

Reserved

Court No. - 46

Case :- ELECTION PETITION No. - 12 of 2019

Petitioner :- Rakesh Agarwal

Respondent :- Santosh Kumar Gangwar

Counsel for Petitioner :- In Person, Rakesh Agarwal

Counsel for Respondent :- Subodh Kumar, Udit Chandra

Hon'ble Naheed Ara Moonis, J.

Heard Shri Rakesh Agarwal, the petitioner in person and Shri Subodh Kumar and Shri Udit Chandra, learned counsel appearing on behalf of respondent.

The instant election petition has been filed by Rakesh Agarwal, Advocate with a prayer to declare the election of respondent-Santosh Kumar Gangwar, who has won the 17th Lok Sabha election from 25 Bareilly Lok Sabha seat, held between 18th March and 23rd May, 2019 to be void.

Before adverting to the facts narrated in the election petition, it is necessary to mention that an election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction and a special jurisdiction has always to be exercised in accordance with the statute creating it. In the election disputes, the Court is put in straight jacket. The success of winning candidate is not to be likely interfered with. The burden of proof lies on one, who

challenges the election to raise necessary pleadings and adduce evidence to prove such averments as would enable the result of the election being set aside on any of the grounds available in law.

The instant election petition and the question raises therein is to be decided within the fore-corners of the statutes. It appears from the pleadings of the petition raised in paragraphs Nos. 10 to 14 of the petition, which are delineated herein below:

" 10. That the petitioner objected to the nomination of the respondent in writing supported by his own affidavit and document, that the Returning Officer discarded it and rejected it, instead of rejecting the nomination of respondent.

11. That the respondent adopted all sorts of corrupt practices to win the election at any rate. He gave one crore rupees to the congress candidates to ensure that he should not contest the election fiercely and vigorously by throwing his life and soul together. He further gave a heavy amount of money to almost all the Muslim candidates, so that he could stop polarizations of votes in favour of the petitioner and he was successful in his drive and illegal designs.

12. That the respondent used all measures to influence voters in numerous ways, including distribution of diaries, key rings, cash amount, food, drinks liquor etc. to a very large strength.

13. That the respondent exploited all kinds of voters and adopted all sorts of corrupt practices and thereby collected a huge amounts of votes and declared victorious.

14. That the respondent initiated communal riots in Bareilly in last 25 years on several occasions and on 01.9.2003 he kept the dead body of a person, alleged to be a workers of RSS and BJP, on a hand pull Thela and moved it in the entire town and thereby excited an environment of hostility and with the result immediately curfew was imposed in the town the same day.”

The grounds of objections raised in the petition are that on the date of his election, the respondent returned candidate was not qualified and was disqualified to be chosen to fill the seat under the Constitution and this Act under Article 102(1)(d); the returned candidate had committed several corrupt

practices as disclosed in the body of the election petition; ten nomination of independent candidates were improperly rejected; there is improper acceptance of nomination of respondent-returned candidate; several persons were in collusion and in conspiracy in the corrupt practices adopted to favour the returned candidate; there is utter non-compliance of the provision of Constitution of India, Representation of People Act, 1951 and the Rules and Orders made thereunder and the High Court Rules; lastly, possibility of manipulation of EVM machine by the ruling party, cannot be ruled out. Hence, the relief sought to declare the election of respondent to be void.

The averments contained in the petition were sworn on affidavit. In the election petition, the petitioner has also mentioned the list of documents as evidence in support of his case, viz. (i) petitioner's objections against nomination of BJP candidate, Mr. Santosh Kumar Gangwar dated 05.4.2019, (ii) petitioner's affidavit dated 05.4.2019 in support of above objections, (iii) petitioner's written printed letter dated 01.5.2019, (iv) order of Returning Officer dated 05.4.2019 rejecting the above objections, (v) petitioner's written printed letter dated 12.4.2019; and (vi) all other relevant documents which this Court may deem fit and proper to examine.

On the election petition, the Stamp Reporter reported on 04.7.2019 that the petition is properly

drawn up in compliance with Section 80, 81, 82, 83 and 117 of the Representation of People Act and it is filed within time. It has also been acknowledged, that requisite stamp has been affixed and tender of Rs. 2000/- as security money has been deposited vide receipt dated 04.7.2019. On the basis whereof, the Registrar General has also made an endorsement to the aforesaid report on the said date.

The petition was nominated to this Bench by Hon'ble the Chief Justice under Chapter XV-A, Rule 4 of Allahabad High Court Rules, 1952 and sub-section 80(A) of the Representation of People Act, 1951 vide order dated 10.7.2019.

On 17.7.2019, the matter came up before this Court and in order to verify the probity of the election petition, this Court has passed the following order:

"The instant election has been filed by Rakesh Agrawal Advocate, with a prayer to declare the election of Santosh Kumar Gangwar who has won 17th Lok Sabha Election from 25 Bareilly Constituency Seat held on 18th March and 23rd May 2019 to be void.

The petitioner has mooted a number of grounds for challenging the election of Santosh Kumar Gangwar. The grounds raised by the petitioner can neither be stifled nor acquiesced

without inviting the respondent Santosh Kumar Gangwar.

In these circumstances notice be issued to the respondent by ordinary process as well as by registered post in terms of Rule 6 of Chapter XV-A of the Allahabad High Court Rules 1952 returnable within six weeks. Publication be also made following the terms of clause (b) of Rule 5 & 6 of Chapter XV-A of the Rules.

Let this petition be listed on 18th September 2019.”

Pursuant to the aforesaid order, the directions were complied with by the registry, the notices were published in the local Hindi papers published from Bareilly. The notice was also sent through registered post as well as by ordinary process to the respondent. On 18.9.2019, Shri Subodh Kumar, who represented the respondent, sought time to file objections in response to the election petition.

Learned counsel appearing on behalf of the respondent filed two affidavits; (i) for recalling the order dated 17.7.2019 whereby notice was issued to the respondent and (ii) an application under Order 7 Rule 11 of Code of Criminal Procedure to dismiss the election petition. The aforesaid applications were supported by the affidavits. The petitioner sought time

to file counter affidavit to the aforesaid two applications.

After exchange of the pleadings between the parties, the election petition was heard at length.

Learned counsel appearing on behalf of the respondent has submitted that the Stamp Reporter has acceded his powers as while presenting the election petition before the Registrar General, he has not mentioned as to whether any other person has challenged the election or not, hence it is not in consonance with the provision of Constitution of Bench mentioned in Chapter XVA, Rule 4 of Allahabad High Court Rules, 1952 (hereinafter referred to as "High Court Rules"), which speaks that an election petition duly presented shall be registered, and numbered and shall, after an additional office report regarding other election petition, if any, in respect of the same election as are referred to in sub-section (3) of Section 86 of the Act and the Bench, if any, to which they have been referred, be laid forthwith before the Chief Justice for reference to a Bench.

In the instant case, the Registrar General has not mentioned in the report whether any other election petition has been filed by any other person for same election or not. The report so submitted by the Stamp Reporter is in violation of Chapter XVA Rules 4 of the High Court Rules as the Registrar General was

empowered to see whether there was any other election petition filed challenging the same election. Rule 5 empowers the Court to first, prima facie, satisfy whether the election petition is not barred by Section 81 of the Representation of People Act (hereinafter referred to as "the Act").

The petitioner has opposed the prayer made on behalf of respondent No. 2 on the ground that report so submitted by the Stamp Reporter or the Registrar General is in compliance of Rule 4 and 5 of High Court Rules and once the notice has been issued to respondent, the petition cannot be dismissed on such technical grounds. He further submits that learned counsel for the respondent is trying to lower the dignity of this Court, who is fully empowered to issue notice and has issued notice to the respondent after considering the facts of the case.

Learned counsel for the respondent further submitted that the present election petition challenging the election of the returned candidate does not fulfil strict compliance of the provisions of the Act. Even a single lack of compliance of the provisions will render the election petition nullity. Hence, the merits of the case will only be considered if the relevant statutory provisions have been fully complied with to challenge the election of the returned candidate.

Section 81 of the Representation of People Act speaks about presentation of the petition, which reads as under:

"Section 81. Presentation of petitions:- An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates."

Presentation of petition has been assigned to the Registrar as per Chapter XV-A Rule 3 of High Court Rules. The relevant Rule reads as under:

3. Presentation of election petition:- Every election petition shall be presented to the Registrar.

The petition shall bear an office report on Court-fee and on compliance, in addition to other matters, with Sections 81, 82 , 83 and 117 of the Act.

The petitioner shall file with the petition a list of all documents whether in his possession or power or not, on which he relies as evidence in support of his claim.

From the perusal of the above Rule, it is evident that it is not only mandatory to strictly comply with the Rule, but also states that the petitioner has to file all the documents relied upon by him as evidence. All the annexures and schedules must be signed and verified by the petitioner which shall also be accompanied with as many copies as there are respondents with his signature and it should be true copy.

It is also required that with the election petition, list of documents on which the petitioner placing reliance shall also be filed as evidence. In this regard, learned counsel for the respondent has drawn the attention of the Court to the provisions of Sections 83(2) and 81(3) of the Act, which reads as under:

**"83. Contents of petition: (1) xxx
xxx xxx**

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

**81. Presentation of petition: (1) xxx xxx
xxx**

*(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.*

Learned counsel for respondent submits that if the aforesaid requirements are not fulfilled, the petition is liable to be dismissed.

In the present case, the election petition filed before the Registrar containing 17 pages and on the 16th page of the election petition, there is a mention of list of certain documents on which the petitioner wanted to rely, but those documents have not been filed with the copy of the election petition, which is contrary to Rule 3 of Chapter XV-A of High Court Rules and the report of the Registrar General that the petition is presented properly is in clear violation of Rule prescribed under the High Court Rules.

The copy of the election petition served to the respondent does not bear the detail or swearing of the affidavit of election petition. There is variation in the copy of the election petition supplied to the returned candidate and is not a true copy as filed in the registry.

It is further pointed out by the learned counsel that photograph mentioned in the election petition was not supplied to the returned candidate, which is also in

violation of Section 83 of the Act. In support of his contention, learned counsel for the respondent has placed reliance upon the decision of Hon'ble Supreme Court in **M. Karunanidhi Vs. H.V. Hande, (1983) 2 SCC 473**, wherein Hon'ble Apex Court has held that 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. Hence, it was held that election petition could not be treated as election petition presented in accordance with the provisions of Section 81(3) of the Act.

In **Mulayam Singh Yadav S. Dharam Pal Yadav, (2001)7 SCC 98**, Hon'ble Apex Court has held that any infraction of mandatory requirement in the election petition, non-compliance of which will render harsh punishment upon the petitioner.

Learned counsel for the respondent has submitted that in paragraph 11 of the election petition, it is mentioned that respondent has adopted corrupt practice to win the election, but the petitioner has not impleaded the persons, who have indulged in the corrupt practice. They ought to have been impleaded as party and on account of non-impleadment of those persons, the election petition is not maintainable.

The election result of Bareilly Constituency, which was uploaded on the website has been filed as

Annexure CA-1, to the affidavit filed under Order 7, Rule 11 C.P.C., which shows that altogether 16 candidates contested the election, out of which there were one candidate of Indian National Congress and six Muslim candidates. Since, the allegation is made against respondent for corrupt practice, those candidates ought to have been arrayed as respondent and non-impleading those candidates is in clear violation of Section 82(b) of the Act. For ready reference, Section 82 of Representation of People Act is reproduced herein under:

"82. Parties of the petition:- *A petitioner shall join as respondents to his petition:*

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates, and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

In the case of **Har Swarup Vs. Brij Bhushan Saran**, 1967(1) SCR 342, it has specifically been held by the Hon'ble Apex Court that once an allegation is made against a candidate, he should be made party and in case he is not made a party, then the election petition needs to be dismissed in view of Section 82(b) of the Act.

The Hon'ble Supreme Court further held as under:

"The terms of Section 82 show what persons must be joined as respondents to an election petition. Clause (a) shows that where a petitioner is only claiming a declaration that the election of all or any of the returned candidates is void, he has to join all the returned candidates to the petition and no more. Further, where the petitioner in addition to claiming a declaration that the election of all or any of the returned candidates is void claims a further declaration that he himself or any other candidate has been duly elected, he has to join not only the returned candidates but all the contesting candidates. So far as the words "returned candidates" are concerned, there is no difficulty as to what they mean. A returned candidate is one who has been elected and a contesting

candidate is one who has not withdrawn his candidature under Section 37. It is true that in Clause (a) of Section 82 where we find the words "he himself or any other candidates", "any other candidate" there means any other contesting candidate. That is clear from the context, for there is no question of declaring a person who has withdrawn his candidature as duly elected. But the same in our opinion cannot be said of the words "any other candidate" used in Clause (b) of Section 82. There is no indication in Clause (b) to suggest that "any other candidate" only refers to a candidate who has not withdrawn his candidature under Section 37. The use of the words "any other candidate" in clause (b) is really in contrast to the candidates who are to be made parties under Clause (a). Under Clause 9a) persons who are to be made parties to the petition are:

(a) returned candidates

(b) contesting candidates.

Depending upon the kind of declaration claimed in the petition. Where, for example, there is no claim for a further declaration in an election petition, only

returned candidates would be made respondents under Clause (a), But if there are allegations of corrupt practice against any candidate other than the returned candidate, he would have to be made a party under clause (b) as "any other candidate". Similarly where a declaration is asked for in the petition that a particular candidate has been duly elected, all the returned candidates as well as all the contesting candidates have to be made parties under Clause (a). Even in such a case if there is allegation that any other candidate besides the returned candidates and the contesting candidates has been guilty of corrupt practice, clause (b) requires that he should also be made a respondent. There is in our opinion for cutting down the meaning of the word "candidate" as defined in Section 79(b) for the purpose of Section 82(b) in the manner suggested on behalf of the appellants, namely that in Section 82(b) the candidate is only one who has not withdrawn his candidature under Section 87."

Similar view has been reiterated by the Hon'ble Supreme Court in **Mohan Raj Vs. Surendra Kumar Taparia and others**, 1969 (1) SCR 630 by holding that

non-compliance of Section 82(b) of the Representation of People Act will render the petition liable to be dismissed.

The Hon'ble Apex Court further held as under:

"When the Act makes a persons a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition."

In **Kashi Nath Vs. Smt. Kudisia begum and others**, (1970)3 SCC 554, Hon'ble Supreme Court held as under:

" It is not disputed on behalf of the appellant that Aizaz Rasul was a necessary party and the failure to implead him would entail dismissal of the election petition if there was a candidate against whom allegations of corrupt practice had been made in the petition. Section 82 (b) of the

Act lays down in the mandatory terms that such a candidate must be impleaded as a party.”

Learned counsel for the respondent has further submitted that in the affidavit filed in support of the petition the petitioner also failed to adhere to the mandatory requirement as provided under Section 83 of the Act., non-compliance whereof will render election petition as not maintainable. Section 83 of the Act lays down that an election petition shall contain a concise statement of the material facts, the detail particulars of the corrupt practice and the statement, if any, which shall be signed by the petitioner and verify in the manner as provided under Code of Civil Procedure. The prescribed form has been explained under Rule 94-A of the Conduct of Election Rules, 1961, which provides that affidavit filed under Section 83(1) should be sworn before a Magistrate of first class or Notary or the Oath Commissioner which shall be in Form 25. The affidavit in the instant petition is not in the prescribed format as incomplete copy of the affidavit has been served by the petitioner and verification form is lacking which states about solemn affirmation. There is not a whisper of any single person, who has indulged in corrupt practice and, therefore, the affidavit about the corrupt practice is in violation of Section 83(1) of the Act.

In **Purushottam Vs. Returning Officer, Amrawati**, AIR 1992 Bombay 227, a learned Single Judge of Bombay High Court after relying upon catena of judgements of Hon'ble Supreme Court, held that absence of notary affirmation cannot be regarded as inconsequential. It is an omission of a vital nature which is likely to prejudice the returned candidate. It is, therefore, not possible to hold that there has been substantial compliance of the provisions of Section 81(3) of the Act, as contended by the petitioner. The preliminary objection, therefore, deserves to be upheld and the petition deserves to be dismissed on that ground alone.

It is not the duty of the respondent to go through the entire record in order to find out whether the copy supplied to him was a correct one or not and there is endorsement of the Notary on the copy supplied to the returned candidate. It was also not possible for the returned candidate to know whether the affidavit was really sworn and if so, before whom it was sworn and on what date.

In **Rajendra Singh Vs. Smt. Usha Rani**, AIR 1984, SC 956, the Apex Court has observed as under:

"This being the position, it is manifest that the appellant did not receive the correct copies as contemplated by Section 81(3) of the Act. The respondent has also

not been able to prove that the copies served on the appellant were out of the 10 corrected copies which she had signed and filed. It appears that in view of a large number of the copies of the petition having been filed, there was an utter confusion as to which one was correct and which was not. It is obvious that if an election petitioner filed a number of copies, some of which may be correct and some may be incorrect, it is his duty to see that the copy served on the respondent is a correct one. A perusal of Sections 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of Section 81(3) which is sufficient to entail a

dismissal of the election petition at the behest."

In **Mithlesh Kumar Pandey Vs. Baidhanath Yadav**, AIR 1984, SC 305, Hon'ble Supreme Court has laid down certain principle which are to be borne in mind by the Court while dealing with the omissions or discrepancies in the election petition, which are as under:

"(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 straight away under Section 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 omission 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 Section 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 Section 81(3) of the Act.

(5) As Section 81(3) is meant to protect and safeguard the 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.

In the light of the aforesaid principles laid down by the Hon'ble Supreme Court, it cannot be said that the omissions and discrepancies, which appeared in the election petition supplied to the returned candidate was only clerical or typographical, but the same appears to be substantial and it could cause prejudice to the returned candidate, who is not expected to wade through the original record.

Lastly, it has been submitted by the learned counsel for the respondent that the instant petition has

been filed levelling wild allegations against the returned candidate to gain cheap publicity. There is no specific averments to substantiate the charge of corrupt practice and even if allegation has been mentioned of corrupt practice, nothing in detail has been submitted on which the petitioner wish to rely and hence the ratio laid down in the case of **Gujarat Urja Vikas Nigam Limited Vs. Essar Power Limited**, 2008 (4) SCC 755 that "where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner" fully applies in the fact and circumstances of the present case and, hence the petition deserves to be dismissed with heavy costs.

The petitioner has filed counter affidavit in reply to the application filed by the learned counsel for the respondent under Order 7 Rule 11 C.P.C. and has replied in a very casual manner by denying the contents of the affidavit in one single paragraph by mentioning false, frivolous and vexatious. Petitioner further stated that contents of the petition are correct and uncontroverted and hence petition be allowed.

It is submitted by the learned counsel appearing on behalf of the respondent that returned candidate is a law graduate and has good reputation in his constituency and has earned goodwill of the people of all the religion, caste and community, who is now serving as Minister of State, independent charge in

Central Government. The petitioner is in the habit of casting aspersion on false, frivolous and vexatious grounds against the returned candidate to malign his image.

It has been pointed out by the learned counsel for the respondent that petitioner has earlier also challenged the election of the returned candidate by filing Election Petition No. 14 of 2017 and on account of non-compliance of the mandatory provisions of the Act, the election petition was dismissed by Coordinate Bench of this Court vide order dated 04.9.2019 imposing cost of Rs. 25,000/- (rupees twenty five thousand only).

So far as the tampering of EVM machine is concerned, Hon'ble Apex Court has rejected the contention raised by various other political parties and as such the petitioner has least respect of the highest court of law. He is in habit of making false accusation against Judicial Officers, Administrative Authority and Politicians and also returned candidate, the Returning Officer rightly rejected the objections made by the petitioner. Wild allegations have been made against the returned candidate with respect to the corrupt practice in the election. The petitioner has not complied with the provisions of Section 117 of the Act, hence the petition deserves to be dismissed as not maintainable.

In view of the rival submissions advanced by the learned counsel for the parties and going through the settled statutory provisions of the Act, it is culled out that the parties must plead the material facts in the election petition and adduce the evidence substantially on the basis whereof, the court may proceed to adjudicate the issue as to whether prima facie case is established and if there is any absence of the pleading, evidence or any infraction in law, such election petition cannot be entertained. It is also equally settled by the case laws relied upon by the learned counsel for the respondent that a party cannot be permitted to travel beyond its pleadings. The object and purpose of pleadings is to enable the adverse party to know the case, it has to meet and the absence of the pleading would amount to denial of opportunity to the opposite party to rebut the contention as has been held time and again by the Hon'ble Apex Court that the election petition has to be decided strictly in accordance with the statutory provisions contained in the Act and the Rules as the success of a winning candidate cannot be lightly interfered with. Merely by raising bald allegations and controverting the objections in one single para as false, frivolous and vexatious will not be sufficient to declare the election of winning candidate as void. The burden of proof lies heavily on the person, who challenges the election and in the present case the petitioner has utterly failed to

put forth any cogent reply for the shortcomings in the election petition as pointed out by the learned counsel for the respondent, viz., incomplete copy of election petition served on the respondent, lacking verification and swearing, not filling the list of documents as evidence to be relied by the petitioner and non-impleadment of those persons against whom allegations of corrupt practice was made, to substantiate the charge of corrupt practice.

In view of the settled principle of law and what has been indicated herein above, the preliminary objections raised by the learned counsel for the respondent-turned candidate, deserves to be upheld and the election petition, deserves to be dismissed under Section 86 of the Act.

In the result, the election petition is dismissed.

However, on the facts and circumstances of the case, the parties are directed to bear their own costs.

Dated: 19.02.2020

Ishrat