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

\+ EL.PET. 7/2019

Reserved on: 22.10.2019
Date of decision : 04.12.2019

ARUN KUMAR ..... Petitioner
Through: Dr.S.S. Hooda, Adv.

versus

DR. HARSH VARDHAN ..... Respondent
Through: Mr.Nikhil Goel, Mr.Dushyant Sarna & Mr.P. Harold, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

I.A. No.12439/2019

1. This petition arises out of the election for Chandni Chowk Parliamentary Constituency, which took place in May, 2019 for the 17thLok Sabha, wherein the respondent was declared as the successful candidate from the said constituency.

2. The petitioner, who claims to be a registered voter from the Chandni Chowk constituency, has challenged the election of the respondent alleging 'Corrupt Practice' under Section 123(2) of The Representation of the People Act, 1951(hereinafter referred to as the Act), on the following grounds:

(i) Suppression of the actual Purchase Price of the property bearing flat no. 122, 2nd Floor, Delhi Apartment CGHS Ltd. Plot No. 15-C, Sector-22, Dwarka, New Delhi-78.

(ii) Non- declaration of the source of income of the spouse.

3. It is the case of the petitioner that the respondent, who was also the returned candidate in the 2014 Lok Sabha elections, revealed the Purchase Price of the above stated property as Rs. 62,50,000/- in the affidavit filed in that election year, while the Purchase Price of the same property in the affidavit of 2019 Lok Sabha elections is shown as Rs. 70,73,673/-. The said property being in the name of the respondent's wife.

4. The petitioner submits that in the affidavit filed in the election year 2014, it is shown that the wife of the respondent never filed an Income Tax Return. Relying upon the Income Tax Returns filed by the respondent's wife during the years 2014-2019, as shown in the affidavit filed in 2019, the averments made in the petition further questions the source of her income and seeks an explanation as to her ownership of the immovable assets.

5. The petitioner submits that an incorrect disclosure of the Purchase Price of the property and the non-declaration of the source of income of the spouse amounts to 'Corrupt Practice' under Section 123(2) of the Act and that these grounds spell out a cause of action for setting aside the election of the respondent.

6. The petitioner places reliance on the decision of the Supreme Court in ***Lok Prahari Vs. Union of India & Ors***. (2018) 4 SCC 699, wherein the Supreme Court has held as under:

"Information to the voter

55. *The information regarding the sources of income of the candidates and their associates, would in our opinion, certainly help the voter to make an informed choice of the candidate to represent the constituency in the legislature. It is, therefore, a part of the fundamental right under Article 19(1)(a) as explained by this Court in ADR case [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294.]*

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72. *We have already taken note of (i) the fact that increase in the assets of the legislators and/or their associates disproportionate to the known sources of their respective incomes is, by compelling inference, a constitutionally impermissible conduct and may eventually constitute offences punishable under the PC Act, and (ii) "undue influence" within the meaning of Section 123 of the 1951 RP Act. In order to effectuate the constitutional and legal obligations of legislators and their associates, their assets and sources of income are required to be continuously monitored to maintain the purity of the electoral process and integrity of the democratic structure of this country. Justice Louis D. Brandeis, perceptively observed: "the most important political office is that of the private citizen".*

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79. *We shall now deal with Prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to "undue influence" — a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar (2015) 3 SCC 467. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a* *court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to "undue influence" — a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.*

80. *On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case held as follows:*

> *"91. ... While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. ..."*

81. *For the very same logic as adopted by this Court in Krishnamoorthy, we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2.*

7. The respondent has filed the present application seeking summary dismissal of the above Election Petition of the petitioner. In the application, it is contended that even assuming that there was a discrepancy in the declaration of the Purchase Price of the above referred flat in the affidavits filed by the respondent in the years 2014 and 2019, the same cannot be presumed as 'Undue Influence' or as a 'Corrupt Practice'. It is further submitted that the Election Petition fails to

disclose 'Material Facts' and 'Material Particulars' in support of the petition.

8. The respondent submits that in the election, out of 15,62,268 registered voters in the Chandni Chowk Parliamentary Constituency, 9,80,390 voters turned out to vote and out of these votes, the respondent secured 5,19,055 votes, that is, 52.94% of the total votes polled; the next highest votes were polled in favour of the candidate who secured 2,90,910 votes, which is only 29.67% of the total votes. It is submitted by the respondent that the above fact would show that the allegations raised in the petition are frivolous and merely intended to initiate a fishing and roving inquiry.

9. The learned counsels for the parties have made submissions in line of their pleadings.

10. Section 123(2) of the Act is reproduced hereinbelow:

> *"123. Corrupt Practices- The following shall be deemed to be corrupt practices for the purposes of this Act:*
>
> *xxxx*
>
> *"(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:*
>
> *Provided that—*
>
> > *(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—*

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

11. As noted hereinabove, in ***Lok Prahari*** (supra), the Supreme Court has held that non-disclosure of assets and sources of income of the candidates and their associates would constitute a 'corrupt practice' falling under heading 'undue influence' as defined in Section 123(2) of the Act. At the same time, the Supreme Court declined to issue direction in nature of mandamus to consider the amendment of the Act to provide for rejection of nomination paper of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information of their assets in Form-26 at the time of filing of the nomination.

12. The Supreme Court in ***R.P.Moidutty v. P.T. Kunju Mohammad and Ors.,*** (2000) 1 SCC 481, observed that:

"*It is basic to the law of elections and election petition that in a democracy, the mandate of the people as expressed at the Hastings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly*".

13. In ***Rahim Khan v Khurshid Ahmed and Ors.,*** (1974) 2 SCC 660, the Supreme Court observed as under:

> *"9. However, we have to remember another factor. An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded."*

14. On the above touchstone the allegations made in the present petition are to be tested.

15. As noted hereinabove, the allegation of the petitioner is that the respondent in the affidavit filed in 2014 had declared the Purchase Price of the flat as Rs.62,50,000/- while in the 2019 affidavit has disclosed the same as Rs.70,73,673/-. It is not denied that the wife of the respondent

owned this flat so disclosed. The petition, however, does not disclose as to how this difference in the Purchase Price would and has in fact had any direct or indirect interference with the free exercise of the electoral right of any person.

16. In ***Lok Prahari*** (supra), the Supreme Court was concerned with the non-disclosure of assets and sources of income of the candidates and their associates. The Court held that the effective increase in the assets of the legislator and/or their associates, disproportionate to the known sources of their respective income is a constitutionally impermissible conduct and the citizen is entitled to be informed of the same so as to enable/empower him to make rational choices of the record of those holding or aspiring to hold public office of the State. Therefore, the primary purpose of such disclosure is for the citizen to be informed of the increase in wealth of the candidate disproportionate to the known sources of his income.

17. In the present case, though the disclosure of the asset was duly made, the allegation is that it carries a different value in the two affidavits. It was for the petitioner to have thereafter also shown as to how this difference in valuation/purchase price would adversely affect the choice made by the citizen and therefore, amount to an 'undue influence'. The petition is completely silent on this aspect.

18. Equally, apart from making a statement of fact that in the affidavit filed by the respondent in 2014 he had asserted that the wife of the respondent has never filed an Income Tax Return, while in the 2019 affidavit it is stated that the wife of the respondent has filed Income Tax Return in the intervening period and it is not disclosed how she has come

to have purchased immovable assets of total purchase price of Rs.85,35,673/-, there again is no averment showing how the said information given in the affidavit falls foul of Section 123 of the Act.

19. In ***Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada and Others***, (1990) Supp SCC 248, the Supreme Court emphasised on the Election Petition containing concise statement of the material facts on which the petitioner relies as an Election Petition has the effect of declaring an election void. It is a serious remedy and therefore, it is vital that the corrupt practice charge against the respondent should be full and complete statement of material facts to clothe the petitioner with a complete Cause of Action to be stated in the same. In the present case, barring making the allegation regarding the valuation of the property and trying to raise suspicion on the income of the spouse declared by the respondent, the petition is lacking any other material particulars to show as to how the same, in any manner, effected the outcome of the election in question.

20. I, therefore, find that the petition does not disclose any Cause of Action. Consequently, the application filed by the respondent is allowed.

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In view of the order passed above in I.A. No.12439/2019, the Election Petition is dismissed. The parties shall bear their own cost.

NAVIN CHAWLA, J

DECEMBER 04, 2019/Arya