

RAVINDER SINGH
v.
JANMEJA SINGH AND ORS.

SEPTEMBER 19, 2000

[DR. A.S. ANAND, C.J. AND N. SANTOSH HEGDE, JJ.]

Election Laws :

Representation of the People Act, 1951—Section 123(4)—Commission of corrupt practice under—Allegation of—Requirement of making a statement to the effect that the publication was made by the returned candidate or his election agent or by any other person with the consent of the candidate or his election agent or any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of the candidate—In the present case, the election petition silent regarding any such averment—Effect of—Held, the requirement of making such a statement is mandatory under Section 123(4) and in the absence of any such statement, the charge could not be put to trial.

Sections 83, 123(1)—Conduct of Election Rules—Form 25—Mandatory requirement that the election petition levelling a charge of corrupt practice be supported by an affidavit in the prescribed form in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice—Held, in the absence of proper affidavit in the prescribed form filed in support of the corrupt practice alleged, the allegation pertaining thereto could not be put to trial, the defect being of a fatal nature.

The appellant was defeated by respondent no. 1, the returned candidate in the Legislative Assembly elections. The appellant filed an election petition in the High Court seeking to declare the election of returned candidate void on various grounds and for a further declaration that the appellant be declared duly elected as Member of the Legislative Assembly after setting aside election of the returned candidate. The High Court dismissed the said election petition at the threshold on sustaining preliminary objection that the election petition lacked in material facts and particulars, necessary to constitute complete cause of action for setting aside of the election of respondent no. 1. Hence the present appeal.

A Dismissing the appeal, this Court

B HELD : 1.1. In the election petition, two main corrupt practices were alleged to have been committed by the returned candidate - one falling under Section 123(1)(A)(b) of the Representation of the People Act, 1951 and the other falling under Section 123(4) of the Act. The requirement emanating from Section 123(4) of the Act for the alleged commission of corrupt practice, is making an averment to the effect, that the publication was made by the returned candidate or his election agent or by any other person with the consent of the candidate or his election agent or any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of the candidate. The election petition is singularly silent of any such averment. Though in the election petition, this requirement emanating from Section 123(4) has been mentioned there was no assertion that the returned candidate in this case published the false statements knowing them to be false and/or not believing them to be true. The requirement, of making such a statement is mandatory and in the absence of any such statement, the charge could not be put to trial. Thus, in the face of the pleadings, no charge could have been framed insofar as corrupt practice under Section 123(4) of the Act is concerned.

[334-F-H; 335-A-B]

E 1.2. As regards the charge of corrupt practice falling under Section 123(1) of the Act, those allegations could not be put to trial either. There is no affidavit filed in support of the allegations of corrupt practice of bribery. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123(1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form - Form 25, of the conduct of Election Rules, the allegations of corrupt practice made in the

election petition are not supported by the otherwise defective affidavit either. No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial - the defect being of a fatal nature. [335-E-H, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 865 of 2000.

From the Judgment and Order dated 3.6.1999 of the Punjab and Haryana High Court at Chandigarh in Election Petition No. 4 of 1997.

R.K. Talwar, D.M. Sinha and Yash Pal Dhingra for the appearing parties.

The Judgment of the Court was delivered

This appeal is directed against an order of the High Court of Punjab and Haryana dated 3.6.1999, dismissing an election petition filed by the appellant at the threshold on sustaining preliminary objection.

The appellant, who was a candidate set up by the Congress Party was defeated by respondent No .1, the returned candidate, who had been set up by the Akali Dal (Badal group). The elections to constituency No .96, Ferozpur Cantt of Punjab Legislative Assembly were held in 1997. The polling took place on 7.2.1997 and after counting of votes on 9.2.1997, respondent No. 1 was declared elected. In view of the limited nature of controversy involved in this appeal, we are relieved of the necessity of giving break-up of votes or mention about other candidates, who had also contested the election.

The appellant filed an election petition seeking to declare the election of returned candidate void on various grounds and for a further declaration that the appellant be declared duly elected as Member of the Legislative Assembly after setting aside election of the returned candidate. In the election petition, two main corrupt practices were alleged to have been committed by the returned candidate -one falling under Section 123 (1)(A)(b) of the Representation of the People Act, 1951 (hereinafter referred to as the Act) and the other falling under Section 123 (4) of the Act. The material facts and particulars concerning allegations of corrupt practice insofar as corrupt practice under Section 123(1) is concerned, are contained from paragraphs 28 to 39 of the election petition, while material facts and particulars concerning commission

A of corrupt practice falling under Section 123 (4) of the Act are contained in paragraphs 12 to 27 of the election petition.

Mr. Talwar, learned counsel appearing for the election petitioner has taken us through the election petition.

B Section 123(4) of the Representation of the People Act provides :

C “The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.”

D In vain, have we searched through the election petition and, particularly through paragraphs 12 to 27 thereof, dealing with the alleged commission of corrupt practice which falls within the mischief of Section 123(4) of the Act, for any averment to the effect, *that the publication was made by the returned candidate or his election agent or by any other person with the consent of the candidate or his election agent or any statement of fact which is false and which he either believes to be false or does not believe to be true* in relation to the personal character or conduct of the candidate.

E The election petition is singularly silent of any such averment that the returned candidate, even if, it be assumed for the sake of the arguments, had published and distributed certain documents, (Annexures A-1 to A-7), as alleged in the election petition either himself or through any other persons with his consent, that those statements were false and that the *returned candidate either believed them to be false or did not believe them to be true*, though in paragraph 9 of the election petition, which has been verified as correct on the basis of legal advice, this requirement emanating from Section 123(4) has been mentioned but without any assertion that the returned candidate in this case published the false statements knowing them to be false and/or not believing them to be true. The submission of Mr. Talwar, that at the trial, the petitioner could have said so in his evidence is futile. It is an established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings.

H In the face of the pleadings, no charge could have been framed insofar as corrupt practice under Section 123(4) of the Act is concerned. We need

not detain ourselves to consider the 'allegations' in this behalf, because of the absence of the essential averments to lay a charge under Section 123(4) of the Act. The requirement of making such a statement, as referred to above by us, is mandatory and in the absence of any such statement, the charge could not be put to trial. Faced with this serious lacuna in the pleadings, Mr. Talwar sought to press the allegations of bribery under Section 123(1) as detailed in paragraphs 28 to 39 of the election petition.

Coming now to the charge of corrupt practice falling under Section 123(1) of the Act, for which material facts and particulars have been detailed in paragraphs 28 to 39 of the election petition, we find that those allegations could not be put to trial either. There is no affidavit filed in support of the allegations of corrupt practice of bribery.

Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition *shall* also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123 (1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form - Form 25, of the conduct of Election Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to

A prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise, in the absence of proper affidavit. In the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.

B We also wish to note here that the learned Senior counsel appearing for the election petitioner in the High Court had on 14.7.1998 made a statement in the High Court that he was not pressing his prayer relating to recounting of votes. No other point was raised before us.

C The learned Single Judge of the High Court dismissed the election petition on deciding Issue No. 5, which was treated as a preliminary issue and reads thus :

D “Whether the election petition lacks in material facts and particulars, necessary to constitute complete cause of action for setting aside of the election of the respondent No. 1, within the meaning of Section 83, read with Sections 100(1)(d)(iv) and 123 of the Representation of People Act.?”

For what we have said above, the order of dismissal of the election petition, without putting it to trial, cannot be faulted with.

E For our reasons, which are somewhat different from the ones given by the High Court, we find that the decision of the High Court to non-suit the election petitioner by deciding the preliminary issue against him is well merited. There is no merit in this appeal. It, consequently, fails and is hereby dismissed. There shall, however, be no order as to costs.

M.P.

Appeal dismissed.