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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J.
August 23, 2023
CIVIL APPEAL Nos. 4179-4180 OF 2023 ARISING OUT OF SLP (C) Nos. 11828-11829 of 2023
THANGJAM ARUNKUMAR *versus* **YUMKHAM ERABOT SINGH & ORS.**

Representation of People Act, 1951; Section 83(1)(c) - The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit - In this case, the election petition contained an affidavit in which the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c). *(Para 14-15)*

For Appellant(s) Mr. Devadatt Kamat, Sr. Adv. Mr. David Ahongsangbam, Adv. Mr. Br Sharma, Adv. Mr. S Gunabanta Meitei, Adv. Mr. Mohan Singh, Adv. Mr. Javedur Rahman, Adv. Mr. Harsh Pandey, Adv. Ms. Rajkumari Banju, AOR

For Respondent(s) Mr. Shadan Farasat, AOR Ms. Warisha Farasat, Adv. Mr. Aman Naqvi, Adv. Mr. Harshit Anand, Adv. Ms. Hrishika Jain, Adv. Ms. Natasha Maheshwari, Adv. Ms. Mreganka Kukreja, Adv.

J U D G M E N T

Pamidighantam Sri Narasimha, J.

1. This appeal arises out of the decision of the High Court of Manipur[1] dated 11.04.2023, whereby the returned candidate's application under Order 7 Rule 11 of the Code of Civil Procedure, 1908[2], to dismiss the election petition filed by the unsuccessful candidate on the ground that it lacks material particulars and is in violation of mandatory requirements of law was rejected by the High Court. The returned candidate is the Appellant before us.

Facts:

2. The short and precise facts necessary for our consideration are as follows. The Appellant is the returned candidate to the XII Manipur Legislative Assembly, having been elected from the 15Wangkhei Assembly Constituency. The Respondent No.1, the unsuccessful candidate moved Election Petition No. 24 of 2022[3] alleging violations under Sections 80, 80A, 81, 84 read with Sections 100(1)(d)(iv) and 101 of the Representation of People Act, 1951[4]. The election petitioner prayed that the election of the Appellant be held void and also to declare him to be the elected candidate. It is important to note that the election petition alleges corrupt practice, in as much as the petitioner pleaded that the returned candidate has not provided the material particulars with respect to a financial transaction relating to financing a loan.

3. In response to the election petition, the Appellant moved two applications under Order 7 Rule 11 read with Section 151 of the CPC and under Section 86 of the Act seeking

[1] Hereinafter "the High Court".
[2] Hereinafter, "the CPC".
[3] Hereinafter, "the Election Petition".
[4] Hereinafter, "the Act".

dismissal of the election petition on the grounds of – (i) non-disclosure of cause of action/triable issue *vis-à-vis* the alleged corrupt practice committed by the Appellant; (ii) the absence of a concise statement of facts as mandated under Section 83 of the Act; and (iii) for not serving a true self attested copy of the election petition on the returned candidate as provided under Section 81 of the Act. Apart from the above, and more importantly, the Appellant also sought dismissal of the election petition on the ground that the Form-25 affidavit as prescribed under Section 83 of the Act r/w Rule 94A of the Conduct of Election Rules, 1961[5] has not been filed along-with the election petition. It was alleged that such an affidavit is mandatory, as the election petition raises allegations of corrupt practice.

4. The High Court, by the order impugned, dismissed the applications under Order 7 Rule 11 of the CPC. The High Court observed that – (i) the election petitioner had elaborately pleaded all the material facts and set forth full particulars of all the actions and omissions of the Appellant, sufficient to constitute a case of corrupt practice. The High Court, therefore, concluded that there is a cause of action and triable issues; (ii) the High Court also concluded that the alleged non-compliance of Section 81(3) of the Act is incorrect as the election petitioner had effectively attested the election petition. For this purpose, High Court relied on the decisions of this Court in *Ch. Subbarao* v. *Member, Election Tribunal, Hyderabad & Ors.*[6], and also a decision of the same Court in *Pukhrem Sharatchandra Singh* v. *Mairembam Prithviraj @ Prithibiraj Singh*[7], later came to be upheld by this Court in *Mairembam Prithviraj @ Prithviraj Singh* v. *Pukhrem Sharatchandra Singh*[8]. The High Court observed that although the election petitioner attested the election petition as "true copy of the original" and not as "true copy of the petition", the same is in compliance with Section 81(3) of the Act.

5. The submission that in all cases involving allegations of corrupt practices, the election petitioner must mandatorily file an affidavit under Section 83(1) of the Act was rejected without much discussion. The High Court simply following the decision of this Court in *Lok Prahari through its General Secretary* v. *Union of India & Ors.*[9], rejected the plea.

Submissions:

6. Mr. Devadatt Kamat, learned senior counsel appearing for the Appellant initially argued the first two grounds, namely that there is a non-disclosure of the cause of action and also that there is a complete non-compliance of the requirement under Section 81(3) of the Act with respect to the attestation of the election petition. However, as we expressed our disinclination to interfere on those grounds, he took up the alternative point and emphatically argued that the judgment of the High Court is unsustainable as the election petition completely violated the 'mandatory' requirement of 83(1)(c) of the Act. He argued that the election petition must fail for not filing the additional affidavit in support of the allegation of corrupt practice. He elaborated this point by taking us through the Section, and in particular, the proviso which requires that in cases of corrupt practice, "*the petition shall also be accompanied by an affidavit*".

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[5] Hereinafter, the "Rules".
[6] AIR 1964 SC 1027
[7] 2016 SCC OnLine Mani 30
[8] (2017) 2 SCC 487
[9] (2018) 4 SCC 699

7. On the specific submission of Mr. Devadatt Kamat as to how the election petition alleging corrupt practice must fail for not filling the additional affidavit, Mr. Shadan Farasat, learned counsel for the election petitioner submitted that no such additional affidavit is filed. Mr. Farasat, however, strengthened his case in the written submission by referring to the decisions of this Court in *G.M. Siddeshwar* v. *Prasanna Kumar*[10], and *A. Manju* v. *Prajwal Revanna*[11], where it was held that non-filing of a Form-25 affidavit is a curable defect.

Issue for consideration:

8. The only issue for consideration is whether the election petition is liable to be dismissed by allowing the Order 7 Rule 11 application for non-compliance of Section 83(1)(c) of the Act.

Analysis:

9. We may at the outset state that there is absolutely no consideration of this issue by the High Court. Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court. Further, surprisingly, the High Court simply referred to the decision of this Court in *Lok Prahari* (supra) and rejected the submission. *Lok Prahari* (supra) has no bearing on the issue.

10. We would refer to the statutory provisions and the judgments on the point for answering the question of law raised by the Appellant. We will first refer to Sections 83 and 86 of the Act and Order 6 Rule 15 of the CPC.

"***83. Contents of petition —*** *(1) An election petition—*

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

(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.

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.*

Order 6 Rule 15: Verification of pleadings — *(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.*

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

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[10] (2013) 4 SCC 776
[11] (2022) 3 SCC 269

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

11. The first decision on this issue is by a Constitution Bench in *T.M. Jacob* v. *C. Poulose*[12]. In the said case, the returned candidate was defending an election petition filed against him on the ground of non-compliance with the requirements under Section 81(3) of the Act. This Court, after going through the difference in the legislative intent of Sections 81 and 83 of the Act, observed that non-compliance with the requirements of the former provides for an automatic dismissal of an election petition under Section 86 of the Act, and non-compliance with the latter is a curable defect and would not merit dismissal at the threshold. In this light, this Court observed that:

"***38.*** *… to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes — those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam, (1964) 3 SCR 573 and Ch. Subbarao, (1964) 6 SCR 213 cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure.*"

12. In *Siddeshwar* (supra), the matter came up before a threejudge bench of this Court by way of a reference. When the matter was placed before a two-judge bench, it was contended, relying upon *P.A. Mohammed Riyas* v. *M.K. Raghavan*[13], that an election petitioner has to file the Form-25 affidavit in support of the corrupt practice allegation, in addition to the usual verifying affidavit which forms an integral part of the election petition. On the other hand, the two-judge bench was also appraised of judgments to the contrary which held that not filing of the affidavit is a curable defect. In order to give quietus to the issue, the matter was referred to a bench of three judges. After relying on various precedents, the three Judge Bench in *Siddeshwar* observed as under:

"***1.*** *The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511, which suggests to the contrary, does not lay down correct law to this limited extent.*

2. *Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.*

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[12] (1999) 4 SCC 274
[13] (2012) 5 SCC 511

22. *A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. Does this mean, as suggested by the learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits—one in support of the allegations of corrupt practices and the other in support of the pleadings?*

23. *A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in CPC. That Order 6 Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.*

25. *It seems to us that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of the pleadings filed under CPC may be mandatory in terms of Order 6 Rule 15(4) CPC, the affidavit is not a part of the verification of the pleadings—both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.*

37. *A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.*

38. *Recently, in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say:*

"28. … The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so."

We have no reason to take a different view. The contention urged by Siddeshwar is rejected."

(emphasis supplied)

13. More recently, in *A. Manju* v. *Prajwal Revanna* (supra), this Court dealt with the same question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit in Form 25, is liable to be dismissed at the threshold. This Court had observed:

"***26.*** *However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition.*

In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 as well as G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form."

(emphasis supplied)

14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.

15. In the instant case, the election petition contained on affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act.

16. We are in agreement with the conclusion of the High Court that there is substantial compliance of the requirements under Section 83(1)(c) of the Act and this finding satisfies the test laid down by this Court in *Siddeshwar* (supra). Even the subsequent decision of this Court in *Revanna* (supra) supports the final conclusion arrived at by the High Court.

17. For the reasons stated above, we are of the opinion that the Appellant has not made out a case for interfering with the judgment of the High Court. We, therefore, proceed to dismiss C.A. Nos. 4179-4180 of 2023 arising out of the judgment and order of the High Court dated 11.04.2023 in MC (El. Pet.) No. 67 of 2022 and MC (El. Pet.) No. 135 of 2022.

18. Parties shall bear their own costs.