



2025:AHC:166307

HIGH COURT OF JUDICATURE AT ALLAHABAD

Election Petition No. - 8 of 2022

Kamlendra Singh

.....Petitioners(s)

Versus

Shri Harsh Vardhan
Bajpai

.....Respondents(s)

Counsel for Petitioners(s)	: Anjani Kumar Mishra, Gulab Chandra, In Person, Kamlendra Singh, Ravindra Pratap Singh
Counsel for Respondent(s)	: Mithilesh Kumar Rai, Ravi Anand Agarwal

RESERVED

Court No. - 43

HON'BLE SIDDHARTHA VARMA, J.

Civil Misc. Dismissal Application No.5 of 2022 :

(Under Order VII Rule 11(a) CPC read with Section 86(1) of Representation of People Act)

1. The instant election petition was filed with a prayer that the result of the returned candidate of the assembly constituency 262 North, Allahabad be declared null and void. The ground taken in the election petition was that since the nomination paper of the election petitioner had been improperly rejected, the election of the returned candidate be declared void.

2. It is the case of the election petitioner that the election was notified on 1.2.2022 wherein nomination was to be filed in between 1.2.2022 to 8.2.2022. The date of scrutiny of the nomination forms was 9.2.2022. The date of distribution of symbols was 11.2.2022 and the date of voting was 27.2.2022. The results were to be declared on 10.3.2022. The election petitioner, wishing to contest the assembly election as an independent candidate, had filed his nomination form and as per the election petitioner, a list of proposers as per section 33 of the Representation of the People Act, 1951 (hereinafter referred to as the “1951 Act”) was given in the nomination form. It is the case of the election petitioner that on the date of scrutiny when the list of proposers was found to be comprising such names which were not to be found in the electoral rolls, the election petitioner ought to have been given an opportunity to give the correct list of proposers with the nomination form and, therefore, when that opportunity was not given to the election petitioner and the Returning Officer rejected the nomination form of the election petitioner then an illegality was committed and, therefore, the election petition be allowed.

3. During the pendency of the election petition, the elected candidate (hereinafter referred to as the “applicant”) filed an application for the rejection of the election petition under Order VII Rule 11(a) of the Code of Civil Procedure read with section 86(1) of the 1951 Act.

4. Essentially, the application under Order VII Rule 11(a) CPC read with section 86(1) of the 1951 Act was filed alleging that there was absolute non-compliance of sections 81(1) and 81(3) of the 1951 Act.

The applicant had submitted that the election petition could be challenged only on the grounds as were mentioned under section 100 of the 1951 Act and from the perusal of the grounds taken in paragraph 17 of the election petition, the grounds were not to be found. Apart from the fact that grounds were not to be found, the applicant raised the following issues :-

- (i) The copy of the election petition supplied to the returned candidate-applicant was not a true copy of the election petition;
- (ii) The Annexure-2 i.e. the notification dated 1.2.2022 mentioned in paragraph 3 of the election petition had not been annexed with the true copy supplied to the returned candidate;
- (iii) There was no verification of the election petition and also there was no administration of oath;
- (iv) Merely stating that any document was a true copy of the original did not make the true copy, a copy of the election petition;
- (v) In ground no.17(6), it had been stated that the improper rejection by the Returning Officer amounted to a corrupt practice but as per Rule 94(A) of the Conduct of Election Rules, 1961 (hereinafter referred to as the “1961 Rules”) the prescribed Form-25 was not filed;
- (vi) The election petition was barred under Order VII Rule 11(a) CPC as no “material fact” averred in the election petition constituted a “cause of action”;
- (vii) An election petition is not an action at common law and equity but is statutory in nature. In this regard, learned counsel for the applicant relied upon a decision of the Supreme Court in **Sunil Kumar Kori vs.**

Gopal Das Kabra reported in (2016) 10 SCC 467 and specifically relied upon paragraph 20 of this judgment which is being reproduced here as under :-

“20. The learned Senior Counsel for the Cantonment Board submitted that the provisions pertaining to election in the Act have to be strictly construed with which proposition we agree. In *Banwari Dass v. Sumer Chand* reported in (1974) 4 SCC 817 at paragraphs 20 and 21 it was held by this Court that statutory provisions of election law are to be strictly construed and its requirements strictly observed. **It was further submitted by the learned Senior Counsel for the Appellants that the principles of equity and common law are strangers to election law.** That an Election Petition is not an action at common law, nor in equity is no more *res integra*. The said principle is applicable to adjudication of election disputes and not for interpretation of election law. Construing Section 28 on the basis of the above well accepted principles of statutory construction, we are of the opinion that the word “resident” should receive a narrow construction in comparison to its synonym “inhabitant”. We are of the opinion that a person should be a resident of a legally constructed house for being entitled to be enrolled as an elector.”
(emphasis supplied)

In this regard learned counsel for the applicant submitted :-

- (a) The election petitioner though had stated that he had filed the nomination paper along with the election petition, he had not done so;
- (b) In paragraph 6 of the election petition, there was an averment that the true copy of the nomination form was being filed as Annexure-4. However, Annexure-4 was only an alleged Form-26 and not the nomination which is to be filed with Form-2B.
- (c) The petitioner had stated in paragraph 8 of the election petition that he was appending incorrect list of proposer with the nomination form. However, the petitioner has neither brought the incorrect nomination form having the list of proposers nor has he brought on record the fresh nomination form containing the correct list of proposers.

(d) In fact the election petitioner has submitted that the Annexure-5 is merely an order rejecting the nomination paper whereas in paragraph 8, it has been stated that the true copy of the application along with the correct list of proposers was being filed as Annexure-5 to the election petition.

(e) The document which was alleged to have been filed as Annexure-6 was not the rejection order but was a complaint to the Chief Election Officer, Uttar Pradesh, Lucknow.

(viii) It was contented by learned counsel for the applicant that in the election petition in paragraph 7 it had been stated by the election petitioner that as per the election rules and the provisions of 1951 Act, the nomination form could be corrected and the list of proposers could be changed till the stage of scrutiny. However, neither the said rules have been appended nor have they been shown to the Court.

(ix) Learned counsel for the applicant, relying upon a decision of the Supreme Court in **V. Narayanswamy vs. C.P. Thirunavukkarasu** reported in **(2000) 2 SCC 294** further submitted that there was a distinction between “material facts” and “material particulars”. In the case when “material facts” were missing, the petition definitely had to be rejected at the outset but in the case when “material particulars” were missing, the petition could be cured subsequently. However, where in spite of sufficient time being there to cure the defect in material particulars, the petitioner fails to cure the same then the petition had to be rejected. In this regard learned counsel for the applicant relied upon paragraph nos.27 and 30 of the judgment and submitted that the election

petition which was not a suit at common law or an action in equity, had to abide by the statutes and, therefore, had to be rejected under Order VII Rule 11 CPC. The relevant portion of paragraphs 27 and 30 are reproduced here as under :-

“27. It is contended by Mr. Bhandare that all the material facts have been stated in the election petition and that for lack of material particulars, the petition could not have been thrown out at the threshold. He said opportunity should have been given to the appellant to supply the material particulars. It is really of strange proposition to advance. Till the date of the impugned judgment, appellant had persisted that the petition did not lack material particulars and that the verification was in accordance with the Code and the affidavit in support of the corrupt practice in the form prescribed. Admittedly, the petition lacked material particulars, verification to the petition was not in accordance with the Code and the affidavit did not conform to the form prescribed. At the first opportunity, the respondent raised objection that the petition lacked both material facts and the material particulars and that the verification to the petition and the affidavit were not in accordance with law. This was repeated in the miscellaneous application (Original Application No.298/98). In the counter affidavit and in the reply to the miscellaneous application, the appellant persisted in his stand and termed the objections raised by the respondent as irrelevant. It is not that the appellant did not have opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter affidavit of the respondent or even his reply to the miscellaneous application (O.A. No. 298/98). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for the reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the Court has jurisdiction to dismiss the petition. High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo moto the furnishing of better particulars and requiring amendment of petition for the purpose of verification and filing of proper affidavit. In a matter of this kind

the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. [See in this connection Constitution Bench decision in Bhikaji Keshao Joshi & Anr. vs. Brijlal Nandlal Biyani & Ors. SCR at p.144 (AIR 1955 SC 610 = (1955) 2 SCR 428].

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30. It will be thus seen that election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed was not in the form prescribed. Moreover, ingredients of corrupt practices, as defined in Section 123(1)(B) and 123(2) of the Act are also lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which right, as noted above, has been defined in clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or not to vote in a particular way because he was entertained or otherwise. The allegation is that appellant himself could not meet the MLAs and he believed if he had been given a chance to meet them he would have influenced their vote in his favour and against their party of affiliations. There is no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier appellant did not show as to why he could not meet the MLAs on October 2, 1997 when they were available in Pondicherry. Material fact must be that the appellant was prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars.”

5. Learned counsel for the applicant also relied upon a judgment of the Supreme Court in **Karim Uddin Barbhuiya vs. Aminul Haque Laskar & Ors.** reported in **2024 SCC OnLine 509** and specifically relied upon paragraph 15 and 19 of the same and submitted that definitely when the material facts were not given then the election petition had to be rejected and when material particulars despite

opportunity were not provided then also the election petition had to be rejected under Order VII Rule 11 CPC. Since, paragraphs 15 and 19 of the judgment are specifically relied, the same are being reproduced here as under :-

“15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of Kanimozhi Karunanidhi vs. A. Santhana Kumar and Others (supra) : -

“28. The legal position enunciated in afore-stated cases may be summed up as under : — i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.”

19. Now, from the bare reading of the Election petition, it emerges that the respondent no. 1 has made only bald and vague allegations in the Election Petition without stating the material facts in support thereof as required to be stated under Section 83(1)(a) of the RP Act. Apart from the fact that none of the allegations with regard to the false statements, and suppression and misrepresentation of facts allegedly made by the respondent no. 1 with regard to his educational qualification or with regard to his liability in respect of the loan availed by him for his partnership firm or with regard to his default in depositing the employer's contribution to provident fund, would fall within the definition of "Corrupt practice" or "undue influence" as envisaged in Section 123(2) of the RP Act, the Election petition also lacks concise statement of "material facts" as contemplated in Section 83(a), and lacks "full particulars" of the alleged Corrupt practice as contemplated in Section 83(b) of the RP Act."

6. Learned counsel for the election petitioner in reply has submitted that in essence, the grievance of the petitioner could be found out from the reading of the election petition and a cause of action was clearly made out and, therefore, the election petition could not be rejected under Order VII Rule 11(a) CPC.

7. Having heard learned counsel for the parties, the Court is of the considered view that the election petition cannot continue and that the election petition deserves to be rejected under Order VII Rule 11 CPC. Also, the Court finds that there are such defects which would make the election petition not maintainable vis.-a-vis. the provisions of section 86(1) of 1951 Act.

8. So far as the submission of learned counsel for the applicant that the election petitioner had no locus-standi, the Court is of the view that this submission holds no water. The election petitioner could have filed the election petition if he had considered that his nomination was wrongly rejected. However, the Court does find that since allegations of

wrong educational qualifications had been alleged in certain paragraphs and giving of wrong educational qualifications would be considered as a corrupt practice, the Court is of the view that the election petition ought to have been accompanied by a Form-25.

9. The Court finds that the election petitioner though had stated that he had filed the nomination paper along with the election petition, he had not done so. More so, in paragraph 6 of the election petition, the averment that the true copy of the nomination form was being filed as Annexure-4 was found incorrect as the Annexure-4 was only an alleged Form-26 and not the nomination which was to be filed with Form-2B. Also, the claim of the election petitioner in paragraph 8 that he was appending incorrect list of proposer with the nomination form was found incorrect since the petitioner has neither brought the incorrect nomination form having the list of proposers nor has he brought on record the fresh nomination form containing the correct list of proposers. The Court also finds that the averment made by the election petitioner in paragraph 7 that as per the election rules and the provisions of 1951 Act, the nomination form could be corrected and the list of proposers could be changed till the stage of scrutiny holds no water as neither the said rules have been brought on record nor have they been shown to the Court. The Court, therefore, finds no force in the claim of the election petitioner that his nomination was wrongly rejected. This has also been held by the Supreme Court in **Shaligram Shrivastava vs. Naresh Singh Patel** reported in **(2003) 2 SCC 176**. The relevant portion of the judgment is reproduced here as under :-

“10. At the time of scrutiny the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of Section 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Therefore providing a proforma, eliciting necessary and relevant information in the light of Section 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under sub-section(2) of Section 36 of the Act. The Returning Officer is authorized to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under Sub-section (2) of Section 36 of the Act relating to his being not qualified or disqualified in the light of Section 8 of the Act . It is bound to result in defect of a substantial character in the nomination.

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16. Here we would like to point out that the directive of the Commission states

"when a candidate files his nomination paper the Returning Officer or, as the case may be, the Returning Officer receiving the nomination paper shall hand over to him the enclosed letter, together with the proforma of affidavit annexed thereto to ascertain at the time of scrutiny of nomination as to whether the candidature is valid from the angle of Section 8 of RP Act, 1959",

it would be better that for future the directive may find it feasible to require the Returning Officer to hand over the proforma of affidavit while issuing the nomination paper itself.

17. In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. **It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same.**”

(emphasis supplied)

10. The Supreme Court in **V. Narayanswamy vs. C.P. Thirunavukkarasu** reported in **(2000) 2 SCC 294** also held that in the case when “material facts” were missing, the petition definitely had to be rejected at the outset but in the case when “material particulars” were missing, the petition could be cured subsequently. However, where in spite of having sufficient time to cure the defect in material particulars, the petitioner fails to cure the same then the petition had to be rejected.

11. The Supreme Court further in the case of **Karim Uddin Barbhuiya vs. Aminul Haque Laskar & Ors.** reported in **2024 SCC OnLine 509** held that definitely when the material facts were not given then the election petition had to be rejected and when material particulars despite opportunity were not provided then also the election petition had to be rejected under Order VII Rule 11 CPC.

12. Under such circumstances, the Court is of the view that the election petition when is defective and cannot be entertained, it had to be rejected under Order VII Rule 11 CPC. The application is, therefore, allowed. The election petition is, therefore, rejected under Order VII Rule 11 CPC and the election petition, thus, stands dismissed.

(Siddhartha Varma, J.)

September 17, 2025

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