

Nazmul Haque Vs Abu Bakkar Siddique Jotdar and Others

Court: Gauhati High Court

Date of Decision: Jan. 29, 1997

Acts Referred: Representation of the People Act, 1951 – Section 100, 101, 117, 80, 80A

Citation: (1997) 1 GLR 327

Hon'ble Judges: V.D. Gyani, J

Bench: Single Bench

Advocate: B.R. Dey, S. Dutta, K.K. Dey and K.K. Nandy, for the Appellant; S.N. Bhuiyan, B.M. Mahanta, U. Bhuyan and M. Deb, for the Respondent

Final Decision: Allowed

Judgement

V.D. Gyani, J.

By this petition u/s 80, 80A, 81, 100 and 101 of the Representation of People Act 1951 the Petitioner, a resident of village

Ambari, District Goalpara, and an elector of Assam Legislative Assembly Constituency No. 38 (Goalpara West) who was also one of the

contestants in last General Election held in April, 1996 from the said L.A. Constituency calls in question the election of Respondent No. 1, a

Congress-I candidate, who was declared elected from the aforesaid constituency securing 5707 votes more than his nearest rival the Petitioner,

who had polled 13663 votes while the Respondent No. 1 polled 19370 votes.

2. Apart from seeking the declaration the election of Respondent No. 1 is void and illegal, the Petitioner has further prayed, that he be declared

elected from the aforesaid constituency. On Petitioner's own showing there were in all eight contestants at the election as named by him in

paragraph 5 of his petition. Out of them only one Respondent, Respondent No. 1, the returned candidate has been impleaded as a party, the seven

others are not, in face of the relief - declaring the Petitioner elected. The Returning Officer is Respondent No. 2.

3. The election result was declared on 10.5.95. This petition was filed on 24.5.96, inter alia, on the ground (i) wrongful rejection and acceptance

of votes and non compliance of provisions relating to counting; (ii) impersonation in several polling stations by the supporters of Respondent No. 1;

(iii) refusal to allow Petitioner's agents to guard the strong room, where ballot boxes were kept - subsequently at the time of counting several ballot

papers were found to be without signature of the presiding officer; (iv) large scale rigging of votes by Respondent No. 1 along with his agents and

supporters which materially affected the result of election in favour of Respondent No. 1.

4. On the grounds set forth above, the Petitioner has not only challenged the Respondent's election but also claimed and prayed for the relief of

being declared elected.

5. Notices were directed to be issued to the Respondents, accordingly they have entered appearance. The Respondent No. 1 has on 18.9.96 filed

an application u/s 86 of the Act; stating that the election petition does not disclose any cause of action, material facts constituting corrupt practice

as alleged and totally lacking no specific instances or facts have been stated, it is all vague and ambiguous and in absence of the necessary parties,

the petition was liable to be dismissed.

6. The above application was registered as Misc. Case No. 8/97. Ever since its filing, date after date time was given to Petitioner to file his reply to

the application but he did not choose to file one even after several opportunities and adjournments. The Petitioner on 3.12.96 prayed for time and

once again sought time on the last date on 17.12.96 to enable him to file reply by 7.1.97 which was granted when once again the same prayer was

repeated and time was granted till 21.1.97. Despite all these opportunities no reply has been filed. learned Counsel for the Petitioner has however

opposed the prayer on the ground that evidence is not required to be pleaded and that he should be granted time to suitably amend the petition and

also dropping the relief of being declared elected.

7. So far as grant of time is concerned, more than enough time was granted to the Petitioner for submitting his reply to the application. The

Petitioner could well have filed an application for amendment, taking a clue from the Respondent's application, although as rightly pointed out, by

Mr. Bhuyan, learned Counsel appearing for Respondent No. 1, that time limit prescribed u/s 81 of the Act, cannot be overlooked even while

considering any amendment to the petition.

8. I am purposefully not dealing with the point of non-disclosure of cause of action as raised by Respondent No. 1, at the same time it is not to

suggest that the ground is wholly without substance. It is only for the reason that it would involve deep and elaborate probing of facts vis-a-vis,

Clause 1(a)(b) and the proviso thereto of Section 83 of the Act. I am, therefore, restricting myself to the question of necessary parties.

9. Section 83 of the Act which deals with contents of the petition reads as follows:

83. Contents of petition, - (1) An election petition-

(a) shall contain a concise statement of the material facts on which the Petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the names of the

parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;

and

(c) shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of

pleadings:

(Provided that where the Petitioner alleges any corrupt practice, the petition shall also lie accompanied by an affidavit in the prescribed form in

support of the allegation of such corrupt practice and the particulars thereof)

(2) Any schedule or annexure to the petition shall also be signed by the Petitioner and verified in the same manner as the petition.

10. Section 82 of the Act provides for the parties to the petition and reads as under:

82. Parties to the petition. - A Petitioner shall join as Respondents to his petition-

(a) where the Petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further

declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the Petitioner and where no such

further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 86 clearly provides:

Trial of election petitions. - (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or

Section 82 or Section 117.

Explanation.-An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under Clause

(a) of Section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who

has or have been assigned by the Chief Justice for the trial election petitions under Sub-section (2) of Section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to

Use same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a Respondent shall, upon application made by him to the High Court within fourteen days from the date of

commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a

Respondent.

Explanation.- For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the

Respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the

petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall

not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the

petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day

to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be

recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the

date on which the election petition is presented to the High Court for trial.

Now advert to the Petitioner's prayer Clause (IV) as reproduced below:

(iv) to direct recount of ballot papers and declare the Petitioner to be duly elected candidate from No. 38 Goalpara West L.A. Constituency:

it would be seen from the above that the Petitioner has undoubtedly sought a declaration that he be declared elected, which as enjoined by Section

82 of the Act calls for impleading of all the contesting candidates, other than the Petitioner, On Petitioner's own showing there were eight

candidates in the election arena out of them he has impleaded only one the returned candidate. Thus the necessary parties are not before the Court.

11. It was urged by learned Counsel that the question should be decided on trial and the Petitioner can also give up the relief of being declared

elected.

12. learned Counsel for the Respondent on the other hand submitted, that the explanation to Sub-clause (1) of Section 86 is very specific and

clear.

13. A conjoint reading of the above two provisions of law, would lead to the inference that an election petition can be dismissed for want of

necessary parties as contemplated by Section 86(1) of the Act and it will have the same effect as dismissal on trial u/s 98(a) of the Act.

14. The second point - non-disclosure of cause of action for want of as full a statements of corrupt practices as possible, as raised by the

Respondent as already indicated above, is not being gone into. The first objection itself stands. Therefore the petition is liable to be dismissed it is

accordingly dismissed with costs. Counsel's fee Rs. 2,500/-. Needless to add that the Misc. Case stands finally disposed as allowed.