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(1997) 01 GAU CK 0011

Gauhati High Court

Case No: Misc. Application No. 25 and 24 of 1996 (In Election Petition No. 2 of 1995)

Rinchin Khandu Khrimey		APPELLANT
	Vs	
Nima Tsering Khrime		RESPONDENT

Date of Decision: Jan. 6, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 16, Order 7 Rule 11
- Representation of the People Act, 1951 - Section 100, 101, 80, 81, 82

Citation: (1997) 2 GLR 144

Hon'ble Judges: D.N. Baruah, J

Bench: Single Bench

Advocate: A.M. Mazumdar, N. Saikia, M. Bat and J.M. Das, for the Appellant; N. Dutta and B. Goswami, for the Respondent

Judgement

D.N. Baruah, J.
Both the above Misc. Cases arise out of Election Petition No. 2 of 1995 and, therefore, both the cases are taken up together for disposal by this common judgment.

2. In Misc. Case No. 25 of 1996, by an application under Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure, the applicant prays, inter alia, for striking out paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 to 24 of the Election Petition on the ground that those paragraphs are incomplete, vague and devoid of material particulars.

3. In the Election Petition, the election Petitioner has challenged the election of the returned candidate on the ground of corrupt practice. Written statement has been filed and after filing of the written statement the present application has been filed for striking out the paragraphs mentioned above.

4. In Misc. Case No. 24 of 1996, by an application under Sections 80 and 86 of the Representation of the People Act, 1951 (for short, "the Act") read with Order VII Rule 11 of the CPC and Rules 1 and 2 of Chapter VIII-A of the Special Provisions relating to procedure in Election Petition of the Gauhati High Court, the applicant prays for dismissal of the Election Petition on the ground that the petition is not maintainable being not in form.

5. Heard the learned Counsel appearing on behalf of the Applicant (returned candidate) and Mr. N. Dutta, learned Counsel appearing on behalf of the Respondent (election Petitioner).

6. According to the learned Counsel for the Applicant, paragraphs mentioned above of the election petition do not disclose any cause of action, the petition lacks material particulars besides it being vague and indefinite. On the other hand, learned Counsel appearing on behalf of the Respondent (election Petitioner) submits that those paragraphs contain full particulars which are necessary for the purpose of adjudication of the election petition and therefore, the application praying for striking out of the above mentioned paragraphs is misconceived and liable to be dismissed.

7. On the submission of the learned Counsel for the parties it is now to be seen whether the aforesaid paragraphs contain material particulars or not.

8. It is now well-settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by over changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds. Election of a returned candidate can be rendered void on proof of the alleged corrupt practice. In addition he would incur a subsequent disqualification for a period of 6 years next. This harshness is essential if we want our democratic process to be clean, free and fair. Law so far adjudication of an election dispute is concerned has been set out in Part VI of the Act. Those provisions are self-contained. Therefore, an election petition calling in question the election of a returned candidate must be made in accordance with the provisions of the statute. Under the provisions of this part (Part VI), an election petition calling in question the election of a returned candidate must be founded on one or more of the grounds specified in Sections 100 and 101 for any of the reliefs specified in Section 84 of the Act. Section 100 specifies several grounds, one of them being commission of a corrupt practice by the returned candidate. Section 83(1)(a) requires that every election petition shall contain a concise statement of the "material facts" on which the Petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83(1)(b) requires an election Petitioner to set forth full "particulars" of any corrupt practice alleged against a

returned candidate. In the absence of those things an election petition on the ground of corrupt practice is liable to be dismissed. It is also well settled that the "particulars" are obviously different from the "material facts" on which the petition is founded and are intended to afford adequate opportunity to the returned candidate to effectively meet with such an allegation. The underlying idea in requiring the election Petitioner to set out in a concise manner all the "material facts" as well as the "full particulars", where commission of corrupt practice is complained of, is to the scope, ambit and limits of the inquiry at the trial of the election petition.

9. In the present case, the attack of the applicant is that the aforesaid paragraphs lack those requirements and hence those paragraphs are liable to be struck off. Learned Counsel appearing on behalf of the Respondent (election Petitioner), on the other hand, strenuously urges that "material facts" and "full particulars" have been set out. Learned Counsel for the applicant could not precisely point out which "material facts" and "particulars" are lacking in those paragraphs. I have gone through those paragraphs and I find that material facts and particulars have been given in those paragraphs which constitute cases of action and require to be proved by evidence at the time of hearing. Therefore, I find no ground for striking out those paragraphs. In view of this the application for striking out fails and it is dismissed.

10. As regards the application under Sections 80 and 86 of the Act read with Order VII Rule 11 of the CPC and Gauhati High Court Rules, the applicant alleges that the election petition does not comply with the provisions of Sections 81and 82 of the Act and also the provisions of Rule 1 and 2 of the Special Provisions relating to procedure in Election Petition of the Gauhati High Court. The applicant further states that die election petition does not disclose cause of action and that from the statements given in the election petition it is established that the petition is barred under the law. The applicant further alleges that the notice was defective and some pages were missing particularly the list of documents. The application was filed at a belated stage and at this stage this Court cannot accept die contention that some of the pages were missing. It is also argued that number of lines in each page of the election petition was more than what is prescribed. I have gone through the same. I find that on this ground the petition cannot be dismissed at this stage. However, it is left open to be seen at the time of trial and this can be looked into at the time of trial. Accordingly this petition is disposed of.