

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 15, 2008
Date of Order: August 12, 2008

+CM(M) 1490/2007

%

12.08.2008

Duli Chand

..... Petitioner

Through: Mr. Anurag Kumar Aggarwal &
Mr. Umesh Mishra, Advs.

Versus

A. Prem Raj Chandela

...Respondents

Through: Mr. Sandeep Sharma, Advs.

JUSTICE SHIV NARAYAN DHINGRA

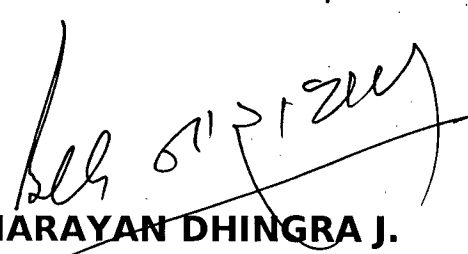
1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

The facts of this case are similar to the facts of CM(M) No.1519/07 and the amendment sought is also in respect of the expenses incurred in inserting advertisement in 'Jan Manas Samachar Publication' and 'Shakti Times'.

In view of judgment in CM(M) No.1519/07, this petition is also dismissed.

August 12, 2008
ak


SHIV NARAYAN DHINGRA J.

Signature Not Verified

Signing Date: 02.07.2024 16:24:39
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 15, 2008
Date of Order: August 12, 2008

+CM(M) 1519/2007

%

Sh. Balbir Tyagi

Through: Ms. Ruchira V. Arora, Adv.

12.08.2008

..... Petitioner

Versus

Smt. A. Dhanwati Chandela

...Respondents

Through: Mr. Pankaj Kapoor with Mr. Vikram Kapoor,
& Ms. Pooja Kohli, Advs.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. By this petition, the petitioner has assailed legality of an order dated 4th October, 2007 whereby the Trial Court allowed an application under Order 6 Rule 17 CPC made by the respondent to amend the Election Petition.

2. In Election Petition, respondent had stated that the petitioner had not maintained true accounts of the election expenses. He had not maintained vouchers and indulged into corrupt practices. In para 7(a), respondent had specifically stated that the petitioner did not give true accounts of election expenditure to the Election Commissioner while submitting the statement of expenses and spent amount more than what was

8

allowed by the rules. In para 7(b), he stated that the petitioner appointed polling agents including one Mr. Rajpal in polling station no. 107, ward no. 116 on the day of election and Mr. Rajpal was permanent employee of Municipal Corporation of Delhi. The petitioner had circulated the names of the polling agents to the Returning Officer booth-wise. The petitioner, thus, indulged into mal-practices and corrupt practices.

3. The respondent sought amendment of the Election Petition so as to add para 7(c) stating that the petitioner with a view to allure the voters got a full page advertisement published in 'Jan Manas Weekly Publication' dated 18-24th March, 2007, 25-31st March, 2007 and 1-6th April, 2007 and paid a sum of Rs.24,000/- for each publication. The publication of advertisement was made at the behest of petitioner who under her own signatures had given instructions to the Editor of Jan Manas Samachar Publication. These expenses incurred at publication and advertisement by the petitioner had not been shown in the statement of expenses incurred on the election.

4. The respondent also was allowed to introduce para 7(d) wherein he stated that the petitioner had appointed Mr. Rohtash Singh s/o Ram Saran as his polling agent at polling booth in polling station no. 108 on election day, i.e., 5th April, 2007 and at that point of time he was permanent employee of DTC,

79

Naraina Depot.

5. The Trial Court considered that the amendments sought by the respondent were necessary for the purpose of determining the real question of controversy between the parties and allowed the same. The Election Petition at that time was still at the stage of pleadings and issues had not been framed.

6. The petitioner has challenged the order stating that the order was contrary to law laid down by this Court in 60 (1995) DLT 491 **Krishna Tirath vs. Kalka Dass & Ors.** The respondent has sought to widen the scope of the Election Petition by way of amendment which was not permissible.

7. The Supreme Court had occasion to consider the scope of amendment of an Election Petition in AIR 1991 SC 1557 **F.A. Sapa vs. Singora & Ors.** and observed that the Court has power to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified provided the amendment does not have the effect of widening the scope of the Election Petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the Election Petition. Thus, the Supreme Court laid down that the amendment or amplification must relate to particulars of a corrupt practice already pleaded and must not be an effort to expand the scope of inquiry by introducing particulars regarding

8/10

a different corrupt practice not earlier pleaded.

8. This Court in **Krishna Tirath vs. Kalka Dass & Ors.**

had reiterated the law in following words:

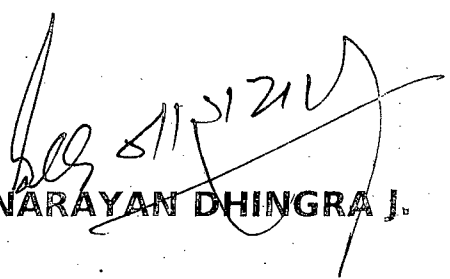
"The law on amendment of election petitions is well settled and need not be reiterated except by making reference to one decision of the Supreme Court in **F.A. Sapa etc. v. Singora and Others** etc. AIR 1991 SC 1557. It has been held that High Court is empowered to allow the particulars of any corrupt practice, alleged in the petition to the amended or modified under Section 86(5) of the Representation of the People Act, provided the amendment does not have the effect of widening the scope of the election petition by introducing particulars in regard to a corrupt practice not previously alleged or pleaded within the period of limitation in the election petition. In other words, the amendment or amplification must relate to particulars of the corrupt practice already pleaded and must not be an effort to expand the scope of the inquiry by introducing particulars regarding a different corrupt practice not earlier pleaded. Only the particulars of that corrupt practice of which the germ exist in the election petition can be amended or amplified and there can be no question of introducing a new corrupt practice. It has further been held that Section 86(5) of the Act permits particulars of any corrupt practice, alleged in the petition, to be amended or amplified and not the material facts. The decision further clarifies on the powers of the Court in allowing the amendment within the ambit aforementioned saying that where the amendment sought for falls within the purview of Sub-section (5) of Section 86, the High Court should be liberal in allowing the same unless, in the facts and circumstances of the case, the Court finds it unjust and prejudicial to the opposite party to allow the same. Such prejudice must, however, be distinguished from mere inconvenience."

8/11

9. It is apparent from perusal of the Election Petition and the amendment sought by the respondent that by introducing para 7(c), respondent simply wanted to amplify a corrupt practice already alleged by him that the petitioner had not given correct particulars of the expenses incurred by him on election in his report. Para 7(d) was an amplification of para 7(b). The respondent had specifically alleged that the petitioner had employed polling agents who were permanent employees of Municipal Corporation of Delhi. Although, in para 7(b) he gave name of only one polling agent but subsequently he discovered another polling agent who was employee of DTC. It is apparent that both the corrupt practices, the detailed particulars of which had been given by the respondent by way of amendment, were already pleaded and no effort was made to introduce a new corrupt practice so as to widen the scope of Election Petition.

10. I find no infirmity in the order of the Trial Court. The petition is hereby dismissed.

August 12, 2008
ak


SHIV NARAYAN DHINGRA J.