

A AJAY KUMAR POEIA
v.
SHYAM AND ORS.

DECEMBER 11, 2003

B [V.N. KHARE, CJ., S.B. SINHA AND G.P. MATHUR, JJ.]

Representation of the People Act, 1951 :

C *Ss. 21(1)(3) and 81(1) Election Petition—Statements of material facts—Requirement of—Election petition based on the ground that returned candidate did not belong to Scheduled Caste—Application under Order 6, r. 16 CPC for striking out the grounds and certain other paragraphs of election petition for not containing material facts—Held, documents mentioned in relevant paragraphs indicate that the petitioner in effect or substance did not raise any material fact that returned candidate was not a member of Scheduled Caste—One of the sub-paragraphs contains grounds for setting aside the improper acceptance of nomination papers filed by returned candidate and the same cannot be treated to be statements containing requisite material facts, which, if proved, would entitle the petitioner in obtaining reliefs sought for—*
D *Furthermore, the said statements were verified and purported to be based on legal advice—The said averments do not satisfy the requirement of s. 81(1) and as such the plea is not available to the petitioner—Code of Civil Procedure, 1908—Order 6, r.16.*
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F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4090 of 2003.

From the Judgment and Order dated 10.3.2003 of the Allahabad High Court in E.P. No. 8 of 2002.

G R.C. Srivastva and Ms. Rachna Srivastava for the Appellants.

Nariman, Rajiv Datta and M.P. Shorawala for the Respondents.

The following order of the Court was delivered :

H The Election Commission issued a Notification calling upon the

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 electorates to elect the Members of the Legislative Assembly in the State of U.P. The date of Notification of election was 16th January, 2002 and the last date for filing nomination papers was 23rd January, 2002. The last date for withdrawal of nomination was 28th January, 2002. The date of poll was 21st February, 2002. In the said election, the appellant herein and respondent No. 1 were the contesting candidates. As a result of counting of votes, respondent No. 1 was declared elected as having received the majority of valid votes. The appellant herein filed a petition questioning the election of respondent No. 1 as Member of Legislative Assembly from 346 Govardhan (S.C.) Assembly Constituency. The election petition purported to be based on the ground that respondent No. 1 is not a member of Scheduled Caste. After the notices were issued by the High Court in the election petition, respondent No. 1 filed an application under Order 6 Rule of the Code of Civil Procedure, 1998, for striking off the grounds (i) to (v) and paragraphs 5-29 of election petition on the ground that those paragraphs did not contain material facts as required under Section 81(3) of the Representation of People Act, 1951 (for short 'the Act'). The High Court was of the view that since no fact warranting declaring the election of the respondent herein void had been alleged and the documents referred to therein having not been supplied, the same does not satisfy the requirement of Section 81 of the Act. Since the election of respondent No. 1 was not challenged on any other ground, the High Court dismissed the petition. It is in this way, the appellant has preferred this appeal under Section 116A of the Act, challenging the judgment of the High Court.

We have heard counsel for the parties.

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 The sole question which arises in this case is whether there was a pleading as regards the grounds that respondent No. 1 is not a member of the Scheduled Caste. The relevant paragraphs to this effect runs as under:

"4. That the election of respondent No. 1 (Shyam) is void on the following grounds :

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 GROUNDS

- (i)
 (ii) Because the respondent No. 1 with the *malafide* intention

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- A and freud (sic), obtained a caste certificate showing himself a person belonging to scheduled caste and wrongly and fraudulent (sic) contested the election from the seat which is reserved for scheduled caste where as in fact he does not belong to scheduled caste.
- B (iii)
6. That the respondent No. 1 had filed the nomination paper and annexed his caste certificate showing himself to be of scheduled caste. The caste certificate was issued in favour of the respondent No. 1 by Tehsildar, Mathura on 16.7.2001 showing in belonging to Bahelia caste.
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7. That in 1991 the respondent No. 1 was issued a caste certificate showing him as of Agaria caste. The caste certificate was issued by the Tehsildar, Mathura on 8.3.1991 as per the SCHEDULE A.
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8. That the respondent No. 1 had contested the election of member of Zila Panchayat in 1995 from ward No. 15 which is a reserved constituency and with his nomination paper, he had annexed a caste certificate showing himself belonging to the scheduled caste.
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9. That an election petition was filed by one Laxman Singh against the respondent No. 1 challenging his caste as scheduled caste and it was asserted by the petitioner that Shyam Singh belongs to Aheria caste which is a backward caste.
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10. That it is pertinent to mention that the brother of Shyam Singh namely Virendra Singh had filed an affidavit in the aforesaid election petition and said that they belong to Aheria caste which is a backward caste and not a scheduled caste.
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11. That it is relevant to mention that the Daughter of the respondent Rani Kumari was studying in Shree Chameli Devi Khandelwal Girls Inter College, Mathura which issued
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a transfer certificate to the Rani Kumari on 4.3.2002 which contents the caste as Aheria which is the caste of the respondent No. 1. A

12. That the facts stated above is conclusive evidence to prove that the respondent No. 1 does not belong to scheduled caste and he is the member of backward caste as such his nomination paper ought to have been rejected as per the Section 36(2) of the representation of people act. B
13. That the petitioner moved an application before the Returning Officer on 24.1.2002 to cancel the nomination of the respondent No. 1 for wrongly showing himself as a member of scheduled caste, which he does not actually belong." C

A bare perusal of the documents contained in the *above mentioned* paragraphs would show that the appellant in effect or substance did not raise any material fact that the first respondent herein was not a member of the Scheduled Caste. Learned counsel appearing on behalf of the appellant, however, submitted that the averment contained in ground No. 4(ii) contains the requisite fact. The said paragraph contains the grounds for setting aside the improper acceptance of the nomination papers filed by the first respondent and cannot be treated to be statements contained the requisite material facts, which, if proved, would entitle the appellant in obtaining the reliefs sought for. Furthermore, the said statements had been verified and purported to be based on the legal advise. It may be true that for improper verification of the material facts pleading in the election petition, the same cannot be dismissed at the threshold, but apart from the fact that the appellant herein did not move any application for reverification of the election petition, the averments contained in paragraph 4(ii) does not satisfy the requirement of Section 81(1) of the Representation of People Act, 1951 and in that view of the matter, the said plea is not available to the appellant. D E F G

For the aforesaid reason, we do not find any merit in the appeal. It is, accordingly, dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.