

CASE NO.:
Appeal (civil) 4042-4043 of 2001

PETITIONER:
KAMALNATH

Vs.

RESPONDENT:
SUDESH VERMA

DATE OF JUDGMENT: 08/01/2002

BENCH:
G.B. Pattanaik & Y.K. Sabharwal

JUDGMENT:

PATTANAIAK, J.

These appeals by special leave are directed against the order dated 21.7.2000 of the High Court of Judicature at Jabalpur in Election Petition No. 3 of 1998 as well as against the Order dated 31.1.2001 in the said Election Petition. The appellant is the successful candidate from Chhindwara Lok Sabha Constituency in the State of Madhya Pradesh. The respondent filed an Election Petition, which was registered as Election Petition 3 of 1998 impugning the election of the appellant alleging corrupt practice under Section 123(6) of the Representation of Peoples Act (hereinafter referred to as "The Act"), in as much as the appellant is alleged to have incurred or authorised expenditure in contravention of Section 77 of the Act. It may be stated, apart from the aforesaid allegation of corrupt practice, there was no other allegation in the Election Petition. The appellant had won the election by defeating his nearest rival by 1,53,398 votes. In the Election Petition the appellant filed two applications seeking dismissal of the Election Petition on the ground that the said Petition does not disclose material facts with regard to alleged corrupt practices, as required under Section 83 of the Act. It was also urged that the accompanying affidavit is too vague and is not in accordance with the proviso to Section 83 of the Act. The appellant also prayed that several paragraphs of the Election Petition should be deleted as it has no connection with the allegation of corrupt practice within the ambit of Section 123(6). It was also prayed that the Election Petition having not disclosed any triable issue, the same is liable to be dismissed. The learned judge, who had been appointed as Election Tribunal, by his order dated 21.7.2000 came to hold that the pleadings in paragraphs 3, 4, 5, 9, 15, 16, 17, 18 and 19 are wholly unnecessary and frivolous and deserve to be struck down, and accordingly directed for striking out those paragraphs. But so far as the allegation of corrupt practice on the ground, that the amount spent exceeded the ceiling on election expenses, the learned Judge came to hold that the material facts with regard to the ingredients of the cause of action for the alleged corrupt practice has been disclosed, and therefore, the Election Petition cannot be dismissed in limine. The appellant

thereafter filed yet another application seeking review of the aforesaid order dated 21.7.2000, and that Review Application was rejected by Order dated 31.1.2001, and hence the present appeals.

Mr. K.K. Venugopal, the learned senior counsel, appearing for the appellant contended, that the validity of Explanation 1 to 77(1) of the Representation of Peoples Act, 1951 having been upheld by this Court in the case of Dr. P. Nalla Thampy Terah vs. Union of India - 1985 (Supp.) Supreme Court Cases 189, unless an Election Petition contains averment to the effect that the returned candidate, either has incurred or has authorised expenditure to be incurred by the election agent, more than the ceiling prescribed under the Act, a mere vague allegation will not make an Election Petition maintainable to be tried under Section 123(6) of the Act, and in the case in hand, after striking out of the paragraphs as per the order of the High Court, on the assertions made in the residue of the paragraphs do not make out an allegation of corrupt practice within the ambit of Section 123(6) of the Act, and as such, the Election Petition was liable to be rejected and the High Court committed error in rejecting the said submission of the appellant. Mr. Venugopal further contended, that the allegations of corrupt practice being quasi criminal in nature, the pleadings require a strict examination, and therefore, there should not be any vagueness in the allegations made which a returned candidate would be required to meet. According to Mr. Venugopal, on vague and general allegation without giving any particulars, it is difficult to hold that there exists a triable issue, therefore the High Court committed error in not dismissing the Election Petition. According to Mr. Venugopal the Election Petition cannot be entertained to have a fishing and roving enquiry and, therefore, it is obligatory on the Election Petitioner to give requisite facts, details and particulars of the corrupt practice with exactitude, and in the absence of such particulars the Election Petition must fail at the thresh-hold. Mr. Venugopal further urged that on a true construction of Section 83 of the Act, more particularly, proviso to Section 83 [1][c], the source of information is required to be given in the affidavit and the same not having been furnished there has been an infraction of requirement of law and Election Petition ought to have been rejected on this ground also.

Mr. Ramajois, learned senior counsel appearing for respondents, on the other hand contended, that the material facts and material particulars are not one and the same thing. Material facts are those primary facts which disclose the cause of action and those primary facts have to be specifically pleaded, and failure to do so will result in rejection of the Election Petition. But if such material facts have been pleaded, then the rest would be a matter for trial and, therefore, in the case in hand, since the Election Petition did contain the material facts alleging that the returned candidate had spent more than the ceiling provided for, the Election Petition could not have been rejected at the thresh-hold, and on the other hand there exists a triable issue which can only be adjudicated after evidence being lead. In this view of the matter, the impugned order of the High Court does not suffer from illegality requiring interference by this Court. In support of his contention reliance is placed on the decision of this Court in V.S. Achuthanandan vs. P.J. Francis and another (1999) 3 Supreme Court Cases 737.

In view of the rival contentions two questions arise for consideration:-

(1) After striking out of the paragraphs from the Election Petition in pursuance of order of the High Court, whether on the residue of the averments can it be said that material facts leading to the allegation of corrupt practice have been pleaded or the allegations are such that it would involve a chance or conjecture for the Court to draw inference by adopting an involved process of reasoning to arrive at a conclusion that the Petition contains an averment of expenditure beyond the prescribed limit, and as such, a triable issue still exists.

(2) Whether non-mention of source of information in the affidavit constitutes an infraction of the provisions of Section 83 of the Act, and as such is fatal to the maintainability of an Election Petition.

Coming to the first question, Chapter VIII of the Act deals with election expenses. Under Section 77 of the Act every candidate at an election either by himself or by his election agent, is required to keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof. Sub-section (3) of Section 77 provides that the total of the said expenditure shall not exceed such amount as may be prescribed. The expression "prescribed" has been defined in Section 2(h) to mean prescribed by the rules made under the Act. Under Section 123(6) of the Act incurring excessive expenditure than the maximum amount prescribed, would tantamount to corrupt practice. But the said expenditure has to be incurred either by the candidate or by his election agent or by a person authorized by him and further such expenditure must be between the date of publication of the notification calling the election and the date of declaration of the result thereof. Rule 90 of the Conduct of Election Rules provides the maximum amount that can be spent by a candidate or his authorised agent under Section 77 and for a Parliamentary Constituency, the amount is specified in Column (2) of the table in the State of Madhya Pradesh.

It may be stated that mere non-disclosure of the expenditure will not be a corrupt practice but it is incurring of expenditure in excess of the prescribed amount would be held to be a corrupt practice. On a combined reading of Section 77 and Section 123(6) of the Act, it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorised by the candidate or his election agent. In other words, an expenditure incurred by a third person, who is not authorised by a candidate or who is not an election agent of the candidate, will not be a corrupt practice within the ambit of Section 123(6) of the Act. It would, therefore, be necessary to establish a corrupt practice, as contemplated under Section 123(6) of the Act to plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent. In the case of Dharti Pakar Madan Lal Agarwal vs. Rajiv Gandhi, 1987 (Supp.) S.C.C. 93, this Court examined the allegations made in the election petition and came to hold that mere allegation that several jeeps were plying in the constituency and that food was given to the party workers, would not tantamount to an allegation of corrupt practice and, therefore, the election

petition was held to be not maintainable. Explanation (1) to Section 77 in the context of expenditure incurred or authorised by the candidate bears considerable significance inasmuch as voluntary expenditure incurred by friends, relations or sympathisers of the candidate is not required to be included in the candidate's return of expenses unless expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the person, who incurred the expenses. When maintainability of an election petition is considered from the stand point as to whether material facts have been pleaded or not in a petition alleging corrupt practice on the ground that expenses incurred by the candidate is more than the prescribed limit, it would be necessary to aver the fact that the candidate has incurred the expenditure or has authorised any other person to incur the expenditure or that his election agent has incurred the expenditure and further the candidate has undertaken the liability to reimburse. These would constitute the material facts of an election petition, which is filed, alleging corrupt practice within the ambit of Section 123(6) read with Section 77 of the Act and Rule 90 of the Conduct of Election Rules. We would, therefore, examine the residue of averments made in the election petition to find out whether such material facts had in fact been averred in the election petition, so that a triable issue can be said to subsist, which could be adjudicated upon, after evidence being lead. Vague assertion that an helicopter was used for a specified number of flying hours and the standard charges for flying hour was Rs. 53,000/-, would not necessarily constitute the material fact that the candidate has spent by way of hiring of the helicopter, an amount exceeding the ceiling provided under Rule 90 of the Conduct of Election Rules. In *Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi*, 1987 (Supp.) S.C.C. 93, the Court examined the allegation that at least 100 jeeps for 30 days and his workers with his consent used 40 jeeps and spent money on propaganda badges, leaflets, making arrangements for holding meetings throughout Amethi constituency and money was spent in providing food to 100 workers of Rajiv Gandhi, which was not accounted for in the election expenses return and came to hold that the allegations contained therein do not make out any case of corrupt practice. It was held in the aforesaid case that it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent and a mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice. In *V. Narayanaswamy vs. C.P. Thirunavukkarasu*, 2000 (2) S.C.C. 294, a three Judge Bench of this Court examined the distinction between material facts and material particulars and ultimately came to hold on fact that the election petition had lacuna in material facts. The allegation in that case was also corrupt practice but relating to bribery and undue influence. But the Court observed that in a petition on the allegation of corrupt practice, the cause of action cannot be equated with the cause of action, as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices inasmuch as an election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter and if proved, not only does the candidate suffer ignominy, but he also suffers disqualification from standing for election for a period that may extend to six years. After

taking note of all the earlier decisions, the Court held that to plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person has affected and it cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Applying the aforesaid test to the residue of pleadings that are available in the election petition, after striking of several paragraphs pursuant to the orders of the High Court, it is difficult for us to hold that the material facts in relation to the alleged corrupt practice within the ambit of Section 123(6) read with Section 77 of the Act, have at all been pleaded, so that the matter would be left to lead evidence during trial. On the other hand, vague assertion with regard to the use of helicopter and what are the standard charges of an helicopter per flight hour have been mentioned on it. It has not been specifically pleaded that either the appellant had incurred the expenditure amounting to a particular sum or has authorised his agent to incur the same or that he has authorised any other person to make the expenditure which the appellant has undertaken to reimburse. The High Court in paragraph (11) has culled out the residue of averments in the petition which were considered to be sufficient pleadings of the corrupt practice within the ambit of Section 123(6) read with Section 77 of the Act. But on examining the averment which remains in the election petition after several paragraphs having been struck off, we do not find any averment on record, indicating that the appellant either did incur the expenditure of hiring an helicopter for a specified number of hours or that he has authorised his election agent for hiring such helicopter or that he has authorised any other person for hiring such helicopter to whom he has undertaken to reimburse the amount. Mr. Ramajois, appearing for the respondents vehemently argued that paragraph (6) of the election petition unequivocally satisfies the material facts in relation to the allegation of corrupt practice under Section 123(6) of the Act, but paragraph (6) merely states that the facts narrated below specifically would show that the expenses beyond the maximum limit as prescribed under Section 77 were actually incurred by the returned candidate or he has authorised the same. But on scrutinizing the facts narrated below did not indicate the factual averment that the returned candidate had in fact incurred expenditure beyond the prescribed limit and all that had been stated is that an helicopter had been used for a number of hours and the normal rate of hiring a helicopter being in the minimum Rs. 2,12,000/- per day and the helicopter having been used for 14 days, the returned candidate must have been required to pay more than the prescribed limit towards the expenses of the helicopter. This in our considered opinion, cannot be held to be an assertion of material fact and on the other hand, it would be in the realm of conjecture, requiring the Court to draw inference by adopting an involved process of reasoning and that would not satisfy the requirement of the pleadings of material facts. We are unable to agree with the submissions of Mr. Ramjois, appearing for the respondents that in fact the election petition does indicate the cause of action and the applicant would be required to establish them only during trial inasmuch as an election petition which purports to unsettle the wish of the electorates has to be strictly construed and more so when an allegation of corrupt practice is the basis of the petition, the said allegation being quasi criminal in nature. Having examined the averments which remain after striking off several paragraphs pursuant to the order of the High Court,

we have no hesitation to come to the conclusion that material facts in relation to an allegation of corrupt practice within the ambit of Section 123(6) read with Section 77 of the Representation of the People Act are lacking and, therefore, the election petition must be held to be not maintainable. In our view, the High Court committed error in coming to the conclusion that a triable issue does subsist on the residue of the allegations. Our answer to the first question, therefore, is that there has been an infirmity in the election petition, as the material facts in the context of allegation of corrupt practice within the ambit of Section 123(6) read with Section 77 of the Representation of the People Act are lacking and such an election petition is liable to be dismissed.

So far as the second question is concerned, Mr. Venugopal's contention is based upon the language used in the proviso to Section 83(1) of the Representation of People Act. The proviso to Section 83(1) 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;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleged 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 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.)"

Mr. Venugopal contends, that when an Election Petition alleges any corrupt practice the said petition, under law, is required to be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The underlined idea behind the aforesaid proviso is that the person against whom allegations are made should also be aware of the source of information of the deponent so that the person concerned can challenge the same in cross-examination. This being the position, according to Mr. Venugopal, lack of source of information of the deponent constitutes an infraction of the proviso, even if the prescribed form does not provide to indicate such source of information, and any petition which lacks the source of information should be rejected at the threshold. In support of the same reliance has been placed on the decision of this Court in Ravinder Singh vs. Janmeja Singh and Others (2000) 8 Supreme Court Cases 191, as well as a Three Judge Bench decision in V. Narayanaswamy vs. C.P. Thirunavukarasu (2000) 2 Supreme Court Cases 294. In Ravindra Singh's case (supra) this Court, construed the provision of Section 83 of the Act and held that not only a

concise statement of material facts and full particulars of the alleged corrupt practice to present a full and complete picture of the action to be detailed in the election petition, but also 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. According to learned Judges 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 inquiry and save the returned candidate from being taken by surprise. The Court in this case held that 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. In the aforesaid case the Court found that there was no affidavit filed in support of the allegations of corrupt practice of bribery.

In V. Narayanaswamy's case the Court also construed the provision of Section 83 of the Representation of People Act and examined the purpose with which proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961. The Court held that an Affidavit within the meaning of proviso to Section 83(1) has to conform not only to the form prescribed in substance but also contain particulars as prescribed by the Rules. It was also held that if several paragraphs of the Election Petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. Bearing in mind the principles laid down in the aforesaid cases, and on examining the affidavit that has been sworn to in the case in hand, it appears, that Rule 94(A) of the Conduct of the Election Rules, which was inserted by way of amendment with effect from 27th February, 1962, provides that the Affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. Thus Form 25 is the prescribed form required under the proviso to Section 83(1), in which form the affidavit is required to be made. The form indicates that the deponent must state that which of the paragraphs are true to his knowledge and which of the paragraphs are true to his information. The Election Petition in the present case contains a verification which states that paragraphs 2 to 21 are true to the information received by the petitioner of which sources have been disclosed in the main petition. The accompanying affidavit also states that the particulars of corrupt practices mentioned in paragraphs 2 to 21 are true to the information received from the concerned authorities/persons are believed to be true. Out of these paragraphs, paragraph nos. 3, 4, 5, 9, 15, 16, 17, 18 and 19 have already been struck up by the order of the High Court dated 21.7.2000. On considering the averments made in the Election Petition, as well as the contents of the verification and affidavit referred to earlier, we are unable to persuade ourselves with the submission of Mr. Venugopal that there has been an infraction of the proviso to Section 83(1) of the Act so as to reject the Petition on that score at the threshold.

In view of our conclusion on question no. 1, the appeals are allowed and the impugned orders of the High Court dated 21.7.2000 as well as 31.1.2001 are set aside and the Election

Petition No. 3 of 1998 in the High Court of Madhya Pradesh at Jabalpur is held to be not maintainable.

.....J.
(G.B. PATTANAİK)

.....J.
(Y.K. SABHARWAL)

January 08, 2002.

JUDIS