that money was offered to on Jetha Kisku by Munshi Hansda but in the copy served on the returned candidate instead of Munshi Hansda the name of Paul Hansda was mentioned. Apparently, the mistake was a verbal one but this court held that it was sufficient to prejudice the defence and accordingly came to the conclusion that the petition was liable to be dismissed under s.86 of the Act.

We shall presently show that in the instant case the mistakes were of a greater nature than those with which this Court was dealing with in the aforesaid case. In *Satya Narain v. Dhuja Ram & Ors.*(1) this Court clearly pointed out that where the first part of s.81(3) was not complied with, the provision being a peremptory one, total noncompliance with the same would entail dismissal of the election petition under s.86 of the Act. In a later case in *Sharif-ud-Din v. Abdul Gani Lone*(2) this Court observed thus "It is true that section 89(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequences should follow if the act is not done in that manner, courts have no option but to enforce the law as it is." In a latest decision of the Court in *M. Karunanidhi etc. etc. v. H. V. Hande & Ors. etc. etc.*,(3) the following observations were made :

"It is obvious that the photograph was a part of the averment contained in paragraph 18(b). In the absence of the photograph the averment contained in paragraph 18(b) would be incomplete. The photograph referred to in paragraph 18(b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-s.(3) of s.81 of the Act by failure to serve the appellant with a copy of the election petition."

On a careful consideration and scrutiny of the law on the subject, the following principles are well established ;

- 1) that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightaway under s.86 of the Act,
- 2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof,
- 3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of s.81(3) of the Act.
- 4) Prima facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of s. 81(3) of the Act, and
- 5) As s.81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section.

We might mention here that in the instant case the mistakes in the copy supplied to the returned candidate related to corrupt practices which, as has been held by this Court in a large number of cases, have to be proved to the hilt just like a criminal charge and any mistake which contains an element of vagueness would immediately vitiate the election petition and merit its dismissal under s.86 of the Act.

In the view that we take, it is not necessary for us to wade through a detailed discussion of the mistakes because a few mistakes pointed out by the Judge himself clearly reveal that they were of a very vital and material nature so as to mislead the returned candidate and prejudice him in his defence. Schedule I to the election petition contained the list of persons through whom the corrupt practices were alleged to have been committed. An analysis of these mistakes may be placed in three categories-(1) where there is complete omission of some names which have been mentioned in the

election petition but not in the copy supplied to the returned candidate, (2) giving absolutely wrong names which are bound to mislead the appellant in his defence as the persons bearing the wrong names could not be traced out, and (3) some names given in the petition appear to be males but in the copy given to the appellant they appear to be females.

Coming to the first category, a few examples will suffice to illustrate our point Sl. No. in Name in the Name in the Schedule I original petition copy 17 Yogendra Jha Omitted 37 Bulari Devi Omitted 188 Bal Bhogia Omitted 445 Ramdeo Paswan Omitted 486 Jugeshwari Devi Omitted The omission of names cannot be said to be a typing mistake but a very vital and serious one which is sufficient to entail the dismissal of the election petition. Under the second category (giving wrong names), the following names may be mentioned Sl. No. in Name in original Name in copy Schedule I 42 Nanpuran Mitra Mahpuran Mitra 62 Bilas Jha Biml Jha 105 Dukhi Devi Sudama Devi 179 Bhekai Paswan Mokai Paswan 385 Mauki Tetri 440 Kalasiya Kalya 466 Kalish Jandra Jha Kali Janwa Jha 479 Gayatri Devi Sati Devi 498 Udit Mishra Udit Mitra 579 Yashodara Mishra Yashoda Devi 679 Jhularia Devi Kaushilya Devi Third Category 29 Kiran Jha Kiran Devi (May be a male or a female) (Must be a female) 444 Dulaira Ramdeo Paswan 675 Rajsunair Yadav Rajsunari Yadav There are many more mistakes given in schedule I but we have selected only those which are vital and may seriously prejudice the defence of the appellant because it will be very difficult for him to find out the persons, named in the copy supplied to him, who are said to have indulged in corrupt practices at his instance.

Thus, on an overall consideration of the facts and circumstances of this case, we are unable to agree with the High Court that the mistakes in the copy were either verbal, typographical or clerical. The present case appears to be a much worse case than Murarka Radhey Shyam Ram Kumar's case (supra) where only a slight difference in the title led this Court to hold that the mistake was a vital one.

We are, therefore, of the opinion that the High Court committed a serious error of law in holding that there had been a substantial compliance of the provisions of s.81(3) of the Act so as to exclude the application of s.86 of the Act.

For the reasons given above, we allow the appeal and dismiss the election petition filed in the High Court but in the circumstances without any order as to costs. As a result of our judgment, nothing now survives in the High Court.

S.R.

Appeal allowed.