

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

ELECTION PETITION No.34 OF 2019

ORDER:

This is an Election Petition filed by the petitioner under Section 81 & 84 r/w Section 100 (1) (d) (i) (iii) & (iv) of The Representation of the People Act, 1951 (for short "*Act, 43 of 1951*") to declare the election of the 1st respondent to 05-Zaheerabad Parliamentary Constituency which was declared by the Returning Officer on 23.05.2019 as null and void and set aside the same by holding that the 1st respondent has disqualified to the election held on 11.04.2019, to declare the petitioner herein as the elected candidate from 05-Zaheerabad Parliamentary Constituency and to award costs of the election petition from respondent No.1.

2. As could be seen from the brief averments made in the petition, the petitioner has pleaded that in pursuance of the election notification for General Elections to the House of People (Loksabha), election to Zaheerabad Parliament Constituency was conducted on 11.04.2019.

The petitioner contested for the said election as an official candidate of the Indian National Congress Party (INC) and the 1st respondent was the nominee of Telangana Rashtra Samithi (for short “TRS”). Apart from these two candidates, there were ten(10) more candidates contested for the same Constituency. The 1st respondent herein was declared to have been elected from Zaheerabad Parliamentary Constituency by a meager majority of (6229) votes and the petitioner has claimed that he has secured a total of (428015) votes and the 1st respondent had secured (434244) votes. The petitioner has given the details of all the candidates who have contested the election in a tabular form which is extracted hereunder:

Sl. No.	Name	Party	Votes Secured
1.	B.B.Patil	Telangana Rashtra Samithi (TRS)	434244
2.	Banala Lakshma Reddy	Bharatiya Janata Party (BJP)	138947
3.	Madan Mohan Rao	Indian National Congress (INC)	428015
4.	Alige Jeevan	Bahujan Mukit Party	6366
5.	Kalesh	Bhartiya Anarakshit Party	6339
6.	Mark Babu	India Praja Bandhu Party	1573
7.	Mohammed Nawaz	Ambedkar National Congress	1712

8.	Srinivas Goud Kasala	Pyramid Party of India	1279
9.	Nangunoori Latha	Independent	1869
10.	Benjamin Raju	Independent	3281
11.	Mudiraj Venkatesham	Independent	5581
12.	Ramarao Patil		4019
13.	NOTA	None of the above	11170
	Total:-		1044365

3. The petitioner having obtained a copy of results declared from the official website of Election Commission of India annexed the same to his petition.

4. The petitioner has claimed that the 1st respondent furnished false information in Form No.26 (Election Affidavit), thereby he has lied on oath and the same was accepted by the Returning Officer without conducting any due diligence. Therefore, the election of respondent No.1 is liable to be set aside.

5. The petitioner has also claimed that respondent No.1 did not follow the guidelines issued by the Election Commission of India dated 10.10.2018. According to the said rules, the contesting candidates are required to disclose all the criminal cases pending or previously convicted by publishing them in any news channels and news papers as per the directions of the Hon'ble Supreme

Court of India in ***Public Interest Foundation and Others vs Union of India and Another*** vide Writ Petition (Civil).No.536 of 2011.

6. The petitioner while extracting Para Nos.11 and 12 of the above referred Judgment in the election petition further averred that in pursuance of the said directions, the Election Commission gave directions to be complied with by the candidates at elections to the house of Parliament and Houses of State Legislature. According to the directions, the candidates have to furnish the details of both pending and previously decided criminal cases wherein they were convicted. The petitioner has alleged that the 1st and 2nd respondents failed to follow the above referred guidelines in disclosing all the criminal cases and if those details were correctly disclosed, the petitioner herein would have clearly won the election as the 1st respondent won the election only by a meager margin of (6229) votes.

7. The petitioner had claimed that respondent No.1 and 2 have employed deceptive means and misguided the

electorate of this nation. The petitioner has also claimed that as per the guidelines referred above, the candidates shall submit the copies of the newspapers in which their declarations were published. But, as per the C-4 document submitted by 1st respondent, there was no such publication of pending and convicted criminal cases of respondent No.1, which clearly shows the manipulation done by respondent No.1 in publication. The petitioner has alleged that the font size mentioned in C-1 was not in accordance with the guidelines of the Election Commission. The 1st respondent who is supposed to publish the details in widely circulated newspaper, published the details in English in a Telugu newspaper i.e., Andhra Prabha dated 30.03.2019 and Mana Telangana on 08.04.2019. Therefore, it goes to show that respondent No.1 with a malafied intention to deceive the electorate made the above referred publications which is against the letter and spirit of the guidelines of the Election Commission.

8. The petitioner has also submitted that as per Section 6-A of FormNo.26, and according to the guidelines

of the Election Commission, the 1st respondent is supposed to give the details of criminal cases separately for each case in a separate row. But, the respondent No.1 published 18 different cases in three(3) rows with six(6) cases in each row in a small font to make it look like only three(3) cases are pending against him. Thereby, it is violation of guidelines of Election Commission. The 1st respondent failed to publish the cases in widely circulated newspapers, but the publications made by respondent No.1 were not as per the said guidelines. The 1st respondent failed to disclose certain criminal cases wherein he was convicted and also pending criminal cases in Form No.26.

9. It is also alleged in the Election Petition that the 1st respondent is suppose to disclose the criminal cases in television. But, he has disclosed only three(3) cases pending in Mumbai Court on Metro TV. The 1st respondent who is popularly known as B.B.Patil in the Constituency and who has used the same name in the campaign, when it came to the disclosure of criminal cases in the newspapers, he chose to used full name as Bheemarao Basawantharao

Patil. Therefore, the use of different identity, a less known identity in the disclosure of criminal cases goes to show his intention to deceive the electorate. Therefore, the petitioner has claimed that the 1st respondent did not disclose all the criminal cases as required under the guidelines issued by Election Commission. He did not publish the details in the required font. There was no proper publication of the criminal cases in the Television Media and he has used a different name/identity while publishing details of the criminal cases. The petitioner has claimed that the above violation was only with a view to deceive the electorate. If the petitioner discloses the correct details, he would have lost the election and the petitioner would have won the same.

10 The petitioner has also claimed that respondent Nos.1 and 2 intentionally kept the voters of Zaheerabad Parliamentary Constituency in dark by not disclosing pending/convicted criminal cases. The conduct has not only made the election unfair for the voters, but also for the competing candidates. Therefore, the petitioner has

been put to grave disadvantage. As such, the declaration made by the Returning Officer in favour of the 1st respondent is liable to be set aside, consequently, to declare the petitioner herein as elected candidate from the said Constituency.

11. The 1st respondent opposed the Election Petition filed by the petitioner herein on various grounds. The 1st respondent has claimed that the petitioner failed to present the election petition in person as required under Section 81 (1) of Act 43 of 1951. The 1st respondent has also claimed that the petitioner, who is supposed to file authenticated copies in support of his claim, filed only photocopies/copies obtained from the website without a petition required under Section 65 B of Indian Evidence Act. He has also claimed that the grounds raised by the petitioner are not valid grounds for allowing the petition to declare the election of 1st respondent as void. The 1st respondent has also claimed that he has disclosed all the information with regard to criminal cases both pending and disposed. He was not accused in the cases as alleged by

the petitioner. Therefore, on all these grounds sought for dismissal of the Election Petition.

12. Initially the following issues were framed by this Court on 10.08.2023:

1. Whether the nomination of 1st respondent/Returned candidate was improperly accepted by the Returning officer?
2. Whether the respondents No.1 and 2 by deceptive means misguided the electorate which resulted the election declared in favour of the 1st respondent?
3. Whether the election of the returned candidate is liable to be set aside for violation of Election Commission guidelines dated 10-10-2018, formulated pursuant to the Judgment of the Hon'ble Supreme Court in Public Interest Foundation and Others vs. Union of India (2019 (3) SCC P-224)?
4. Whether the non-disclosure of the pending Criminal cases in Crime report No.96 P dated 20-03-2013 of GARHWA REVENUE CENTER for illegal Mining and non-disclosure of the two convicted cases before SDJM porahat at Chaibsa would amount to non-compliance with the provisions of Rule 4-a of Conduct of Election Rules and guidelines of Election commission of India?
5. Whether the non-disclosure of pending criminal cases and convicted cases in the news media on TV Channels by the respondents No.1 and 2 amount to deception and misleading the electorates, thereby, violates the rights of voters under Article 19(1)(a) of Constitution of India,

thereby, amounts to undue influence under Section 123(2) of the Representation of Peoples Act.

6. Whether the publication of information in the news papers is not in the font size of 12 and news papers of Telugu language the information was published in English and 18 cases were published amounts to deceive the electorate?
7. Whether the news papers in which the returned candidate published the information are not widely circulated and the TV Channels are not mostly viewed?
8. Whether the returned candidate has given his full name which is popular in the news papers and TV Channels to mislead the Electorate?
9. Whether the 2nd respondent used different identities of the 1st respondent to deceive the Electorate?
10. Whether in case, the declaration of election in favour of the returned candidate is declared as null and void and invalid, whether the petitioner is entitled to be declared as elected for 05. Jaheerabad, Parliamentary Constituency?
11. Whether the written submissions/written statement filed by the returned candidate on 31-12-2021 is beyond the prescribed time under Order XIII Rule 1 C.P.C., thereby the same cannot be considered?

13. However, in view of the objections raised by the learned counsel for the respondent No.1, and in view of the petition filed by the respondent under Order 14 Rule 5 r/w

151 C.P.C., the following additional issues were framed on 21.08.2023:

1. Whether the election petition has been presented by the petitioner physically and personally in accordance with the provisions of Section 81(1) of the RP Act, 1951 and the petition filed by the petitioner is in compliance with Section 81(3) of the R.P.Act, 1951?
2. Whether the petitioner has complied with the provisions of Section 82 in as much as the petitioner has also claimed a declaration in addition to the relief to declare the election of the 1st respondent/returned candidate to be void and he be further declared to be duly elected?
3. Whether the petition filed by the petitioner discloses any material about the corrupt practices or undue influence by the 1st respondent as required under Section 123 of the Act for the purpose of maintaining the present Election Petition?
4. Whether the petitioner has set forth the grounds required under Section 100(1) of the Act for challenging the election of the returned candidate?
5. Whether the election petition is liable to be dismissed on the ground that there is no averment to the effect that the result of the election of the returned candidate is materially affected by the non-compliance of the provisions of the said act, rules or orders?
6. Whether there is any Non-disclosure, material suppression out Criminal offences or convictions by the first respondent in the election petition prescribed under Section 33(A)(i) and (ii) of the Act invalidating the election of the 1st respondent?

14. After this election petition was posted for trial, with the consent of both parties, one retired District Judge by name S.V.Nath Reddy has been appointed as Commissioner to record the evidence of witnesses produced by both parties. Accordingly, the learned Commissioner recorded the evidence of witnesses produced by both parties and submitted his report along with depositions of all the witnesses and documents marked by them.

15. Heard learned Sri B.Chandra Mouli learned senior counsel and Sri Ch.Satyasadhan counsel appearing for the petitioner as well as Sri Dammalapati Srinivas, learned senior counsel, Sri N.Manohar and Ms.Nisha Padmanabhan counsel for the 1st respondent.

16. Learned senior counsel for the petitioner has submitted that the Election Petition has been filed by the petitioner on various grounds and he was able to prove his contentions by examining himself as PW1 and by examining the other witnesses. Learned counsel has submitted that the evidence of PWs 1 to 3 would show that

there was failure on the part of the respondent No.1 in furnishing the details of criminal cases pending as well as the previously filed cases where he was found guilty and convicted. There was failure on the part of 1st respondent in publishing the details in the newspaper as per the guidelines of the Election Commission. There was failure on the part of 1st respondent to publish the details in the font as approved by the Election Commission. With regard to the presentation of Election Petition before the High Court, learned Counsel while placing reliance on ***Sheo Sadan Singh vs Mohan Lal Gautam***¹ and also referring the rules framed by this Court with regard to presentation of Election Petition has submitted that in view of the above referred Judgment and as per the Rules framed by the High Court, if the petitioner is able to show that he has presented the Election Petition along with his Advocate, that is sufficient proof and it is compliance of Section 81 (1) of Act, 1951.

¹ (1969) 1 SCC 408

17. In the above said ***Sheo Sadan Singh vs Mohan Lal Gautam's*** case, the Hon'ble Apex Court was pleased to observe that when the Election Petition was presented to the registry by an Advocate Clerk in the immediate presence of the petitioner in substance though not in form it was presented by the petitioner himself. The requirement of the law was fully satisfied. In support of his claim that in view of the framing of the Rules by the High Court, wherein it is provided that Election Petition can be presented by the petitioner or through his counsel, the learned counsel relied on Judgment between ***Jamal Uddin Ahmad vs Abu Saleh Najimuddin And Another***² wherein it was observed that receiving Election Petition is a ministerial function and High Court can authorize its official to receive election petitions, which amounts to authorizing to do only an act incidental to the main judicial function of trial of election petition.

18. Learned counsel for the petitioner while referring the Judgment in ***G.V.Sreerama Reddy and***

² 2003 4 SCC 257

Another vs Returning Officer and Others³ has submitted that the evidence of PW1 is very clear that he himself presented the Election Petition along with his Advocate, thereby the petitioner was able to prove the compliance of Section 81 (1) of the Act, 1951.

19. Learned Counsel for the petitioner has submitted that in view of the guidelines referred by the petitioner in the Election Petition and in view of the evidence placed before the Court, it is very clear that apart from furnishing the information, the information required under Form No.26 has also to be furnished, and for this proposition he has relied on Judgment between ***Satish Ukey vs Devendra Gangadhararao Fadnavis and Another***⁴.

20. Learned counsel for the petitioner has argued that if there was failure by the returned candidate in furnishing the information in Form No.26, it is violation of ***Article 19 (1)(a)*** of the Constitution of India. Therefore, it

³ 2009 8 SCC 736

⁴ 2019 9 SCC 1

amounts to undue influence falling under Section 123 of the Act, 1951.

21. In view of the contentions raised by the 1st respondent with regard to the impleadment of parties to the Election Petition, the petitioner sought to rely on ***Murarka Radhey Shyam Ram Kumar vs Roop Singh Rathore & Others***⁵ and the counsel has argued that impleading persons other than the persons required to be impleaded as per Section 82 of the Act, 1951 is not fatal defect. Mistake of oath commissioned in identifying the affidavit cannot be a sufficient ground for dismissal of the Election Petition and defect as to the time and place of the identification is not a fatal defect.

22. Learned counsel while submitting his further arguments for the petitioner has argued that the oral evidence and documents marked through PWs 1 to 3 would show that the 1st respondent published the criminal cases that were pending against him in a small font in newspapers which have no such a huge circulation, that

⁵ AIR 1964 SC 1545

too in a tabular form containing three(3) rows, six(6) cases in each row so that it give an impression there are only three(3) cases. Such conduct would definitely influence the mind of the voter, thereby it amounts to corrupt practices, and the election of the 1st respondent is liable to be set aside.

23. On the other hand learned counsel for the 1st respondent placed reliance on Judgment between ***G.V.Sreerama Reddy and Another vs Returning Officer and Others*** referred supra for the proposition that when there was a statutory provision and rules made by the Court, the statutory provisions prevailed on the Rules and the failure of the petitioner in presenting the petition before the registry in person clearly shows that it is liable for dismissal.

24. In the above referred Judgment, the Hon'ble Apex Court was pleased to observe that the Act itself is a self contained special Act, enacted with specific purpose. Thereby, the Court needs to consider legislature's intention

and any procedure provided by the Act must be read strictly.

25. Based on the pleadings, number of issues have framed and parties have produced their respective evidence.

26. This Election Petition has been filed under Section 100 of the Act, 1951 questioning the election of 1st respondent on various grounds:

The petitioner has claimed that the 1st respondent failed to disclose all the pending previously filed criminal cases wherein he was convicted while submitting Form No.26 as per the guidelines of Election Commission of India. He has also claimed that the 1st respondent failed to publish the above stated criminal cases in newspapers in accordance with the guidelines and publication made by the 1st respondent was not in the largely circulated newspaper and the font used for such publications is smaller than the required font. The petitioner has also pleaded that the 1st respondent published the cases in three(3) small rows with six(6) cases in each row to depict

as if only three(3) cases were registered against him. Apart from this, petitioner has also claimed that the 1st respondent misled the public by publishing his full name though he was popularly known as B.B.Patil only.

27. Learned counsel for the petitioner has claimed that there is no evidence to believe that the petitioner did not present the election petition before the High Court and in view of the Rules framed by the High Court, it is sufficient if the petitioner is able to show that he has presented the petition through his Advocate.

28. On the other hand the 1st respondent has claimed that the petitioner has failed to follow the mandatory provisions of Act in filing the Election Petition. The petitioner who is supposed to file the petition before High Court in person, failed to prove that he has personally presented the petition. Respondent No.1 has also claimed that the petitioner cannot give a go by to the provisions under Section 81 (1) of Act, 1951 and he has to prove that the petition was presented by him in person.

29. In view of the above settled law, the amendment or framing of Rules cannot be considered. It may be true that as per Rule 3 framed by this Court, Election Petition can be filed by the petitioner himself or through his Advocate, but as per Section 81 (1) of Act, 1951 Election Petition shall be presented by the petitioner only.

30. The petitioner placed reliance on the Judgment between ***Sheo Sadan Singh vs Mohan Lal Gautam*** referred supra wherein it was observed that presentation of Election Petition to the registry by an Advocate Clerk in the immediate presence of petitioner in substance though not in form, it was presented by the petitioner himself and requirement of law was fully satisfied.

31. However, in the recent (subsequent) Judgment in ***G.V.Srirama Reddy vs Returning Officer and Another*** referred supra, the Hon'ble Apex Court having referred the Judgment in ***Sheo Sadan Singh vs Mohan Lal Gautam***, observed that the Act is a self contained special Act enacted with a specific purpose. Court needs to consider legislatures' intention. The reason for this fidelity

towards the legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.

32. The Hon'ble Apex Court made the following observation in *G.V.Srirama Reddy vs Returning Officer and Another*:

15. This Court, on previous occasions, had the chance to interpret Section 81(1). It must be noted that the Representation of the People Act, 1951 is a special statute, and a self-contained regime. In *K. Venkateswara Rao and Anr. vs. Bekkam Narasimha Reddi and Ors.*, (1969) 1 SCR 679, a question arose whether 45 days period provided under Section 81(1) could be condoned through the application of the Limitation Act? After examining the relevant provisions of the Act, this Court held: (AIR p.877,para 14)

14 "...the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act."

This has been reiterated in *Hukumdev Narain Yadav vs. Lalit Narain Mishra*, (1974) 2 SCC 133, wherein this Court has again read the requirements under Section 81 strictly, while stating that the Act is a self- contained special statute.

16. While interpreting a special statute, which is a self- contained code, the Court must consider the intention of the Legislature. The reason for this fidelity towards the Legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.

17. The preamble of the Representation of the People Act makes it clear that for the conduct of elections of the Houses of Parliament or the Legislature of each State, the qualification and dis- qualification for membership of those Houses, the corrupt practice and other offences in connection with such allegations the Act was enacted by the Parliament.

18. In spite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trial of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.

19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

33. In a recent Judgment between **Chaluvagali Raghavendra Raju and Another vs Srinivas Goud** in E.P.No.23 of 2019, on the file of this Court, the learned single Judge while referring (i) **Cooperative Central Bank Limited vs Additional Industrial Tribunal**⁶, (ii) **Babaji Kondaji Garad Etc., vs The Nasik Merchants Co-operative Bank Limited**⁷ and (iii) **Central Industrial Tribunal vs Tajmahal Hotels, Secunderabad**⁸, wherein it was held that if there is conflict between the statutory

⁶ 1969 2 SCC 43

⁷ (1984) 2 SCC 50

⁸ 1971 3 SCC 550

provisions and Rules, the Rules must give in and the Act must prevail, made an observation that the Rules made by the High Court since against statutory requirement, if the Rule is accepted it whittle down the effect of Section 81 (1) of the Act.

34. In the above stated case i.e., **G.V.Srirama Reddy vs Returning Officer and Another** referred supra, the Hon'ble Apex Court made the following observation in para Nos.19 and 24:

19) One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

24) The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

35. Therefore, it is very clear that though Rule 3 made by this Court permit the presentation of Election

Petition by the petitioner or through his Advocate with his presence since statutory provisions required the presence of the petitioner, the petitioner cannot take any advantage of the Rule and he has to prove that he himself presented the petition before the High Court.

36. The petitioner who is examined as PW1 and who filed his evidence in the form of an affidavit reiterate what he stated in the petition and claimed that he was personally present at the time of filing the Election Petition in the High Court. However, in the cross examination PW1 admitted that he cannot say the name of notary who attested his evidence affidavit. He does not remember the name of notary who has attested the Election Petition. He does not remember before which Registrar he has presented the Election Petition. It is elicited from PW1 that he has not signed the Election Petition when it was presented before the registry. PW1 has admitted that he did not obtain any gate pass for entering into the premises of the High Court and by showing his Aadhaar card he could enter the High Court along with his counsel. Though

he claimed that he is aware of return of Election Petition with certain objections, he is not able to say the date on which the Election Petition was returned.

37. Learned counsel for the respondent No.1 while referring the Election Petition filed before the High Court submitted that except oral evidence of PW1 that he was present at the time of filing Election Petition, there is no other proof. In the cross examination of PW1 it was elicited that he did not obtain the gate pass for entering into the High Court premises and his signatures were not found on any written resubmission documents, indicates that he was not personally present and the Election Petition was not presented by him in person.

38. In addition to the evidence of PW1, there is evidence of Officer before whom the Election Petition was filed, the Officer who conducted the scrutiny of the Election Petition. However, the witnesses examined at the instanced of the 1st respondent were not able to confirm that the Election Petition was personally presented by the petitioner.

39. According to the evidenced of CW2, he was working as Asst. Registrar, In-charge of O.S. and Writs during the relevant period in 2019. CW2 deposed before this Court that as per the rules framed by this Court, Election Petition has to be filed in the office of Registrar by the petitioner, or the Advocate duly appointed by him. The said Rules were published in the High Court manual in 2004. CW2 has further stated before the Court that he does not remember as to how many Election Petitions were filed in 2019. He is not aware that the Assistant Registrar has to take signature of the petitioner in Election Petition in a register or by way of an endorsement on the Election Petition to show that he was present in person. However, this witness voluntarily stated before the Court that the said procedure was not there as per the Rules framed by the High Court and he does not know who has presented the petition in the receiving counter.

40. Similarly, as per the evidence of CW3 who was Scrutiny Office of O.S.Wing, New Filing Section in 2019, she herself scrutinized the Election Petition filed by the

petitioner herein. She has noticed 14 objections in the Election Petition as shown in Ex.C2. However, she does not know whether the petitioner was present personally at the time of filing the petition in the High Court. Since it is filed in the counter of receiving section, she is not aware that the signature of the petitioner shall be obtained either on the Election Petition or in the register maintained by the High Court. Therefore, the evidence of CWs 2 and 3 goes to show that they are not sure whether the Election Petition was filed by the petitioner in person or whether it was presented by an Advocate or Advocate Clerk. The petitioner who claimed to have presented the petition in person, was not able to show any proof that he has entered the High Court by duly obtaining gate pass and admittedly there are no signatures of the petitioner in relevant register at the time of presentation of Election Petition.

41. Therefore, it is very clear that the petitioner failed to establish that he himself presented the Election Petition before the registry, and in view of the provisions of Section 81 (1) of the Act, 1951 Election Petition has to be

presented by the candidate personally and in case of his failure to adhere to the said clause, such Election Petition is liable to be dismissed on the ground of improper presentation.

42. As could be seen from Section 81 (1) of Act, 1951 and in view of the above referred Judgments, the Hon'ble Apex Court, it is very clear that the presence of petitioner at the time of presenting the petition in the High Court ensures the verification with the Election Petition to check the genuineness of the claim and for avoiding frivolous and vexatious litigation.

43. As rightly argued by the learned senior counsel for the 1st respondent, there is no averment in the entire petition by the petitioner that he personally presented the Election Petition before the High Court. As could be seen from the record, the petitioner did not file required copies of Election Petition and objection on that ground was not complied within the time of limitation. The petitioner could not place any evidence like gate pass to substantiate his claim that he personally attended the Court and filed the

petition. He did not choose to examine his Advocate to prove that he along with his counsel attended the High Court. Learned counsel for the 1st respondent has argued that the lodgment schedule has been signed by the Advocate and it does not indicate the presence of the petitioner. The petitioner has filed this petition challenging the election of respondent No.1 as Member of Parliament.

44. In a Judgment between ***Jagan Nath vs. Jaswant Singh and Others***⁹, the Hon'ble Apex Court was pleased to observe that "Election disputes are not cases at common law or equity but are strict statutory proceedings and results of an election, is not available to be interfered with lightly."

45. In another Judgment between ***Ponnala Laskmaiah vs Kommuri Pratap Reddy and Others***¹⁰, it was observed that election of a successful candidate is not to be lightly interfered with by the Courts. Courts generally lean in favour of the returned candidate and place the onus of proof on the person challenging the end

⁹ AIR 1954 SC 210

¹⁰ (2012) 7 SCC 788

result of an electoral contest. The following was the observation in the above referred judgment:

29. There is no denying the fact that the election of a successful candidate is not lightly interfered with by the Courts. The Courts generally lean in favour of the returned candidates and place the onus of proof on the person challenging the end result of an electoral contest. That approach is more in the nature of a rule of practice than a rule of law and should not be unduly stretched beyond a limit. We say so because while it is important to respect a popular verdict and the courts ought to be slow in upsetting the same, it is equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in [Sections 100](#) and [123](#) of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The Courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in its approach & without being oblivious of the ground realities.

46. Since the petitioner has filed this petition on the ground that the failure of respondent No.1 in complying the guidelines so far as they relate the disclosure of criminal cases, and publication of those cases in newspapers as well as through television broadcasting,

now the Court has to examine as to how far the petitioner was successful in establishing the alleged corrupt practices and whether the alleged corrupt practices, influenced the exercise of votes of general public i.e., voters of that particular constituency.

47. Even though the petitioner has claimed that the 1st respondent had won the election with a meager majority, the fact is the 1st respondent secured (4,34,244) votes and majority was (6,229) votes.

48. As could be seen from the material averments made in the petition and as per the evidence of the petitioner who was examined as PW1, he sought for declaring the election of respondent No.1 on the grounds available under Section 100 (d)(i)(iii)(iv).

49. Section 100 of The Representation of the People Act, 1951 has been extracted hereunder:

100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or (b) that any corrupt practice has 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; or (c) that any nomination has been improperly rejected; or (d) 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. (2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent; (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

50. The petitioner wanted the said declaration on the ground that the nomination of respondent No.1 was improperly accepted, by the improper reception. The Hon'ble Apex Court in a decision in ***L.R.Shivaramagowda Etc., vs T.M.Candhrashekar (dead) by Lrs and Others***¹¹, observed that when a challenge is made under Section 100(1)(d)(iv) of that Act, 43 of 1951, it is necessary

¹¹ (1999) I SCC 666

for the election of petitioner to plead specifically in what manner the result of the election of the candidate was materially affected by the alleged non-compliance with the provisions of the Act or of the Rules.

51. Even though the petitioner has claimed as if there are number of violations, the main contention is, the 1st respondent failed to indicate all the pending criminal cases in the Form 26 and failed to publish the list in the proper newspaper and in appropriate font. In fact, as per Section 33-A of Act 43 of 1951, a candidate apart from giving any information which he is required to furnish shall also furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed and whether he has been convicted of an offence other than any offence referred in sub section 1,2,3 of Section 8 and sentenced to imprisonment for one year or more.

52. The petitioner has claimed that the 1st respondent is shown as accused in two criminal cases. As per the documents annexed to the Election Petition, the

petitioner has claimed that the 1st respondent is accused in two criminal cases. However, as per the FIR shown in page 184, the names of accused are M.B.Patil and B.B.Patil Constructions Ltd. But, he could not place any material to show as to how respondent No.1 is related to the said B.B.Patil Constructions. The brother of 1st respondent who is examined as RW2 M/s.Patil Constructions was his proprietary concern and he has bagged certain civil contracts, having participated in the bidding. RW2 has admitted that he has not filed Form No.32 of M/s.Patil Constructions and Infrastructure Private Limited. But, his evidence clearly indicates that respondent No.1 is no way concerned with the said B.B.Patil Constructions. Even, if it is accepted that two cases were registered there is no evidence to believe that 1st respondent was accused in the above said cases and it was elicited from RW2 that the said case were filed for violation of certain Forest Rules and the said case was registered against Patil Constructions. The petitioner could not produce any material to show that such a case was registered against the 1st respondent in

his individual capacity. Moreover, the said case is only on the ground of certain violations of Forest Rules. It is not the case of petitioner that these cases are punishable with more than 1 year or two years imprisonment.

53. Learned counsel for the petitioner has argued that the name of 1st respondent has been shown as V.V.Patil as they used to pronounce “B” as “V”, “Ba” as “Va”. Even if this contention is accepted, there is no material to believe that the 1st respondent in any way connected to the said Patil Constructions/brother of 1st respondent who is examined as RW2 is also Patil and his evidence goes to show that respondent No.1 is no way concerned with the said Patil Constructions Ltd. Therefore, the allegation that respondent No.1 suppressed the cases in the Form No.26, is incorrect, and furthermore as could be seen from the record, the alleged offences are not punishable with 1 year or 2 years imprisonment.

54. The petitioner could not place any material, like evidence of any individual to show as to how the alleged suppression of said petty cases affected the result.

Absolutely there is no evidence on record to show that respondent No.1 was convicted in any criminal case. The cases under Forest Act are not against the 1st respondent. Even if it is believed that there was any violation by respondent No.1 and proceedings under Payment of Wages Act, 1936 or Minimum Wages Act, were initiated they cannot be equated with criminal cases.

55. The main ground in filing the Election Petition is about suppression of pending and disposed criminal cases by respondent No.1. In view of the above discussion, it is very clear that the petition is not able to prove that respondent No.1 is accused in any such cases as mention in Section 33 (A) of Act 43 of 1951, and even if “Patil Constructions” is shown as accused in some petty cases for the alleged violation, in view of the evidence of RW2 it is quite clear that respondent No.1 is not accused in those cases and the firm itself was shown as accused.

56. The other grounds on which the petitioner sought the declaration is about the font used while publishing the details of criminal cases and publication in

newspapers which were not having vide circulation etc. The petitioner has claimed that the 1st respondent while publishing the above cased deliberately used the full name as Bheemarao Basawantharao Patil though he is popularly known as B.B.Patil, it was only to mislead the general public and all voters. In support of this claim, the petitioner has examined PW2 and PW3 who deposed that newspapers in which respondent No.1 published the case details were not having such a great circulation in their area. However, the cross examination of these witnesses indicates that they are not residents of that particular locality and they were only a chance witnesses may be projected by the petitioner to support his contention.

57. The petitioner is not in a position to show any strong evidence to believe that the alleged failure of respondent No.1 in publishing the news in a particular font and in largely circulated newspaper had any impact on the result. In fact, the witnesses through whom petitioner sought to prove that 1st respondent failed to publish the case details in a big font, and only in three small rows,

himself comfortably read the case details and the witness did not feel any difficulty in giving the details. The petitioner did not examine any voter to prove that in view of lack of information about the cases only, he has exercised his vote in favour of the 1st respondent.

58. In view of the clear evidence of these witnesses about the number of voters and percentage of literate voters in that particular constituency, even if the claim of petitioner that the case details were not properly published in largely circulated newspaper, the petitioner cannot claim that such failure influenced the voters in exercising their franchise in favour of respondent No.1. The 1st respondent secured more than four lakhs (4,00,000) votes which indicates that more than four lakhs (4,00,000) voters were in favour of the 1st respondent and there is no evidence to believe that the casting of votes by those more than four lakhs (4,00,000) voters was due to the failure of 1st respondent in publishing the criminal case details.

59. It may be true the 1st respondent has mentioned his full name in the news items but in the

absence of clear evidence that the voters were mislead by respondent No.1 by way of publishing his full name instead of using B.B.Patil, it cannot be accepted that the publication of his full name influenced the voting pattern and brought success to the 1st respondent. In view of the public being very active in social media now a days, the contention of the petitioner that simply because the 1st respondent shown his name as Bheemarao Basawantharao Patil in the news item, the public were mislead and thereby casted their votes in favour of respondent No.1 cannot be accepted. In fact, there is no acceptable evidence to indicate that the 1st respondent is known to the public as B.B.Patil only.

60. Therefore, the publication of his name as Bheemarao Basawantharao Patil and publication of cases in small font in normal circulated news papers cannot be said to be a correct practice or such act had impact on the voting pattern and influenced the result of the election.

61. The petitioner did not place any evidence to show that he has raised any objection before the Returning

Officer against the nomination filed by respondent on the above shown grounds. Since the election that was questioned in the present Election Petition is for a Member of Parliament and as the 1st respondent bagged more than four lakhs (4,00,000) votes, simply because the petitioner raised some trivial issues and questioned the election, the same cannot be set aside.

62. The petitioner is not able to prove that he has personally presented the Election Petition before the High Court. His contention that he has presented the petition in the immediate presence of his counsel also cannot be accepted in view of his failure in examining his counsel as a witness in the enquiry of the present Election Petition. The contention of the petitioner that in view of the Rules framed by the High Court, enabling the party to present the Election Petition through his counsel, also cannot be accepted as the same is against the statutory provision, which provides that the Election Petition shall be presented by the petitioner in person.

63. All the grounds, on which the petitioner sought for declaration to declare the election of respondent No.1 as null and void, cannot be considered in view of the absence of clear evidence that such failure had a great impact on the election result. Therefore, for all these reasons, the Election Petition filed by the petitioner is liable to be dismissed. Accordingly, this Election Petition is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE SAMBASIVARAO NAIDU

Date:19.04.2024

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