

MAHADEORAO SUKAJI SHIVANKAR
v.
RAMARATAN BAPU AND ORS.

AUGUST 13, 2004

[R.C. LAHOTI, CJ., G.P. MATHUR AND C.K. THAKKER, JJ.]

Representation of the People Act, 1951—Section 83(1)—Election of returned candidate challenged on ground of corrupt practices—Application under Order VII, Rule 11(a) for rejection of election petition since material facts as to nature of corrupt practices not stated in the petition and also application under Order VI, Rule 16—Subsequent application by defeated candidate for permission to furnish material particulars of corrupt practices but copy not served on the returned candidate—High Court dismissed applications filed by returned candidate but allowed defeated candidate's application—On appeal, held: Election petition contained all material facts as to the nature of corrupt practice set out by the defeated candidate and the defeated candidate filed application to supply particulars in support of facts and allegations made in election petition, thus petition not liable to be dismissed—However, it is incumbent on the defeated candidate to serve copy of the application filed to the returned candidate and the court is to grant time to the returned candidate and pass appropriate orders—Furthermore, with regard to certain false and frivolous allegations, Enquiry Commission has exonerated returned candidate—Hence, order passed by High Court set aside and matter remitted back for decision afresh—Code of Civil Procedure, 1908—Order, VII, Rule 11(a) and Order VI, Rule 16.

Appellant and first respondent contested the election and appellant was declared elected. Respondent-defeated candidate filed election petition for setting aside the election of appellant-returned candidate on the ground of corrupt practices adopted by the returned candidate. Appellant filed application under Order VII, Rule 11(a) of CPC for rejection of election petition on the ground that material particulars of corrupt practice were not disclosed and application under Order VI, Rule 16 for striking out certain pleadings from the petition. Respondent then filed application for granting permission to furnish material

A particulars of corrupt practices as alleged in the petition but copy of the application was not served upon the appellant. High Court dismissed the applications filed by appellant, however, allowed the application filed by respondent. Hence the present appeals.

B Appellant-returned candidate contended that the ‘material facts’ of corrupt practices which the petitioner alleged had not been stated in the election petition, therefore, the appellant filed an application under order VII, Rule 11(a) for dismissal of the election petition; that the copy of application filed by the election petitioner was never served upon the appellant and as such he could not file reply; that the High Court ought to have granted the application under Order, VI, Rule 16 as the averments were false, frivolous, and had been leveled *mala fide*; that in the light of the applications filed by appellant, respondent filed applications disclosing ‘material facts’ which were not found in the election petition and as such High Court should have dismissed the respondent’s application and allowed the applications of the appellant, dismissing the election petition.

Allowing the appeal, the Court

E HELD : 1. All material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by Rule 11(a) of Order VII of CPC. The expression ‘material facts’ has neither been defined in the Act nor in the Code. Material facts are those facts upon which the plaintiff’s cause of action or defendant’s defence depends. What Particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. There is distinction between ‘material facts’ and ‘particulars’. Material facts are primary or basic facts which must be pleaded by the party in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise. [557-H; 558-A-E]

2.1. In the instant case, material facts as to the nature of corrupt practice adopted by the returned candidate had been set out by the petitioner in the election petition and what was done by him by instituting application for granting permission was to furnish particulars in support of the allegations leveled in the election petition. Therefore, it cannot be said that material facts have been set out for the first time in the application by the petitioner and that the petition was liable to be dismissed on the ground of absence of setting out material facts in the election petition. [559-B-D]

2.2. It was incumbent on the petitioner to serve a copy of application to the returned candidate or to his counsel. It was also the duty of the Court to grant time to the returned candidate and contesting respondents to submit reply; if any, to the said application and to pass an appropriate order in accordance with law. High Court did not adopt the said course. Further, in respect of false, frivolous allegations in the election petition, an Enquiry Commission was appointed which exonerated the appellant and High Court did not appreciate the said aspect in its proper perspective. Therefore, order of High Court is set aside and matter is remitted back for decision afresh. [560-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8413-15 of 2003.

From the Judgment and Order dated 15.2.2003 of the Bombay High Court in C. Application Nos. 473, 474 and 2321 of 2000 in E.P. No. 1. of 1999.

V.A. Mohta and S.V. Deshpande for the Appellant.

The Judgment of the Court was delivered by

THAKKER, J.: The present appeals have been filed by the appellant, returned candidate against the common order passed by the High Court of Judicature at Bombay (Nagpur Bench) in Civil Application Nos. 473 of 2000, 474 of 2000 and 2321 of 2000 in Election Petition No. 1 of 1999. By the said order, Civil Application Nos. 473 of 2000 and 474 of 2000 filed by the appellant herein were rejected by the Court and Civil

A Application No. 2321 of 2000 filed by the first respondent herein came to be allowed.

To appreciate the questions raised by the appellant before us, relevant facts may be stated:

B The appellant before us contested an election from 148 Amgaon Legislative Constituency, Bhandara, Maharashtra. The first respondent also contested the election from the same Constituency. Whereas the appellant got elected, the first respondent lost the election. The later, therefore, filed an Election Petition No. 1 of 1999 in the High Court of Judicature of
C Bombay (Nagpur Bench) for setting aside the election of the return candidate *inter alia* on the ground of corrupt practices adopted by the returned candidate. It was alleged that the returned candidate had not submitted correct and true accounts, had spent unaccounted money, etc. It was also alleged that the returned candidate had violated various
D provisions of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') and the election was, therefore, liable to be set aside. The petition was instituted on 1st November, 1999. Notices were issued to the respondents pursuant to which they appeared. The first respondent-appellant herein filed a written statement denying the averments made in the election petition. He also filed two applications, Civil
E Application No. 473 (Exh. 23) under the provisions of Order VII, Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for rejection of Election Petition on the ground that it did not disclose cause of action and Civil Application No. 474 (Exh. 22) under Order VI, Rule 16 of the Code for striking out certain pleadings from the
F petition. Copies of both the applications were duly served upon the petitioner. The election petitioner replied both the applications, vide replies Exhibits 30 and 27 respectively. The election petitioner also filed an application being Civil Application No. 2321 of 2000 (Exh. 32) for granting permission to furnish material particular of corrupt practices as
G alleged in the petition. The said application was instituted on 16th June, 2000. No copy of the said application was served upon the appellant herein.

The High Court, by a common order dated 15th February, 2003, impugned in the present appeal, dismissed the applications Exhibits 22 and 23 and allowed the application Exhibit 32. The said order is challenged
H by the appellant by approaching this Court.

It may be stated that in spite of service on all the respondents, none has entered appearance. We have, therefore, heard Mr. V.A. Mohta, learned senior advocate assisted by learned advocate Mr. S.V. Deshpande for the appellant. Mr. Mohta contended that the High Court has committed an error of law as well as of jurisdiction in rejecting the applications Exhibits 22 and 23 and in allowing application Exhibit 32. He also contended that the copy of application Exh. 32 filed by the election petitioner was never served upon the present appellant (returned candidate) and hence, he could not file reply contesting the application. The order, therefore, suffers from non-observance of principles of natural justice and deserves to be set aside. It was also submitted that application Exh. 32 was time barred and no amendment could have been granted by the Court. Since "material facts" had not been stated in the election petition, the petition was liable to be dismissed on the ground alone and no amendment could have been allowed. The order passed by the High Court has thus caused serious prejudice to the appellant.

We have been taken by Mr. Mohta to the relevant provisions of the Act and the Code. Sub-section (1) of Section 83 of the Act enacts that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It also should set-forth "full particulars" of corrupt practices which the petitioner alleges. The contention of the appellant before us is that the election petitioner had not complied with the provisions of Section 83(1) of the Act and on that ground alone, the election petition was liable to be dismissed. The appellant, therefore, filed an application Exh. 23 praying for dismissal of the election petition on the ground that it did not disclose cause of action. It was also submitted that the petitioner had made certain allegations in the election petition which were unnecessary, scandalous, frivolous and vexatious which would cause prejudice and embarrassment to the appellant and they were liable to be struck off under Order VI, Rule 16 of the Code. In the light of the applications of the appellant, the election petitioner filed an application Exh. 32 disclosing "material facts" which were not found in the election petition. It was therefore, incumbent on the High Court to dismiss the application Exh. 32 by allowing applications Exhs. 22 and 23 and by dismissing the election petition.

Now, it is no doubt true that all material facts have to be set out in

A an election petition. If material facts are not stated in a plaint or a 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 VII of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression “material facts” has neither been defined
 B in the Act nor in the Code. It may be stated that the material facts are 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 defendant’s defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all
 C basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

But, it is equally well settled that there is distinction between
 D “material facts” and “particulars”. Material facts are primary or basic facts which must be pleaded by the party in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic
 E contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise.

Now, in the election, the petitioner has stated the details in paragraphs
 F 9 to 13 as to corrupt practices adopted by the returned candidate. It was averred that the returned candidate used money power for purchasing votes by distributing cash to voters. He had distributed large number of *darris* (carpets) each approximately worth Rs. 600 in villages Kotjambhara, Keshoroi, Raju Mispiri. In village Raju Mispiri, an amount of Rs. 600 was paid to the voters. It was also alleged that many villages were given
 G aluminum utensils by the returned candidate, one of such village was Vasni, Tah. Deori. At village Lendijob, Jashasa, blankets were distributed by the returned candidate. Wine was freely distributed and consignments of wine were escorted by P.S.I. Yadav. It was asserted that 14 boxes each containing 12 bottles were seized after a fax was sent to the Election
 H Commissioner. The consignment was seized from a vehicle by the Election

Commissioner. Wine was distributed by the returned candidate all over the constituency and Police Station House Officer, Deori and Lambat. The returned candidate himself was escorting all vehicles transporting wine. The same process was adopted in Salekasa and Amgaon Police Station. Wine was also distributed in Deori and Chichgad for two days before the polling. What was done by application Exh. 32 by the election petitioner was to supply particulars in support of the facts stated and allegations made in the election petition. It, therefore, cannot be said that material facts have been set out for the first time in application Exh. 32 by the petitioner. Material facts as to the nature of corrupt practice had been set out by the petitioner in the election petition and what was done by him by instituting application Exh. 32 was to furnish particulars in support of the allegations leveled in the election petition. In our opinion, therefore, it cannot be said that the petition was liable to be dismissed on the ground of absence of setting out material facts in the election petition.

Mr. Mohta, no doubt, is right in submitting that the High Court in the order impugned in the present appeal has observed that the petition as filed by the petitioner was liable to be dismissed on the ground that material facts were not set out by the petitioner. But according to the Court, in view of the application for amendment Exh. 32, it was not proper to dismiss the petition. In this connection, attention of this Court was invited by the learned senior advocate to the following observations made by the High Court:-

“On examining the material fact by itself, it does give a picture that the allegations made are general in nature and failed to present a full picture of cause of action and this by itself was sufficient to allow the two applications filed by the respondent no.1. But, then during the course of hearing of the petition, the petitioner has filed an application seeking leave to furnish material particulars of corrupt practices as alleged in the petition, vide Exh. 32. Though the Court is yet to grant such permission, but if these applications are examined in context to the material particulars now sought to be brought on record which contains a list of schedule specifically the persons whose services were utilized and the specific corrupt practices in which the respondent no. 1 is alleged to have indulged at the time of election, on considering

A this material particular in the opinion of this Court, it will not be proper to reject the petition or strike out the pleadings and, therefore, this Court rejects the application and grants permission to the petitioner to place on record better particulars for which he has prayed vide his application Exh. 32.”

B Since it was rightly submitted by the learned counsel that a copy of application Exhibit 32 was never supplied to the returned candidate (which appears to be correct as is clear and evident from the record and proceedings called for by this Court and perused by us), it would be appropriate to set aside the order passed by the High Court on that ground.

C In our opinion, it was incumbent on the petitioner to serve a copy of application Exh. 32 to the returned candidate or to his counsel. It was also the duty of the Court to grant time to the returned candidate and contesting respondents to submit reply, if any, to the said application and to pass an appropriate order in accordance with law. Since the said course has not

D been adopted by the High Court, the order deserved to be quashed and set aside and accordingly the order is set aside.

E As to application Exh. 22, it was submitted that the High Court ought to have granted the said application as the averments were false, frivolous and had been leveled *mala fide* and there was an abuse of process of Court. It was submitted that they had no relevance to the election. Moreover, even in respect of those allegations, an Enquiry Commission was appointed which exonerated the appellant and the said aspect has not been appreciated in its proper perspective by the High Court.

F In our considered opinion, since the order is common, it has to be set aside as a whole by remitting the matter back to the High Court to decide it in accordance with law after affording opportunity to all the parties. Since the matter pertains to election held in 1999, the High Court is expected to dispose of the matter as expeditiously as possible. The appeal is accordingly allowed. In the facts and circumstances of the case,

G particularly when the respondents are not present, there shall be no order as to costs.