

Supreme Court of India

Senthilbalaji V. vs A.P. Geetha on 19 May, 2023

Author: Abhay S. Oka

Bench: Abhay S. Oka, Rajesh Bindal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3895-3896 OF 2023
(Arising out of S.L.P. (C) Nos. 7219-7220 of 2018)

Senthilbalaji V.

... Appellant

versus

A.P. Geetha & Ors.

... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. These appeals arise out of an Election Petition filed by the first respondent under Section 81 of the Representation of the People Act, 1951 (for short, 'the RP Act of 1951'). The Election Petition was filed by the first respondent in the Madras High Court questioning the validity of the election of 134 - Aravakurichi Assembly Constituency (for short, "the said Signature Not Verified Constituency"). Polling was held on 19 th November 2016 and the Digitally signed by GEETA AHUJA Date: 2023.05.20 14:14:29 IST result was declared on 22nd November 2016. The present Reason:

appellant is the 5th respondent in the Election Petition filed by Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 the first respondent. The present appellant was declared as elected. He was polled 88,068 votes. The 6 th respondent in the Election Petition (the 6th respondent in this appeal) was polled 64,407 votes. Only 82 voters voted for the first respondent (Election Petitioner).

2. The first ground of challenge in the Election Petition is the improper acceptance of nomination papers of the appellant and the 6th respondent. The second ground of challenge is that the election is void as the appellant has indulged in corrupt practices. The allegation is that the appellant's agent and some other persons with the consent of the appellant have indulged in corrupt practices.

3. An application was made by the present appellant inter alia pointing out that no cause of action has been set out in the Election Petition in support of the ground of corrupt practice. It was

submitted by the appellant that the Election Petition filed by the first respondent does not disclose any material particulars and material facts about the allegation of corrupt practice. It was contended that the allegations made in paragraphs 3 to 9 are vague and therefore, the said paragraphs deserve to be struck out by exercising the power under Rule 16 of Order VI of the Code of Civil Procedure, 1908 (for short, 'CPC'). The second prayer was for the rejection of the Election Petition on the ground that the same does not disclose the cause of action. A similar application was also filed by the 6th respondent. By the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 impugned judgment, the learned Judge of the Madras High Court rejected the applications. While doing so, he observed that the first respondent had forwarded copies of a compact disc, photographs, etc. to the Returning Officer (5 th respondent). The learned Judge directed the first respondent to file all relevant documents such as emails, photographs, video footage, etc. which were submitted to the Returning Officer within a period of 15 days from the order. The appellant has challenged the said judgment and order dated 23rd February 2018 by way of this Appeal.

SUBMISSIONS

4. Shri Ranjith Kumar, the learned senior counsel appearing on behalf of the appellant has invited our attention to the requirement of clauses (a) and (b) of sub-section (1) of Section 83 of the RP Act of 1951 of incorporating in an election petition a concise statement of material facts and full particulars of any corrupt practice which is allegedly committed by the returned candidate. He pointed out that clause (b) of sub-section (1) of Section 83 also requires the election petitioner to make full statement disclosing the names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. The learned senior counsel also pointed out that initially, the election to the said Constituency was to be held in May 2016. By order dated 14 th May 2016, the Election Commission of India ("the Election Commission") postponed the said election. There was a further order passed Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 on 27th May 2016 by the Election Commission holding that the election of the said Constituency cannot be allowed to proceed and ought to be rescinded so that fresh elections could be held. Accordingly, on 17th October 2016, the Election Commission rescheduled the election to the said Constituency and declared that the polling will be held on 19th November 2016. He pointed out that the first respondent filed a writ petition before the Madras High Court challenging acceptance of the nomination papers of the appellant and 6th respondent. He pointed out that by the judgment and order dated 18th November 2016, the High Court rejected the said writ petition filed by the first respondent and imposed costs on the first respondent.

5. Inviting our attention to the averments made in the Election Petition filed by the first respondent, he pointed out that paragraphs 3 and 4 of the Election Petition give the history of the declaration of the poll and subsequent postponement. Paragraph 5 refers to the fact that the representation made by the first respondent for challenging the validity of the nomination papers of the appellant and 6th respondent was rejected by the Returning Officer. He pointed out that in paragraph 6 of the Election Petition, the first respondent has relied upon four representations made from 17 th November 2016 to 22nd November 2016 to the Returning Officer alleging that the appellant has committed electoral misconduct, corrupt practice, and acts of bribery. It is alleged that the first respondent handed Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 over audio and video clippings to the Returning Officer

to prove the allegations in the representations made by email addressed to the Returning Officer. In paragraph 7, the allegation is that result of the election is vitiated due to improper acceptance of the nomination paper of the appellant. Paragraph 8 contains a chart showing the respective votes polled by various candidates. In paragraph 9, it is alleged that the earlier election was cancelled due to misconduct on the part of the appellant and the 6th respondent and that they have suppressed the findings of the Election Commission recorded against them. He submitted that along with the Election Petition, copies of the representations made by the first respondent were filed. He urged that material facts and particulars regarding the alleged corrupt practices are not found in the Election Petition. He submitted that on the basis of the applications made by the appellant, the High Court has directed the first respondent to file copies of emails, photographs, and video footage which do not find place in the list of documents filed along with the Election Petition. He urged that the said direction is per se illegal.

6. Learned senior counsel relied upon decisions of this Court in the case of (i) Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi¹ (ii) M. Karunanidhi v. H.V. Hande & Ors. 2 and (iii) Mulayam Singh Yadav v. Dharam Pal Yadav & Ors. 3. He 1 1987 Supp SCC 93 2 (1983) 2 SCC 473 3 (2001) 7 SCC 98 Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 submitted that once the paragraphs in the Election Petition concerning allegations of corrupt practice are struck out, nothing will survive in the Election Petition as the term of the appellant is already over and a fresh election has been held thereafter.

7. Lastly, the learned senior counsel submitted that while deciding the applications made by the appellant, the High Court could have either allowed the applications or rejected the same. But the High Court has committed an error by directing the first respondent to produce documents which she had not produced.

8. Shri Balaji Srinivasan, the learned counsel representing the first respondent pointed out that material facts in support of the allegations of corrupt practice are already pleaded in the Election Petition. He pointed out that the first respondent has relied upon representations made by her to various authorities in which specific details of corrupt practices have been set out. He submitted that as material facts have already been pleaded, the High Court rightly did not exercise its powers under Rule 16 of Order VI of CPC. Relying upon a decision of this Court in the case of V.S. Achuthanandan v. P.J. Francis & Anr.⁴, the learned counsel submitted that material particulars can always be supplied later on even if the period of limitation for filing the election petition is over. He also relied upon another decision of this Court in the case of Ponnala Lakshmaiah v. Kommuri⁴ (1999) 3 SCC 737 Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Pratap Reddy and Ors.⁵ He submitted that while dealing with applications under Rule 11 of Order VII or Rule 16 of Order VI of CPC, the Court cannot adopt a hypertechnical approach. Relying upon what is held in paragraph 9 of a judgment of a Constitution Bench of this Court in the case of Balwan Singh v. Lakshmi Narain & Others⁶, he submitted that an opportunity is always available to the election petitioner to apply for amendment of the election petition for incorporating particulars or for amplifying the particulars. He invited our attention to the impugned order and urged that the High Court has correctly applied settled legal principles and therefore, no interference is called for.

OUR VIEW

9. We have given careful consideration to the submissions. We have carefully perused the Election Petition filed by the first respondent. As noted earlier, the election to the said Constituency was postponed in terms of the order dated 27 th May 2016 passed by the Election Commission. The challenge to the election was on two grounds. Firstly, that the nomination of the appellant was improperly accepted and secondly, corrupt practices have been committed by the appellant or by other persons with his consent. Section 123 of the RP Act of 1951 defines various corrupt practices for the purpose of the said 5 (2012) 7 SCC 788 6 (1960) 3 SCR 91 Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 enactment. Naturally, the corrupt practice has to be qua the election subject matter of challenge in the Election Petition.

10. Now, coming to the Election Petition filed by the first respondent, paragraphs 1 and 2 are formal paragraphs which contain the first respondent's address and description of the respondents. Paragraph 3 only records that by a notification dated 16th October 2016, the Election Commission announced the election for the said Constituency. Paragraph 4 quotes the order of the Election Commission by which the election earlier scheduled was postponed due to reasons incorporated in the said order. Paragraphs 3 and 4 are completely irrelevant to adjudicate upon the grounds pleaded in the Election Petition.

11. In paragraph 5, the first respondent has relied upon the representation made by her on 3 rd November 2016 to the Returning Officer by pointing out that the appellant and 6 th respondent have committed misconduct by suppressing the findings of the Election Commission recorded in the order dated 27th May 2016. The first respondent called upon the Returning Officer to disqualify the appellant and the 6 th respondent. It is further stated that the representation was rejected by communication dated 5th November 2011. Therefore, the first respondent filed a writ petition in the High Court which was dismissed by the order dated 18 th November 2016 with costs of Rs.3,000/- on the first respondent. Presumably, paragraph 5 of the petition is in support of the ground of improper acceptance Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 of the nomination papers of the appellant. However, the first respondent has not pleaded that under a particular statutory provision, the appellant and 6th respondent were under an obligation to disclose the order dated 27 th May 2016 passed by the Election Commission while filing nomination papers. It is not pleaded how on the ground of the failure to disclose the said order, the appellant and 6th respondent were disqualified from contesting the election. The disqualification must be based on a statutory provision. The first respondent has not pleaded that in law it was the obligation of the appellant to disclose in the nomination paper, the earlier order of the Election Commission by which the election was postponed. The existence of no such obligation is pleaded. Therefore, in our view, averments made in paragraphs nos. 4 and 5 of the Election Petition are unnecessary, thereby, attracting clause (a) of Rule 16 of Order VI of CPC. Under clause (a) of Rule 16 of Order VI of CPC, the Court has the power to strike out a pleading which is unnecessary.

12. We will have to examine the averments regarding corrupt practice in the light of Section 83 of R.P. Act of 1951 which reads thus:

“83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

Civil Appeals @ SLP (C) Nos.7219-7220 of 2018

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.] (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.” (emphasis added) Now we come to paragraphs 6 and 7 which read thus:

“6. The petitioner filed representations to 4th Respondents on 17.11.2016 two representations, 19.11.2016, 20.11.2016, 22.11.2016 explaining that the 5th Respondent committed electoral misconduct, corrupt practice and bribery to the electorate. The 4th Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Respondent did not consider the representations. She submitted that the 5th Respondent used Government vehicles for election campaign. The petitioner filed audio and video clippings to prove the allegations made in the representation by electronic mail to the 4th Respondent. She craves leave of the Court to treat the averments in the above representations as part and parcel of this petition.

7. The petitioner submits that the returned candidate was disqualified to be chosen to fill the said seat that he has committed corrupt practice and the result of the election so far as it concerned to the 5th Respondent has been materially affected by improper acceptance of his nomination, by corrupt practice and non-compliance of by not disclosing the earlier order of the election commission for same constituency.”

13. Section 123 of the RP Act of 1951 defines corrupt practices. In paragraphs 6 and 7, even bare particulars of any of the corrupt practices covered by Section 123 have not been pleaded. What is the nature of corrupt practice is also not described except for making a bald allegation that in the representations mentioned in paragraph 6, the first respondent has set out electoral misconduct, corrupt practice, and bribery on the part of the appellant. Clause (a) of sub-section (1) of Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Section 83 mandates that an election petition must contain a concise statement of material facts. When the allegation is of corrupt practice, the basic facts constituting corrupt practice must be pleaded in order to make compliance with Clause (a) of

sub-section (1) of Section 83. In this case, such concise facts are not at all pleaded. Basic facts cannot be pleaded only by stating that the same find place in the documents relied upon. The first respondent has merely stated that the contents of representations may be read as a part of the petition. This does not satisfy the requirement of incorporating a concise statement of material facts. Moreover, when the allegation is of corrupt practice, the proceedings virtually become quasi-criminal. Therefore, the elected candidate must get adequate notice of what is alleged against him. That is why material facts concerning the ground of corrupt practice must be pleaded. The outcome of such a petition is very serious. It can oust a popularly elected representative of the people. Therefore, non-compliance with the requirement of stating material facts must result in the rejection of the petition at the threshold.

14. At this stage, we may make useful reference to a well-known decision of this Court of a Bench of three Hon'ble Judges in the case of V.S. Achuthanandan⁴ which is in fact relied upon by the first respondent. Paragraph 15 of the said decision reads thus:

Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 “15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose “material facts and full particulars” of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the “material facts” and the “material particulars” of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in Balwan Singh v. Lakshmi Narain [AIR 1960 SC 770 :

(1960) 3 SCR 91], Samant N.

Balkrishna v. George Fernandez [(1969) 3 SCC 238] , Virendra Kumar Saklecha v. Jagjiwan [(1972) 1 SCC 826], Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511], F.A.

Sapa v. Singora [(1991) 3 SCC 375]
and Gajanan Krishnaji Bapat v. Dattaji

Raghobaji Meghe [(1995) 5 SCC 347] and a host of other authorities, this Court in L.R. Shivaramagowda v. T.M.

Chandrashekar [(1999) 1 SCC 666 : (1998) 6 Scale 361] held that while failure to plead “material facts” is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of “material particulars” can be cured at a later stage by an Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 appropriate amendment. An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge

levelled, the ground relied upon, and in the light of the special circumstances of the case. In *Udhav Singh* case [(1977) 1 SCC 511] the Court held: (SCC p. 523, paras 42-43) “In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are ‘material facts’ which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

‘Particulars’, on the other hand, are ‘the details of the case set up by the party’.

‘Material particulars’ within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). ‘Particulars’ serve the purpose of finishing touches to the basic contours of a picture already Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 drawn, to make it full, more detailed and more informative.” (emphasis added)

15. The consensus of judicial opinion is that the failure to plead material facts concerning alleged corrupt practice is fatal to the election petition. The material facts are the primary facts which must be proved on trial by a party to establish the existence of a cause of action. In the present case, taking the averments made in the petition as it is, not a single material fact is pleaded making out an allegation of corrupt practice covered by Section 123 of the RP Act of 1951. All that the first respondent has pleaded is that he made representations to the Returning Officer and other authorities complaining about the corrupt practice on the part of the appellant. What is the nature of the corrupt practice is not mentioned even in brief. Therefore, material facts, which according to the first respondent constitute corrupt practice were not pleaded in the Election Petition.

16. At this stage, we may refer to a decision of this Court in the case of *Dhartipakar Madan Lal Agarwal* and in particular paragraph nos. 13 and 14 which reads thus:-

“13. The appellant's grievance that in entertaining the preliminary objections and rejecting the election petition under Order VII Rule 11 the High Court deprived the appellant's opportunity to amend the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 petition and to make good the deficiencies by supplying the necessary particulars and details of the corrupt practice alleged in the petition, is devoid of any merit. Firstly, the appellant was free to file amendment application, but at no stage he expressed any desire to make any amendment application nor he made any application to that effect before the High Court. It was open to the appellant to have made that application but he himself did not make any such application. The High Court was under no legal obligation to direct the appellant to amend pleadings or to suo moto grant time for the same. Secondly, the allegations of corrupt practice as required by Section 83 were not complete and the same did not furnish any cause of action, any amendment made after the expiry of the period of limitation could not be permitted which would amount to raise a new ground of challenge. The question, however, does not arise as the appellant did not file any amendment application. During the course of hearing of this appeal before us the appellant has made applications for

amendment of the election petition which we shall deal with later.

14. Before we consider various paragraphs of the election petition to determine the correctness of the High Court order we Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by a catena of decisions of this Court in N.P. Ponnuswami v. Returning Officer [(1952) 1 SCC 94: AIR 1952 SC 64 :

1952 SCR 218 : 1 ELR 133], Jagan Nath v. Jaswant Singh [AIR 1954 SC 210 :

1954 SCR 892 : 9 ELR 231], Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983 : (1982) 3 SCR 318]. These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of People Act is a complete and self-contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.” (emphasis added)

17. This Court held that Section 83 makes it obligatory for the election petitioner to give requisite facts, details, and particulars of each corrupt practice with exactitude. In this case, requisite facts are completely missing. The allegations are very vague Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 and general in nature and, therefore, there is no cause of action to proceed on the ground of corrupt practice. Therefore, in our view, the averments made in paragraphs 6 and 7 do not constitute a cause of action available to proceed on the ground of corrupt practices contemplated by Section 123. Paragraph 8 contains the details of the result of the election. Paragraphs 2 to 4 and 8 are formal in nature and not at all relevant.

18. In paragraph 9, again there are vague and general allegations that the appellant and 6th respondent committed electoral misconduct and corrupt practice. Even this paragraph is bereft of

material facts. Paragraph 9 (a) has been added which contains only one sentence that acceptance of nomination of the appellant and 6th respondent is illegal. Not a single material fact is pleaded in support of the plea that the acceptance of the nomination paper is improper.

19. While rejecting the applications made by the appellants, the learned Single Judge of the High Court had issued directions in paragraphs 19 and 20 which read thus:-

“19. In this case, as already held that the election petition discloses material facts and particulars and copy of the CD, photographs etc sent to the respondent/returning officer has not been given to the applicants herein/respondents 5 & 6. The 1st respondent/election petitioner has not stated anything new in the election petition, these documents have already been sent to the 5th Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 respondent/returning officer during election. The Returned candidate/5th respondent has not denied and the same can be decided at the time of trial. Therefore, it is necessity on the part of the first respondent/election petitioner to produce the copies of emails, photographs, CD and video footages etc., before this Court and serve the same to the applicants herein/contesting respondents 5 and 6.

20. With the above observation, all the three applications are dismissed. This Court directs the first respondent/ election petitioner to file all the relevant documents before this Court within 15 days from the date of this order viz., emails, photographs and video footages etc., if any filed before the 5th respondent/returning officer during the Election and also to serve those materials to applicants herein/contesting respondents 5 and 6.” (emphasis added)

20. We must note here that the emails, photographs, and video footage have not been relied upon in the list of documents filed along with the Election Petition. At the highest, these documents will constitute particulars and not material facts. Secondly, the High Court had no reason to direct the election petitioner to file the said documents on record while dismissing applications filed by the appellant and the 6 th respondent. It was for the first respondent to seek permission to produce the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 documents. The first respondent never sought such permission.

Even if the documents are produced, the same will be without any foundation in the pleadings. Therefore, it is very difficult to sustain the said direction as well.

21. As held earlier, paragraphs 3 and 4 are unnecessary, which do not deal with something which happened after the election was declared. Therefore, the said paragraphs being irrelevant will have to be ordered to be deleted under Rule 16 of Order VI of CPC. Paragraph 5 is not material for the alleged cause of action. Paragraphs 6, 7 and 9 do not disclose any material facts in relation to the allegations of corrupt practices. As material facts regarding allegations of corrupt practice have not been pleaded, the election petition does not disclose any cause of action as far as the ground of corrupt practice is concerned. Therefore, even these paragraphs deserve to be deleted. As stated earlier, the ground of improper acceptance of the nomination paper is not supported by material

facts. In any case, the ground of improper acceptance of the nomination paper is no longer relevant as the term of the appellant has already expired. Therefore, in view of the findings which we have recorded above, no purpose will be served by keeping the Election Petition pending. Accordingly, we set aside the impugned judgment of the High Court and allow the applications filed by the appellant for rejection of the petition and/or for deletion of irrelevant paragraphs. Election Petition Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 No.1 of 2017 pending before the High Court of Judicature at Madras stands dismissed. There will be no order as to costs.

.....J.

(Abhay S. Oka)J.

(Rajesh Bindal) New Delhi;

May 19, 2023.

Civil Appeals @ SLP (C) Nos.7219-7220 of 2018