

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01 / 09 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

E.L.P.No.1 OF 2015

T.Suresh, B.A.B.L.

... Petitioner

-VS-

1. J.Jayalalitha
2. Dr.K.Padmarajan
3. K.R.Ramasamy alias Traffic Ramasamy
4. P.Kumarasamy
5. E.Ramadass
6. M.Ahamed Shajahan
7. A.Venkatesh
8. P.Marimuthu
9. P.Prakash
- 10.A.Noor Mohamed

11.Nagoor Meeran Peer Mohamed

12.R.Jayakumar

13.M.Vasanthakumar

14.M.L.Ravi

15.P.Ponraj

16.J.Jayakumar

17.P.N.Sriramachandran

18.A.Venugopal

19.C.Maharajan

20.M.Gopi

21.V.Duraivel

22. R.Abraham Rajmohan

23.C.Mahendiran

24.M.Subash Babu

25.T.Paulraj

26.J.Abdul Rahim

27.J.Mohan Raj

28.U.K.Manimaran

29.The Election Commission of India

Rep by its Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110 001

30.The Chief Electoral Officer

Public (Election III) Department,
Secretariat, Chennai 600 009.

31.The Returning Officer,

11, Dr.Radhakrishnan Nagar Assembly,
Assistant Commissioner / Zonal Officer-W,
Zone-IV, Chennai Corporation,

266, Thiruvottriyur High Road, Chennai 600 081 ... Respondents

Prayer: Election Petition filed under Section 80 to 84 read with Section 100(1)(C) of the Representation of the People Act, 1951 Rule 2 of the Rules of the Madras High Court Election Petition 1967 praying to (1) declare the 31st respondent order dated 11.06.2015 rejecting the petitioner nomination papers filed for contest in the Dr.Radhakrishnan Nagar Assembly Constituency as improper, invalid and illegal and also set aside the election of the first respondent from 11, Dr.Radha Krishnan Nagar constituency in the Tamilnadu Legislative Assembly consequently (2) declare the election of returned candidate namely the 1st respondent herein in Form 11, Dr.Radhakrishnan Nagar Assembly Constitution, State of Tamilnadu in the election held on 27.06.2015 and the declaration of result on 30.06.2015 as illegal and Null and void.

For Petitioner

: Mr.M.R.Franklin

For Respondent-1

: Mr.B.Kumar, Senior Counsel for

Mr.R.Murali

For Respondents 2 to 31 : No Appearance

ORDER

Selvi.J.Jayalalitha, the respondent No.1 is an elected candidate in the Elections held from R.K.Nagar Constituency to the Tamilnadu Legislative Assembly. Her election had been called in question before this Court by the petitioner, who was one of the candidates, who filed the nomination papers before the 31st respondent, for election in the same constituency, along with the Affidavit in Form-26, before the Returning Officer on 08.06.2015. The nomination was rejected by the 31st respondent, as defective, by his order dated 11.06.2015.

2. The brief material facts leading to the filing of the petition are as follows:

The petitioner claims to be a Social Activist, doing social work for the welfare of the public for a couple of years in his locality. As he decides to

service the public, he wanted to contest in the bye election conducted in R.K.Nagar Constituency on 27.06.2015. Hence, he filed nomination as an independent candidate in the Election and the nomination papers were filed before the 31st respondent, on 08.06.2015. The petitioner also had filed the affidavit as required under Form-26.

3. As per the procedure to participate in the Assembly Election, an independent candidate should get a minimum of 10 persons in the Constituency to propose his candidature and they must be eligible for voting in that Constituency.

4. Accordingly, 10 persons had proposed the name of the Election petitioner. All other requirements such as payment of security, Oath of Election, as per the Rules and certified by the respondent No.31 were all proper. The verification of the nomination papers was done on 11.06.2015. However, on the same day, the nomination papers of the petitioner was rejected on the ground that there were no 10 proposers as per Section 33 of the Representation of Peoples Act, 1951.

5. The petitioner has alleged that he was not aware of the basis of the rejection of his nomination papers. Hence, he filed W.P.No.17837 of 2015 against the 31st respondent, for certiorarified mandamus, calling for the records of the 31st respondent, made in proceedings Ma.A.4.Na.Ka.No.Election /4550/2015 dated 11.06.2015 and quash the same and consequently direct the respondents to accept the nomination papers of the petitioner for R.K.Nagar Constituency, Chennai, for the bye election to be held on 27.06.2015. The said Writ Petition was dismissed on 23.06.2015, as Article 329 of the Constitution of India bars interference by this Court with the Election process, once it is commenced. Thereafter, the Election Petitioner has filed the above petition, challenging the rejection of his nomination and consequently declaring the Election of the returned candidate, as null and void.

6. The petitioner has stated in the petition that in his attempt to know the reasons for rejection of his nomination, one of the Office employee, by name Dhanalakshmi, verified in the office computer on 08.06.2015 and orally informed the petitioner that one of the proposers namely Vignesh's (Part

No.43 Serial No.42) address was wrongly mentioned in the proposer's voter ID. The mistake was that instead of '*Illaya Mudali Street*', it was mentioned as '*Illaya Mudal Street*'. It was also stated that the proposer No.2, Vignesh had already submitted his correction form, an year back, before the 31st respondent. The 31st respondent issued the R.K.Nagar final voter list on 15.10.2014. However, the second proposer Vignesh's name was deleted in the final voter list of Part No.43 in Serial No.42. It is also alleged that the said proposer Vignesh had voted in the bye election of R.K.Nagar already on 27.06.2015 in the Thiyagaraya College Polling Station, which has also been covered and recorded in the C.C.T.V. Camera. Hence, the petitioner alleges that the proposer Vignesh is an eligible candidate and therefore, his return of the nomination papers on that ground is illegal and is liable to be set aside.

7. Notice was ordered to be issued to all the respondents including the returned candidate on 26.10.2015. Excepting the first respondent, the returned candidate, the others though received notice, have not entered any appearance, nor filed counter. Even the first respondent though has been represented by counsel, had not filed any counter to the Election Petition.

8. The learned counsel appearing for the Election Petitioner contended that excepting the fact that one of the proposers was not a voter within the Constituency, otherwise the Election Petition was in order. Section 100 of the Representation of the Peoples Act, 1951 states that the result of the Election in so far as it concerns a returned candidate has been materially affected by any non compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

9. The averment of the petitioner in the Election Petition is that the name of the second proposer has been wrongly deleted by the 31st respondent, as there was only a clerical mistake in the address. The copy of the Electoral Roll 2014 issued by the Electoral Registration Officer, which was filed along with the nomination papers, has been produced by the Election Petitioner. Part No.43, Serial No.42 relates to the second proposer mentioned in the nomination papers. His Election ID is WQD0834705. The voter card of the proposer No.2 is also produced along with the Election Petition. However, the name of the said Vignesh, S/o.Kumar is deleted from the Electoral Roll 2014,

as produced by the Election Petitioner himself. Though it is alleged in the affidavit that the said Vignesh, whose name is shown to be deleted, had voted in the Bye Election of R.K.Nagar Constituency, held on 27.06.2015, from the Sir Thiagaraya College Polling Station and said to have been covered and recorded in C.C.T.V camera, no such C.C.T.V footage is produced before this Court.

10. Mr.B.Kumar, learned Senior Counsel appearing on behalf of the returned candidate Selvi J.Jayalalitha, contended that though originally the first respondent wanted to file an application under Order VII Rule 11 of the Code of Civil Procedure, to reject the Election Petition, primarily on the ground that no cause of action has been made out, on the basis of the averments made in the Election Petition, has chosen not to file such an application, nor even the counter affidavit. Though sufficient time was granted for filing an application under Order VII Rule 11 of the Code of Civil Procedure and for counter, none of the respondents have filed their counter affidavit till today.

11. It is further submitted by the learned Senior Counsel for the first respondent that the Election Petition is based on the ground that non inclusion of the second proposer was only a clerical mistake, therefore, return of his nomination had materially affected the result of the Election. An Election Petition can be entertained only if some illegality contemplated under Section 100 of the Representation of the Peoples Act is found to have been committed during the process of the Election. However, in the present case, the alleged illegality that has been pointed out relates to a stage prior to the commencement of the process of the Election.

12. The Courts have no jurisdiction to go beyond the Electoral Roll to find out whether the name of any person was illegally entered or deleted after the last date of making nomination of the Election in that Constituency. Section 100 of the Representation of the Peoples Act, 1951, states that the result of the Election in so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate (by an agent other than his election agent), or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, (the High Court) shall declare the election of the returned candidate to be void.”

Therefore, an Election Petition should contain the facts necessary to give rise to a cause of action. The omission of a single material fact leads to incomplete cause of action and the petition becomes not maintainable. The material particulars specified in Section 100 of the Representation of the Peoples Act, 1951, is to give a complete picture of the cause of action, with all information in detail, to make the opposite party understand the case that he or she should meet. Therefore, it was contended that in the absence of material particulars, there was no cause of action giving rise to the Election Petition and the same should be dismissed.

13. The learned Senior Counsel has pointed out that the term of bye election had already come to an end and the next election was notified by the Election Commission of India on 22.04.2016. The last date for making nominations was on 29.04.2016 and the Election was held on 16.05.2016 and the new Assembly started on 21.05.2016. The challenge in the Election Petition relates to the Bye Election for the period 2011-2016.

14. Considering the above dates, whether the Election Petition would become infructuous?

15. The learned Senior Counsel for the first respondent also placed his reliance on the decision of Hon'ble Supreme Court in **SOHAN LAL -VS- ASHA RAM AND OTHERS [1981 (1) SCC 106]** wherein, it has been held as follows:

"This election appeal would have invited adjudication of the issue raised by the appellant but for the fact that the U.P. Legislative Assembly has since been dissolved, fresh elections having taken place and a fresh House having come into existence with newly elected representatives. Perhaps Shri Lekhi's client has a substantial grievance. It is also possible that the decision of the Court below was wrong but we are not inclined to investigate the question at all and, therefore, do not propose to

hear either Shri Lekhi or Shri Yogeshwar Prasad. The subsequent events we have adverted to have rendered this litigation so wholly unreal that it will be a waste of this Court's time to consider the issues. For this reason we dispose of this appeal without adjudication. The same fate will be shared by the cross appeal. Parties will bear their own costs."

16. The learned Senior Counsel for the first respondent has also placed his reliance on the judgment of the Supreme Court in **LOKNATH PADHAN VS. BIRENDRA KUMAR SAHU** [1974 (1) SCC 526] wherein, it is held that a Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it, as it would be a fruitless exercise. The finding that the respondent would be disqualified based on the facts existing at the time of nomination would have no relevance so far as the position at a future point of time may be concerned, neither it would benefit the petitioner nor would affect the respondent in any practical sense as the term itself is over and it would be wholly academic to consider whether the petitioner was disqualified

at the date of the nomination. Thus, holding so, the Supreme Court has further stated as follows:

“4. The position might be different if the allegation against the respondent were of corrupt practice. Then it would not be academic to consider whether or not the respondent was guilty of the corrupt practice charged against him, because a finding of corrupt practice has serious consequences. If the respondent is found guilty of corrupt practice during the election, not only his election would be declared void, but he would also incur certain electoral disqualifications. Section 8A provides that a person found guilty of a corrupt practice by an order under Section.99 shall be disqualified for a period of six years from the date on which, that order takes effect. The purity of elections is of utmost importance in a democratic set up and the law has, therefore, taken serious note of practice in elections and laid down a disqualification for a period of six years on an order being made by the High Court recording a finding of corrupt practice at the time of disposing of the election petition. It is, therefore, obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election

petition must proceed to its logical end and it should be determined whether the corrupt practice was committed by the respondent or not., As pointed out by this Court in Sheodhan Singh v. Mohan Lal (1):

"no one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstance of the assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law."

The decision of the question whether corrupt practice was committed by the respondent or not would not, therefore, be academic and the Court would have to decide it, even if in the meantime the Legislature is dissolved. That was precisely the view taken by this Court in Sheodhan Singh v. Mohan Lal (1). In that case the election of the respondent to the Uttar Pradesh Legislative Assembly was challenged by the appellant in an election petition on the ground that the respondent was guilty of

corrupt practice during the election. The Uttar Pradesh Legislative Assembly was dissolved by the President during the pendency of the election petition before the High Court and a preliminary objection was, therefore, raised on behalf of the respondent that the election petition had ceased to be maintainable on account of the dissolution of the Uttar Pradesh Legislative Assembly. The High Court rejected the preliminary objection. It on merits took the view that corrupt practice was not proved and accordingly dismissed the election petition. The appellant thereupon preferred an appeal to this Court and in the appeal also the same preliminary objection was repeated on behalf of the respondent. This Court negatived the preliminary objection. Hegde, J., speaking on behalf of the Court emphasised that the charge against the respondent was of corrupt practice and pointed out that if the creation of the appellant that the respondent was guilty of corrupt practice was found to be true, then not only his election would be declared void but he would also be liable to incur certain sectoral disqualification, and therefore, in the interest of purity of elections it was necessary that "those who had corrupted the course of an election are dealt with in accordance with

law", and this purpose would stand defeated if the election petition were held to become infructuous on the dissolution of the Assembly. The learned Judge then proceeded to consider the relevant elections of the Act and after (1) [1959] 3 S.C.R. 417. referring to them, summarised his conclusion by saying :

"From the above provisions it is seen that in an election petition the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions noticed by us earlier is to ensure to the extent possible that the persons who offered the election law are not allowed to avoid the consequences of their misdeeds." It will be seen that the emphasis in this decision was on the fact that the charge against the respondent was of corrupt practice and it was

in this context that the Court held that where corrupt practices is alleged against the respondent in an election petition, the dissolution of the Legislature during the pendency of the election petition does not render, it infructuous. We fail to see how the ratio of this decision can have any application in the present case. Here there is no charge of any corrupt practice against the respondent. The only ground on which the election of the respondent is sought to be invalidated is that he was disqualified at the date of nomination under s. 9A. This disqualification does not involve any act corrupting the course of an election. It has no other consequence than that of making the particular election void. It does not entail any electoral disqualification for the future. There is, therefore, no analogy between the two situations and this decision cannot be called in aid by the appellant. “

17. The learned Senior Counsel for the first respondent also placed his reliance on the decision of Hon'ble Supreme Court in **MUNDRIKA SINGH YADAV -VS- SHIV BACHAN YADAV AND OTHERS [2005 (12) SCC 211]** wherein, it has been held as follows:

"1. An election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. A perusal of the judgment of the High Court shows that the appellant had sought for the relief of re-count of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Legislative Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly is over. Fresh elections are being held. No relief can be allowed to the appellant in this appeal even if this appeal is allowed. The appeal is rendered infructuous and is dismissed accordingly.

2. No order as to the costs."

18. The learned counsel for the Election Petitioner has challenged the Election based on the rejection of his nomination papers on the ground that one of the proposers name was not found in the Electoral Rolls. Though the Election is impugned in the petition, in effect, the petitioner has to plead and prove the facts and particulars, which amplify the allegations more clear and

informative. Therefore, once an Electoral Roll is published and Election was already declared on the basis of the same, it is not open to challenge the Election on the ground that the Electoral Rolls are defective and that is not the ground available for challenging an Election under Section 100 of Representation of People Act. The finality of the Electoral Rolls cannot be assailed in a proceedings, challenging the validity of the Election, which is held on the basis of the Electoral Roll. Article 329 would be a bar to the same.

19. To appreciate the factual aspect on the ground of challenge, it is useful to refer to the judgment of the Supreme Court in **MAHADEO VS. BABU UDAI PARTAP SINGH [AIR 1966 SC 824]** wherein, in para 11, it has been held as follows:

“11.This position has now been clarified by the Legislature itself by amending Section 100 in 1956. The amended Sections 100 (1)(a),(b) & (c) refer to three classes of cases where the election is set aside on proof of facts enumerated in the said clauses. Clause (a) refers to a case where a returned candidate was not qualified, or was

disqualified, to be chosen to fill the seat under the Constitution or this Act at the date of his election. As soon as this fact is proved, his election is set aside. Similarly, under clause (b), if any corrupt practice is shown to have been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the election of the returned candidate is set aside and declared void. Likewise, clause (c) provides that the election of a returned candidate shall be declared void if it is shown that any nomination has been improperly rejected. It would thus be seen that the view which the Election Tribunals and the Courts had been consistently taking in dealing with the question about the effect of the improper rejection of any nomination paper, has been confirmed by the Legislature and now, the position is that if it is shown that at any election, any nomination paper has been improperly rejected, the improper rejection itself renders the election void without any further proof about the material effect of this improper rejection.”

20. In the light of the above, in the absence of any evidence, other than the production of Electoral Roll 2014, wherein the name of the second proposer is deleted, the contention of the election petitioner that the election of the first respondent is materially affected, is unsustainable.

21. In this regard, in **BALRAM SINGH YADAV ALIAS BALRAM YADAV VS. ABHAY KUMAR SINGH [2014 (6) SCC 699]** the Supreme Court has held as follows:

“12. Presently, we shall proceed to deal with the issue whether the High Court was justified in accepting the plea of the respondent that his nomination paper was improperly rejected. In this regard, reference to Section 33(5) of the Act is seemly. It reads as follows:

“33.(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.”

13. The said provision came to be interpreted in *B. Dandapani Patra v. Returning Officer-cum-Sub-Divisional Officer, Berhampur and others* [3], wherein a two-Judge Bench placed reliance on *Ranjit Singh v. Pritam Singh*[4] and came to hold as follows: -

“7.... it has been held that when Section 33(5) of the said Act refers to a copy of the relevant part of the electoral roll, it means a part as defined in Rule 5 of the said Rules of 1960. The complete copy would carry the various amendments made in the roll to enable the Returning Officer to see whether the name of the candidate continues in the roll.”

The facts of the aforesaid decision would show that unless the current electoral roll is filed along with the nomination paper, that would tantamount to non-compliance of Section 33(5) of the Act. In the instant case, on a perusal of evidence of PW-1, the respondent herein, and the Returning Officer, it is perceptible that the said respondent had not filed the electoral roll of 1998 which was the latest electoral roll as on 1.1.2002. On the date of scrutiny, the respondent was absent. The High Court, as noticeable, has

referred to the order of rejection of nomination paper by the Returning Officer and opined that none had filed the electoral roll of 1.1.2002 and, therefore, the nomination paper could not have been rejected. The aforesaid view is the resultant of erroneous perception of fact. The ground that was indicated by the Returning Officer was that the valid electoral roll as on 1.1.2002 had not been filed. It has come in the evidence that no electoral roll was prepared on that date and the latest electoral roll was that of 1998. The respondent had not filed the same. In fact, he had filed the electoral roll of 1995. It is also clear from the evidence that at the time of scrutiny, he was not present.

14. In view of the foregoing analysis, we have no scintilla of doubt that the High Court has fallen into serious error by setting aside the election of the appellant and, accordingly, we set aside the judgment of the High Court, treat the election of the appellant as valid and further direct that the appellant shall get the entire remuneration for the period for which he was elected as a member of the legislative Council and we say so on the basis of the Constitution Bench decision in Kirpal Singh, M.L.A. v. Uttam Singh and another. "

22. Considering the totality of the circumstances referred to above along with the relevant documents and judgments, this Court is of the considered view that:-

a) the nomination paper filed by the election petitioner in R.K.Nagar Constituency is not valid as per Section 83 of Representation of Peoples Act, 1951 ;

b) the defect pointed out by the 31st respondent is substantial and cannot be cured ;

c) as per Clause 4 of Section 36 of Representation of Peoples Act, 1951, though the Returning Officer shall not reject any nomination on the ground of defect as the defect is of substantial character, the same is rejected ; and

d) as the issue in question has become purely academic in view of the subsequent election, the present election petition has become infructuous.

23. In view of the foregoing reasons, the election petition is dismissed. No costs.

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Index : Yes/No

Internet : Yes/No

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PUSHPA SATHYANARAYANA, J.

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