

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: May 09, 2014*

+ **C.R.P. No.103/2013**

SHRI JAI GOPAL Petitioner
Through Mr.P.D.Gupta, Adv. with
Mr.Abhishek Gupta, Adv.

versus

SHRI RAJ KUMAR SHARMA & ORS Respondents
Through Mr.Vinay Kr. Garg, Adv. with
Mr.Vivek Sharma, Adv. for R-1.
Mr.Sumeet Pushkarna, Adv. for R-17/
State Election Commission.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by petitioner, Jai Gopal, under Section 115 CPC against the order dated 25th April, 2013 passed by the Additional District Judge, Delhi in Election Petition bearing No.60/2012 whereby his application under Order VII Rule 11 CPC for dismissal/rejection of the election petition was dismissed.

2. Brief facts are that the General Elections of Councillors for the purpose of constituting East Delhi Municipal Corporation (EDMC) were held on 15th April, 2012 wherein the petitioner contested as candidate of Bhartiya Janta Party (BJP) from Ward No.232, Anarkali, Delhi. He was declared elected by a margin of about 2300 votes defeating the nearest rival, i.e. respondent No.1 herein.

3. The respondent No.1 filed the election petition challenging the election of the petitioner on the ground that the petitioner had indulged into corrupt practices in terms with Section 17 read with Section 22 of the Delhi Municipal Act, 1957 (in short, called “DMC Act”) and also, inter alia, on the grounds that the result of the election has been affected in view of the said practices. Respondent No.1 filed the petition under Section 15 of the DMC Act against 15 respondents including the petitioner herein.

The petitioner and all the respondents filed nominations for the post of Councillor of EDMC from the Ward in question. The nomination papers of respondents No.11 to 15 were withdrawn from the contest leaving the petitioner and respondents No.1 to 10 as the contesting candidates for the said Ward.

The details of the total numbers of votes polled and received by the petitioner and respondents No.2 to 10 are as under:-

Total No.of Votes Polled	26,765 Votes
Petitioner received	10,039 Votes
Respondent No.2 received	5,932 Votes
Respondent No.3 received	2,370 Votes
Respondent No.4 received	145 Votes
Respondent No.5 received	101 Votes
Respondent No.6 received	124 Votes
Respondent No.7 received	101 Votes
Respondent No.8 received	72 Votes
Respondent No.9 received	53 Votes
Respondent No.10 received	89 Votes

4. Respondent No.1 contested the election as an independent candidate and lost by about 2300 votes from the petitioner. Respondent No.2 contested as a candidate of Indian National Congress, respondent No.3 as candidate of Bahujan Samaj Party and respondent No.4 as candidate of Communist Party of India. Respondents No.5 to 10 all contested as independent candidates.

5. The petitioner along with his nominations papers as candidate for election to the EDMC from the Ward in question submitted Form-A & B dated 23rd March, 2012 issued by BJP. The petitioner in terms of Rule 18(2) of the Delhi Municipal Corporation (Election of Councillor) Rules, 2012 submitted affidavit in Form-20, 21 & 22 of these Rules. The affidavit dated 24th March, 2012 in Form-21 of the petitioner claims that he is not an accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which charge(s) has/have been framed by the Court(s) of competent jurisdiction. In his affidavit in Form-22 under the heading “Details of Immovable Assets”, the petitioner has disclosed residential building No.124, Ram Nagar, Delhi, Survey No.5/29/2 having a total area of 1371 Sq. Ft. with total built up area of 3295 Sq. Ft. as his own property having current market value of ₹2,30,00,000/- without indicating any joint ownership thereof and thus, claimed it to be his own property.

6. The contention of respondent No.1 at the time of filing of the election petition was that the petitioner has made incorrect statement in his Form-21 & 22 to the following effect:-

- (a) Petitioner is accused in FIR No.287 dated 8th August, 2010 P.S. Jagatpuri under Section 420/468/567 IPC. However, petitioner has not made any disclosure about the said FIR and instead has claimed “not applicable”.

- (b) Petitioner has claimed property No.124, Ram Nagar, Delhi as his own property since he has not made any indication as regards the joint ownership thereof on the premise that the property was gifted to him by his father. However, the property i.e. 124, Ram Nagar, Delhi continues to be the ancestral property and is not in the exclusive ownership of the petitioner. Petitioner has not filed copy of any registered document such as the gift deed to show either transfer of title to him or the valuation of the property as claimed by him. The property continues to be ancestral.
- (c) Petitioner had on 16th March, 2005 purchased an immovable property at village Ghondli, Krishna Nagar, Delhi-110051 a sum of Rs.2,90,000/- and the documents of transfer have been registered on 16th March, 2005 vide registration No.4974 at Book No.4, Volume No.1439 at pages 141 to 146. No further documents have been registered for this property for its transfer from the name of petitioner in the name of any other person till date and thus, the property continues to be in the ownership of petitioner. The petitioner however, has not disclosed any other property in the list of his immovable property assets and had concealed this property purchased by him for a sum of Rs.2,90,000/- in the year 2005.

6.1 The case of respondent No.1 before the learned Trial Court was that the statement made in Form-21 amounts to non-disclosure of assets and thus, the petitioner is guilty of suppressing the material information as regards the criminal cases and also the assets held by him. Therefore, the nomination of the petitioner has been incorrectly accepted who has failed to comply with the provisions of DMC Act, Rules and the Orders made thereunder. It was also alleged in the election petition that Section 22 of the Act defines corrupt practices referred to in Section 17(1)(b) of the Act as a ground for declaring the election of returned candidate to be void. As per sub-section (7) of Section 22, issuing of any circular, play card or poster, having a reference to

the election which does not bear the name and address of the printer and publisher thereof, is deemed to be a corrupt practice. The petitioner during the campaign of the election distributed through himself, his agents and persons campaigning for him, envelop and pamphlets. The pamphlets bear photographs of the petitioner as candidate for Bhartiya Janta Party from Ward No.232, Anarkali, Delhi-110051, along with his party symbol and the photograph of Bhartiya Janta Party MLA of the area, with an appeal to elect petitioner in the elections to be held on April 15. On the reverse page, there is an appeal printed by Dr. Harsh Vardhan, MLA and also by Bhartiya Janta Party, Anarkali Mandal, Ward No.232, to vote for petitioner on 15th April, 2012. On the same page, i.e. reverse page, the photographs of petitioner as also of Dr. Harsh Vardhan, MLA are printed. Both these pamphlets distributed in an envelope which also carries photographs of petitioner along with the photograph of Dr. Harsh Vardhan, MLA and the party election symbol. Below the photograph of petitioner, his name, Ward number and name of Ward have been printed. However, in none of these three documents, name and address of either the printer or of the publisher as is mandated under Section 22(7) of the Act, have been printed. Thus, distribution of these pamphlets/handbills in envelop, amounts to corrupt practices by petitioner, his agents and the persons with his consent and on his behalf.

6.2 The other allegation of respondent No.1 was that several Government Servants especially those employed with Municipal Corporation of Delhi had been campaigning along with the petitioner, and those include Sh.Rajendra Swami who is a teacher in MCD School and Sh.Satish Silelan who is also employed with MCD. The petitioner even after declared elected

had put in hoardings in the area for giving thanks to the voters whereon photographs of Sh.Satish Silelan and Sh.Rajendra Swami as the persons thanking the voters for electing the petitioner, were printed. It clearly proves the fact that both these Government Servants also campaigned for the petitioner during the election in question. Therefore, the petitioner is guilty of corrupt practices in terms of Section 22 read with Rule 102 of the Rules in this behalf also.

7. Upon service of the election petition, the petitioner filed his written statement as well as the application under Order VII Rule 11 CPC, inter-alia on the reasons that the election petition did not contain concise statement of material facts and was devoid of sufficient particulars and did not make out a cause of action which are mandatory under Section 15 of the DMC Act read with Rule 91 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012. The contention of the petitioner in the application was that the said requirement was mandatory in nature and strict compliance of an election petition containing material facts and sufficient particulars were required under the law, otherwise the election petition in view of the settled law on the subject was not maintainable. Even otherwise, the petitioner has made correct statement in his Form-21 & 22. The allegations are baseless far away from truth, devoid of merit. The election petition has been filed in order to harass him.

8. The learned Trial Court by order dated 25th April, 2013 dismissed the application of the petitioner under Order VII Rule 11 CPC, mainly on the reason as stated in para 36 of the impugned order which is reproduced herein below:-

“36. Whether the concealment of material facts regarding registration of criminal case i.e. FIR number, sections and police station and non publication of name and addresses of the publisher, materially affected the election and the alleged corrupt practices have or have not affected the result of the election are the triable issues which can be determined only after production of the evidence by the parties and thus in the considered opinion of this court, the triable issues are involved in the present matter.”

9. It is settled proposition of law that the object of Order VII Rule 11 of the Code is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him.

10. In view of above said facts and law laid down by various Courts, the following two issues are involved in order to decide the present petition:

- (1) Whether the election petition does not disclose any cause of action?
- (2) Whether the petition lacks in material facts and particulars, as contemplated under Section 83 of the Representation of People Act?

11. Under Section 15 of the Act, it is provided that the election of a Councillor can be challenged by an election petition. Section 15 of the Act provides as follows:-

- (1) No election of a Councillor shall be called in question except by an election petition presented to the Court of the district judge

of Delhi within fifteen days from the date of the publication of the result of the election under Section 14.

- (2) An election petition calling in question any election may be presented under any of the grounds specified in section 17 by any candidate at such election, by any elector of the ward concerned or by any Councillor.
- (3) A petitioner shall join as respondents to his petition all the candidates at the election.
- (4) An election petition -
 - (a) shall contain a concise statement of the material facts on which the petitioner relies;
 - (b) shall, with sufficient particulars, set for the ground or grounds on which the election is called in question; 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.

12. Section 16 of the Act provides for the relief that could be claimed by an election petitioner in such an election petition which reads as under:-

- (1) A petitioner may claim -
 - (a) a declaration that the election of all or any of the returned candidates is void, and
 - (b) in addition there to, a further declaration that he himself or any other candidate has been duly elected.
- (2) The expression "returned candidate" means a candidate whose name has been published in the official Gazette under Section 14.

13. Section 31 of the Act enables the Central Government to frame rules by exercising which powers the Central Government can make rules to provide for or regulate all or any of the matters mentioned in clauses (a) to (k) of sub-Section (1) of Section 31. Exercising the aforesaid powers the

Central Government made and promulgated the DMC (Election of Councillors) Rules, 1962, Rules 80 & 81 of the said Rules read as under:-

"80.(1) Where the petitioner alleges any corrupt practice, an election petition shall, in addition to complying with the provision of Section 15 also set forth full particulars of that corrupt practice 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 corrupt practice and shall also be accompanied by an affidavit in the prescribed form in support of such corrupt practice and the particulars thereof.

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

(3)

81. If the provisions of Section 15 or rule 89 are not complied with, the Court shall dismiss the petition."

14. Section 83 of the Representation of Peoples Act mandates that:

"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 alleges, 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 such 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.

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

15. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judges Bench of this Court in *Samant N. Balkrishna vs. George Fernandez*. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter-alia, laid down that:-

“(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;

(ii) Omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) The function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) Material facts and particulars are distinct matters – material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

(v) In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.”

16. From a joint reading of the aforesaid provisions of the Act and the (Election of Councillors) Rules (1962) and the provisions of Sections 83 and 86 of the Representation of People Act, 1951, it can be stated that it is rightly held in many cases that in a case where the provisions of Section 15 of the Act are not complied with, the Court has been empowered to dismiss the election petition itself.

17. No such power, however, is given under the provisions of the Representation of the Peoples Act, in as much as, the Representation of the Peoples Act empowers the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the said Act. The provisions of Section 83 of the said Act are not included within the aforesaid provisions of Section 86 of said Act. It is true that such a petition could be dismissed by the High Court when any of the conditions within the provisions of Order 7 Rule 11, CPC is fulfilled.

18. The election of a Councillor can be challenged by an election petition which is to be presented in accordance with the provisions of Section 15 of the Act. In terms of the provisions of sub-Section(4) of Section 15 of the Act, such an election petition has to contain a concise statement of the material facts and it contains with sufficient particulars on which the election petition is filed. If any of the aforesaid provisions is not complied with by the election petitioner, such a petition could be dismissed for such non-compliance under the provisions of Rule 81 of the Rules.

19. The question as to what exactly is content of the expression “material facts and particulars” which the election petitioners shall incorporate in his petition by virtue of Section 83(1) of the Act, has been discussed in the case

of *Azhar Hussain vs. Rajiv Gandhi*, 1986 AIR 1253, wherein it was observed as under:-

“(i) What are material facts and particulars?

Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. [*Manubhai Nandlal Amarsey vs. Popatlal Manilal Joshi & Ors.*, (1969) 3 S.C.R. 217].

(ii) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded. [*Hardwari Lal v. Kanwal Singh*, [1972] 2 S.C.R. 742]

- a) mode of assistance;
- b) measure of assistance; and
- c) all various forms of facts pertaining to the assistance.

(iii) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following:

- a) kind or form of assistance obtained or procured;
- b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election-candidate for promoting the prospects of his election. [*Hardwari Lal v. Kanwal Singh* (supra)].

(iv) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance,

the persons from whom the actual and specific assistance was procured. [*Hardwari Lal v. Kanwal Singh* (supra)].

(v) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. [*Hardwari Lal v. Kanwal Singh* (supra)].

(vi) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars. [*Hardwari Lal v. Kanwal Singh* (supra)].”

20. This issue has been dealt by the Courts from time to time and was again dealt with by the Supreme Court in *Azhar Hussain vs. Rajiv Gandhi* (supra). Referring to earlier pronouncements of Supreme Court in *Samant N. Balkrishna*, AIR 1969 SC 1201 and *Udhav Singh vs. Madhav Rao Scindia*, AIR 1976 SC 744, wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain*’s case (supra) held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. It is settled law that if the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by Clause (a) of Sub-section (1) of Section 83 of the Act read with Clause (a) of Rule 11 of Order VII of the Code. The expression ‘material facts’ has neither been defined in the Act nor in the Code. According to the dictionary

meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' and 'primary'. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. It is absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

22. The election petition could not be said to be in accordance with Section 83(1)(a) of the Act and the defect could not be cured by amendment of the petition. Since the petitioner had not disclosed all material facts, no roving inquiry could be permitted.

23. The petitioner in the present case has denied all the allegations made by the respondent No.1 in his election petition. According to him, the petition does not disclose any cause of action. The allegations are vague, wild and without required details and are baseless. The impugned order suffers from infirmity and cannot be sustained. The same is liable to quashed.

24. The first allegation made by the respondent in the election petition is that the petitioner is an accused in FIR No.287 dated 8th August, 2010 under Sections 420/468/567 IPC, Police Station Jagatpuri. However, petitioner has not made any disclosure about the said FIR and instead has claimed "not applicable"

It is denied by the petitioner that the petitioner has made any incorrect disclosure about the said FIR and instead has claimed "not applicable". An

affidavit in Form 21 along with his nomination papers and the relevant portion of the said affidavit are reproduced hereinafter for kind perusal:

“1. That I am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which charge (s) has/have been framed by the court(s) of competent jurisdiction.

(i) Case/first information report No./Nos.: Not applicable.
Police station(s):-Not applicable

(ii) Section (s) of the concerned Act(s) and short description of the offence(s) for which the candidate has been charged.

Court(s) which frame the charge(s) discharged from.

(iii) Dates on which the charge(s) was/were framed.

Whether all or any of the proceeding(s) have been stayed by any court(s).”

25. It is the admitted position between the parties that the petitioner has not been charged in any criminal offence or against him even no challan/charge-sheet has been filed in any offence punishable with imprisonment for two years or more in pending case(s). The petitioner by abundant caution the answering respondent had duly applied for a certificate in his favour declaring non-involvement in any criminal offence from the Office of Deputy Commissioner of Police, East Delhi. A certificate dated 22nd March, 2012 was issued by the office of the Deputy Commissioner of Police, East District, Delhi to this effect that answering respondent is not involved in any criminal offence. Thus, it is apparent on the face of it that the allegations levelled by respondent No.1 are not tenable as nothing contrary has been filed or disclosed by the respondent No.1 in the election petition.

26. The respondent No.1 in the election petition has alleged that the petitioner has wrongly claimed property No.124, Ram Nagar, Delhi as his own. Although it's a jointly owned property. It is alleged to be a gifted property by the father of the petitioner to the petitioner. But the petitioner has not filed copy of any registered document to show either transfer of title to him or valuation of property by him.

27. In reply to the said allegation with regard to the property i.e.124 Ram Nagar, Delhi, it is alleged by the petitioner that it continues to be the ancestral property and is not in the exclusive ownership of petitioner. It was denied that the property continues to be ancestral. It is argued that the petitioner has given true facts to the best of his knowledge and belief in relation to his property No.124, Ram Nagar, Delhi as the same relates to his paternal property which was bequeathed in his favour vide registered gift deed dated 2nd May, 2001 executed by answering respondent's father.

It is evident that the respondent has malafidely made vague allegations in view of specific statement made that the property is his paternal property which was bequeathed in his favour vide registered Gift Deed dated 2nd May, 2001 executed by his father. In the presence of said documents, it cannot be treated as an ancestral property and is in exclusive ownership of the petitioner.

28. In his third allegation made by the respondent No.1 in his election petition, it was alleged that there was a non-disclosure of immovable property at village Ghondli, Krishna Nagar, Delhi- 110051, purchased by the petitioner for ₹2,90,000/- in the year 2005 and documents of transfer registered thereof on 16th March, 2005. No document was registered for this property for its transfer from the name of petitioner to other person.

It was denied by the petitioner that the property continues to be in the ownership of petitioner. In reply he has specifically stated that he had purchased the same for a sum of ₹2,90,000/- in the year 2005 and the said was sold by him way back on 25th July, 2005 and after execution of the sale deed in favour of the purchaser he was left with no title or interest in the above said property entitling him to claim ownership of the above said property. The certified copy of the sale deed dated 25th July, 2005 is filed on record. In the presence of certified copy of sale deed, it is apparent, the respondent has not verified the actual position and filed election petition without verifying the truthfulness of the same. Therefore, the petition filed by respondent No.1 suffers from deficiency of material particulars requiring to declare respondent's returning as void.

29. Under Order VI Rule 16 CPC, the Court is empowered to strike out the pleadings which may be unnecessary, frivolous or vexatious which may tend to prejudice, embarrass or delay the fair trial of the suit. In many cases, the Courts have ordered for striking out parts of the pleadings in an election petition. Order VII Rule 11 CPC enjoins the Court to reject the plaint where it does not disclose a cause of action. If it is found that the election petition does not disclose any cause of action, the provisions of Order VII Rule 11(A) of the CPC can be invoked. It was held in the case of **Sh. D. Ramchandran Vs. R.V. Janakiraman & Ors.**, reported in AIR 1999 SC 1128 that it is elementary that under Order 7 Rule 11 (A) CPC the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. It was also held that under the rule there cannot be a partial rejection of the plaint or petition. While coming to the aforesaid conclusion the Supreme Court relied upon an earlier decision

rendered by it in *Roop Lal Sathi Vs. Nachhattar Singh Gill*, reported in AIR 1982 SC 1559.

Corrupt Practices

30. It was averred in the election petition that the petitioner has indulged in the corrupt practices in terms of Section 17 read with Section 22 of the DMC Act as the pamphlets and envelop distributed by petitioner during the campaign of the election through himself and his agents bearing his photographs as a candidate of BJP, mentioned the name and address of neither the printer nor of the publisher, as required. As per the directive of the Election Commission, campaigning for polling on 15th April, 2012 was to end on 14th April, 2012 at 5.30 A.M. However, the petitioner and his agents continued to campaign after the said period.

It was denied by the petitioner to the extent that in none of these documents, name and address of either the printer or of the publisher as is mandated under Section 22(7) of the Act, have been printed. It is also denied that distribution of these pamphlets/handbills in envelop, amounts to corrupt practices by respondent No.1, his agents and the persons with his consent and on his behalf.

31. In reply it was submitted by the petitioner that he has taken all precautions to comply with the provisions contained under the DMC Act. As a matter of fact, none of the alleged pamphlets etc. were got published by the petitioner, rather the same were got printed by Dr. Harsh Vardhan, MLA and Bhartiya Janta Party, Anarkali Mandal, Ward No.232 giving therein the name of printer and publisher as well as address of the publisher.

32. The respondent No.1 has also failed to give any particulars with regard to name and address of any person who was distributing the

pamphlets and also to provide the date, time and place of the alleged distribution of pamphlets.

33. From the record, it is evident that the details of the printer have been adequately mentioned, i.e. its name and mobile number, on the alleged pamphlets which adequately meet the compliance of the provision contained under the Act. Therefore, the respondents have raised vague ground for challenging the election of the petitioner.

34. Next allegation of corrupt practices in the petition was that MCD employees campaigned along with petitioner and after declaration of the petitioner as elected, petitioner put up hoardings thanking the voters for electing him whereon photographs of the said MCD/government servants had been printed thanking the voters.

It was specifically denied by the petitioner that these persons ever campaigned for the petitioner, rather the alleged hoardings (if any) showing photographs of the said persons along with the petitioner while thanking the voters for electing the petitioner could have been an instantaneous photograph taken by the photographers showing the elected representative of the local body along with electorate of the area.

35. The petitioner has also denied the allegation of the respondent that several government servants especially those employed with Municipal Corporation of Delhi had been campaigning along with respondent No.1. It was denied that Sh.Rajendra Swami who is a teacher in MCD School and Sh.Satish Silelan who also is employed with MCD ever campaigned for the petitioner during the election in question. It was denied that petitioner is guilty of corrupt practices in terms of Section 22 read with Rule 102 of the Rules in this behalf also.

36. It has come on record that the hoardings showing photographs of the above said persons along with the answering petitioner while thanking the voters for electing the petitioner could be an instantaneous photograph taken by the photographers showing the elected representative of the local body along with the electorate of the area by the nature of 'Thanksgiving'. The campaigning in election is entirely different from 'Thanksgiving' and as such the allegation is also devoid of any merit and does not come under the purview of corrupt practice.

The respondent No.1 while alleging that two persons employed with MCD campaigned for the petitioner amounting to corrupt practice, failed to give the necessary and sufficient particulars as to what is the parentage or residential address of the said persons, where exactly those two persons are employed and in which manner they have campaigned/furthered the prospects of the petitioner for the election in question.

37. The next allegation of corrupt practices raised by respondent No.1 in the election petition was that as per the directive of the Election Commission, campaigning for polling on 15th April, 2012, ended on 14th April, 2012 at 5.30 A.M. However, petitioner and the persons on his behalf campaigned in the area even after the campaigning had statutorily ended on 14th April, 2012 at 5.30 A.M. The supporters of respondent No.1 accordingly caught the person campaigning for and with the connivance of the petitioner, distributing leaflets/handbills bearing the name, photographs and party symbol of the petitioner along with an appeal to vote in his favour on 15th April, 2012 from Ward No.232, Anarkali, Delhi-110051. A police complaint, vide DD No.31A at 17.32 hrs., was made on 14th April, 2012 at Police Control Room and the police sent the report to the SHO, P.S.

Jagatpuri, Delhi vide Diary No.1466 dated 14th April, 2012. The petitioner with his supporters visited the Police Station, with an intention to hush up the matter, but could not succeed in his designs. The police caught the person campaigning for the petitioner and also seized the leaflets/handbills being distributed by him for and on behalf of the petitioner. This also amounts to indulging into corrupt practices under Section 17 of the Act rendering the election of the petitioner void.

It was denied by the petitioner that the supporters of the respondents caught the person campaigning for and with the connivance of petitioner distributing leaflets/hand bills bearing the name, photographs, party symbol of petitioner along with an appeal to vote in his favour on 15th December, 2012 from Ward No.232, Anarkali, Delhi-110051. It was denied that the petitioner with his supporters visited the Police Station, with an intention to hush up the matter, but could not succeed in his designs. It was also denied that any person campaigning for and on behalf of the petitioner or authorized by the respondent was caught by the police and he indulged into corrupt practices under Section 17 of the Act. It has been stated that the petitioner had finished his campaigning work at the scheduled time fixed by the Election Commission/Returning Officer and had not authorized any one to campaign for and on his behalf after the scheduled time.

38. From the pleadings of election petition, there is no particular given as regard late complaining about the tacit approval of the petitioner or his election agent. It appears that the respondent visited the police station by staging a propaganda with sole intention to create same evidence for the purpose of due course. The said allegation even otherwise lacks of specific details which cannot be accepted. Even the respondent has failed to place on

record copy of the complaint made by the respondent No.1 with the local police station at the time of filing of election petition.

39. Lastly, it was alleged that Section 17 of the Representation of the People Act, 1950 provides that no person shall be entitled to be registered in the electoral role for more than one constituency. Section 18 thereof prohibits any person to be registered in the electoral roles of any constituency more than once. Similarly, Rule 39(3) of Delhi Municipal Corporation (Election of Councilors) Rules, 2012 prohibits an elector from voting in more than one Ward and if the elector so votes, his votes in all such Wards shall be void. Sub-Rule (4) of Rule 39 prohibits an elector from voting more than once in the same Ward. The Electoral Roll (voter list) of Assembly Constituency, 60-Krishna Nagar (Gen) NCT of Delhi at Part No.35 would disclose the name of Sh.Rakesh Verma S/o Sh.Jai Dayal Verma R/o House No.13/16 at Sl. No.113 with Voter I.D. Card No.LLC0766295. At Sl. No.114 is Smt.Madhu Verma W/o Sh.Rakesh Verma with Voter I.D. Card No.LLC0766331 and at Sl. No.118 is Ms.Deepti Verma D/o Sh.Rakesh Verma with Voter I.D. Card No.LLC0766353 and at Sl. No.119 is Mr.Sameer Verma S/o Sh.Rakesh Verma with Voter I.D. Card No.NBJ0263012. Sh.Rakesh Verma is the real younger brother of the petitioner. Sh.Rakesh Verma and his wife are once again registered as voters in the same Assembly Constituency and the same Municipal Ward at Sl. No.1130 and 1134 respectively. Similarly, the other brother of the petitioner Sh.Romeo Verma, his wife Smt.Usha Verma, his daughter Ms.Chandni Verma are voters at Sl. No.327, 328 and 329 respectively. Sh.Romeo Verma and his wife are registered as voters for the

same Ward as Romeo Kumar and Usha at Sl. Nos.1135 and 1137 also. Thus, the election of the petitioner is also vitiated on this ground too.

40. In reply the petitioner has specified that these persons have separate and distinct life, affair and residence, beyond the control of the petitioner and he has no role in printing of their names at any place whatsoever. It was submitted by the petitioner that respondent No.1 who alleged that certain persons were registered as voters at two places, has failed to disclose in the petition that the said persons had cast their votes twice or both times in favour of the petitioner who has otherwise got elected with the margin of victory being 2300 votes. Even if the said votes are excluded, the same would only reduce the victory margin by 10-15 votes. Therefore, the result of the election could not be affected.

Therefore, the allegations made in the election petition would reveal that the mandatory requirements on account of such alleged corrupt practices are not made which are lacking details.

41. It is settled law that no purpose can be relegated to a litigation which is fruitless; even on a specific query put to learned counsel for the respondent as to what would be the outcome of such a litigation, he has no answer. A gross injustice would in fact be suffered by the parties if they are put to such a useless trial which can bear no fruit.

42. In the impugned order, it appears that the learned Trial Court has committed a grave error by passing the impugned order which was passed under the presumption that the learned Trial Court is dealing with the application under Order VII Rule 11 CPC in civil matter and not dealing with the election petition where the different rules are applied. A patent

illegality has been committed which has to be quashed. The impugned order is therefore, set aside.

43. Petition is allowed.

44. Election petition stands dismissed.

45. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 09, 2014