

Court No. - 7

Case :- WRIT - C No. - 7701 of 2024

Petitioner :- Abdul Haseeb @ Puttan

Respondent :- Ld. Addl. District Judge, Court No. 7,
Lakhimpur Kheri And Others

Counsel for Petitioner :- Vishnu Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Sayed Tanjir Ahmad, Advocate holding brief of Sri Vishnu Pratap Singh, learned counsel for petitioner as well as learned Standing Counsel for respondent Nos. 11 & 12.

2. By means of present writ petition, the petitioner has assailed the order dated 31.07.2024 passed by Additional District Judge, Lakhimpur Kheri in Panchayat Revision No. 8 of 2023 wherein he has rejected the revision preferred by the petitioner against the order of prescribed authority / Sub-Divisional Magistrate dated 13.04.2024 rejecting the preliminary objections raised by the petitioner in the election petition preferred by respondent No. 2.

3. The brief facts of the present case as stated by the petitioner are that election for gram pradhan for gram panchayat Badagaon, Vikas Chetra Nakha, District Lakhimpur Kheri. were held and the votes were counted on 02.05.2021 and according to the results which was declared, the petitioner had secured 1663 votes and was declared elected while respondent No. 2 had secured 1644 votes.

4. Respondent No. 2 had filed an election petition on the grounds that there was material irregularities in the counting of the votes and also the petitioner had indulged in the corrupt practices and consequently the election of the petitioner was sought to be set aside.

5. The petitioner in response to the notice issued by the prescribed authority had filed an application under Order 7 Rule 11 CPC stating that no cause of action has been disclosed to the election petition and consequently the same deserves to be rejected at the very outset without trial.

6. The prescribed authority by means of his order dated 13.04.2022 rejected the preliminary objections preferred by the

petitioner. He was of the view that sufficient cause of action has been disclosed by the election petitioner to maintain election petition and the second issue was with regard to defect in verification of pleadings in the election petition on which the application under Order 6 Rule 15 CPC had simultaneously been preferred by the election petitioner which has been allowed permitting the election petitioner to remove the defects in the verification of the pleadings considering the fact that any defect in the pleadings would be a curable defect and merely because of the aforesaid defects a petition cannot be rejected.

7. The petitioner being aggrieved by the order of the prescribed authority dated 13.04.2022 had preferred a revision before Additional District Judge, Lakhimpur Kheri.

8. While considering the revision preferred by the petitioner, the revisional authority had framed two questions for consideration. The first question pertains to the fact as to whether there was any cause of action disclosed in the election petition to maintain the same and the second issue pertaining to the defect in verification of the election petition and as to whether the election petition could be dismissed merely on the ground of defect in the verification clause of the affidavit filed in support of election petition.

9. With regard to first question, the revisional authority was considered in paragraph No. 14, the fact that total number of votes cast was 6247 while only 6225 votes were counted and in Ward No. 11, it was found that tally of votes was two votes in excess of the votes actually polled while in Ward No. 15 one vote was in excess of the votes that were polled. He further considered the fact that the returned candidate had used corrupt practices during the said election and violated the Model Code of Conduct for the election on the basis of money power and accordingly sufficient grounds were disclosed in the election petition to maintain the same.

10. This Court has also perused the election petition and found that specific pleadings have been taken by the election petitioner in paragraph No. 5 with regard to irregularities in counting of votes and also with regard to discrepancy in number of votes polled and number of votes counted. Similar allegations have been levelled in paragraph Nos. 8, 9, 10 & 11 of the election petition.

11. Considering the aforesaid allegations, it cannot be said that there was lack of cause of action to maintain the election petition. Apart from the above, this Court has also considered the fact that the difference in votes between the returned

candidate and the petitioner was 19 votes while number of defective votes was in excess of 380 votes which is also a ground sufficient itself to maintain election petition. There is no disputed with regard to second ground that even if there was defects in verification of the pleadings, the same is not such a defect as to render the election petition liable to be dismissed on the said ground alone. Hon'ble the Supreme Court had repeatedly held that defect of verification is a curable defects and permission can be given to the election petitioner to cure the defects but a lot of caution has also been added that in case he does not cure the defects that can be a ground for dismissal of the election petition.

12. The issue as to whether the defect in the affidavit in an election petition is a curable defect or otherwise has been dealt with extensively in the case of **Saritha S. Nair v. Hibi Eden, (2021) 14 SCC 148** where all the previous judgements have been considered and relevant observations are quoted hereunder: -

"33. Section 83(1)(c) mandates that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. Signing a petition and verifying the petition are two different aspects. While Order 6 Rule 14 deals with the signing of the petition, Order 6 Rule 15 deals with the verification of pleading. Rule 14 mandates that every pleading shall be signed by the party as well as the pleader, if any. But the proviso carves out an exception by stating that where a party is unable to sign the pleading, by reason of absence or for other good cause, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. Order 6 Rule 14 reads as follows:

***"14. Pleading to be signed.**—Every pleading shall be signed by the party and his pleader (if any):*

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf."

34. Order 6 Rule 15 which speaks about verification of pleadings reads as follows:

***"15. Verification of pleadings.**—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of*

the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

35. It is to be noted that sub-rule (1) of Rule 15 of Order 6 also permits the verification of pleading to be done by a person other than the party pleading, provided it is proved to the satisfaction of the Court that such other person was acquainted with the facts of the case.

36. Section 86(1) empowers the High Court to dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 and it does not include Section 83 within its ambit. Therefore, the question whether or not an election petition which does not satisfy the requirements of Section 83, can be dismissed at the pre-trial stage under Section 86(1), has come up repeatedly for consideration before this Court. We are concerned in this case particularly with the requirement of clause (c) of sub-section (1) of Section 83 and the consequence of failure to comply with the same.

37. In Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR 1964 SC 1545] , a preliminary objection to the maintainability of the election petition was raised on the ground that the verification was defective. The verification stated that the averments made in some paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources. There was no statement that the advice and information received by the election petitioner were believed by him to be true. Since this case arose before the amendment of the Act under Act 47 of 1966, the election petition was dealt with by the Tribunal. The Tribunal held the defect in the verification to be a curable defect. The view of the Tribunal was upheld by this Court in Murarka Radhey Shyam Ram Kumar [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR 1964 SC 1545] . This Court held that :

"8. ... it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by clause (c) of sub-section (1) of Section 83 is fatal to the maintainability of the petition."

(emphasis supplied)

38. The ratio laid down in Murarka [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR 1964 SC 1545] was reiterated by a three-member Bench of this Court in F.A. Sapa v. Singora [F.A. Sapa v. Singora, (1991) 3 SCC 375] holding that : (F.A. Sapa case [F.A. Sapa v. Singora, (1991) 3 SCC 375]
,

"21. ... [the] mere defect in the verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground."

(emphasis supplied)

It was also held in F.A. Sapa [F.A. Sapa v. Singora, (1991) 3 SCC 375] that :

"21. ... since Section 83 is not one of three provisions mentioned in Section 86(1), ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81."

(emphasis supplied)

39. In F.A. Sapa [F.A. Sapa v. Singora, (1991) 3 SCC 375] this Court framed two questions in para 20 of the Report, as arising for consideration. The first question was as to what is the consequence of a defective or incomplete verification. While answering the said question, this Court formulated the following principles :

(i) A defect in the verification, if any, can be cured:

(ii) It is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true:

(iii) If the respondent desires better particulars in regard to such averments or allegations, he may call for the same, in which case the petitioner may be required to supply the same; and

(iv) The defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier.

40. It was also held in *F.A. Sapa* [*F.A. Sapa v. Singora*, (1991) 3 SCC 375] that though an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial, the defective verification of a defective affidavit may not be fatal. This Court held that the High Court should ensure its compliance before the parties go to trial. This decision was followed by another three-member Bench in *R.P. Moidutty v. P.T. Kunju Mohammad* [*R.P. Moidutty v. P.T. Kunju Mohammad*, (2000) 1 SCC 481] .

41. In *Harcharan Singh Brar v. Sukh Darshan Singh* [*Harcharan Singh Brar v. Sukh Darshan Singh*, (2004) 11 SCC 196] , this Court held that though the proviso to Section 83(1) is couched in a mandatory form, requiring a petition alleging corrupt practice to be accompanied by an affidavit, the failure to comply with the requirement cannot be a ground for dismissal of an election petition in limine under Section 86(1). The Court reiterated that non-compliance with the provisions of Section 83 does not attract the consequences envisaged by Section 86(1) and that the defect in the verification and the affidavit is a curable defect. The following portion of the decision is of significance :

"14. ... Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case."

(emphasis supplied)

42. In *K.K. Ramachandran Master v. M.V. Sreyamakumar* [*K.K. Ramachandran Master v. M.V. Sreyamakumar*, (2010) 7 SCC 428] , this Court followed *F.A. Sapa* [*F.A. Sapa v. Singora*, (1991) 3 SCC 375] and *Harcharan Singh Brar* [*Harcharan Singh Brar v. Sukh Darshan Singh*, (2004) 11 SCC 196] to hold that defective verification is curable. The Court again reiterated that the consequences that may flow from a defective affidavit is required to be judged at the trial of an election

petition and that such election petition cannot be dismissed under Section 86(1).

43. *Though all the aforesaid decisions were taken note of by a two-member Bench in P.A. Mohammed Riyas v. M.K. Raghavan [P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511] , the Court held in that case that the absence of proper verification may lead to the conclusion that the provisions of Section 81 had not been fulfilled and that the cause of action for the election petition would remain incomplete. Such a view does not appear to be in conformity with the series of decisions referred to in the previous paragraphs and hence P.A. Mohammed Riyas [P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511] cannot be taken to lay down the law correctly. It appears from the penultimate paragraph of the decision in P.A. Mohammed Riyas [P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511] that the Court was pushed to take such an extreme view in that case on account of the fact that the petitioner therein had an opportunity to cure the defect, but he failed to do so. Therefore, P.A. Mohammed Riyas [P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511] appears to have turned on its peculiar facts. In any case P.A. Mohammed Riyas [P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511] was overruled in G.M. Siddeshwar v. Prasanna Kumar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] on the question whether it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1). As a matter of fact, even the filing of a defective affidavit, which is not in Form 25 as prescribed by the Rules, was held in G.M. Siddeshwar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] to be a curable defect and the petitioner was held entitled to an opportunity to cure the defect.*

44. *The upshot of the above discussion is that a defective verification is a curable defect. An election petition cannot be thrown out in limine, on the ground that the verification is defective."*

13. Accordingly, it is noticed that prescribed authority as well as revisional authority have found that defect in verification was a curable defect and the prescribed authority has even allowed the application of the election petitioner for curing the defect in the revision.

14. No other ground was urged on behalf of the petitioner assailing the validity of impugned order dated 31.07.2024.

15. In light of the above, this Court does not find any ground for interference in the order of the prescribed authority or the revisional authority. Accordingly, the writ petition being devoid of merits and is **dismissed**.

(Alok Mathur, J.)

Order Date :- 10.9.2024

Ravi/