



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 13th July, 2023
Pronounced on: 29th August, 2023

+ **EL.PET. 8/2019 & I.A. 10182/2019, I.A. 2920/2021, I.A. 6991/2023**
RAMESH Petitioner

Through: Petitioner in person.

versus

SMT. MEENAKSHI LEKHI Respondent

Through: Mr. Harish Pandey and Mr.
 Anshuman Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

I.A. No. 3129/2021*(under Section 8, 83 and 86 of the Representation of People Act, 1951 r/w Order VI Rule 16 and Order VII Rule 11 read with Section 151 CPC on behalf of Respondent)*

1. Mr. Ramesh, the Petitioner-in-person, contested as an independent candidate in the 2019 general elections for the 04-New Delhi Parliamentary Constituency. He now challenges the election of Respondent [Ms. Meenakshi Lekhi], the returned candidate. Central to his claims are allegations of discrepancies in Respondent's election expenditure and her involvement in corrupt election practices. In her defence, the Respondent has controverted these accusations, and has further submitted the present application seeking dismissal of the petition, by referencing to Sections 81, 83, and 86 of the Representation of the People Act, 1951 [*hereinafter, "the*



Act”], and Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure, 1908 [“CPC”]. This judgment aims to appraise the validity of Respondent’s application and scrutinize the Petitioner’s allegations, thereby determining on the appropriate course of action in this electoral contest.

PETITIONER’S CONTENTIONS

2. Petitioner’s grounds of challenge are broadly classified under the following heads:

2.1. *Record keeping of the election expenditure and its accessibility:*

According to Sections 77 and 78 of the Act, every candidate must chronicle their daily election expenditure from nomination day to result day. This record should be submitted to the District Election Officer within thirty days from the date of declaration of the winning candidate. Rule 88 of the Conduct of Elections Rules, 1961 [hereinafter, “1961 Rules”] further stipulates that any person can inspect these expense accounts upon payment of necessary fee. However, Petitioner’s request for access to Respondent’s expenditure details under the Right to Information Act, 2005 was declined. The rationale provided was the unavailability of any provision to provide documents pertaining to the candidates of the 2019 Lok Sabha Elections, to the general public.

2.2. *Unlawful election practices:* Respondent allegedly resorted to unlawful methods to secure a win, including the casting of fraudulent votes by election staff, who impersonated legitimate voters.

2.3. *Affidavit discrepancies:* The affidavit presented by the Respondent, detailing her assets, did not conform to the governing rules.

2.4. *Unaccounted expenditures:* While submitting her nomination on 19th



and 23rd April, 2019, the Respondent was reportedly accompanied by a significant entourage with around 200 vehicles. This substantial expenditure was glaringly absent from the official records. Other unreported costs include outlays on meetings, rallies, the hiring of commercial vehicles, and refreshments. Respondent has misused government resources like vehicles, accommodations, and community centres for campaign activities. She purportedly spent around Rs. 50,00,000/- on promotional materials, in direct violation of the Act and its subordinate rules. Expenses on photography, media advertisements, telecommunication, among others, were also allegedly downplayed. Drawing comparisons to offering bribe, the act of distributing t-shirts to potential voters on 27th April 2019, is also under scrutiny.

2.5. *Grand event and expenditure excess:* On 01st May 2019, a large-scale event, graced by party stalwarts, ministerial staff, and an estimated crowd of 1,00,000 people, was orchestrated by the Respondent. The financial records do not account for this grand affair, whose costs are believed to surpass Rs. 1 crore, crossing the Election Commission of India's stipulated ceiling of Rs. 70 lakhs for campaign-related expenses. To further his case, he placed reliance on the judgement in *Kanwarlal Gupta v. Amar Nath Chawla and Ors.*,¹ wherein it was held that expending large amounts towards election related activities, in excess of the prescribed limit, is a corrupt practice.

2.6. *Concerns about VVPAT verification:* A draw of lots for the random inspection of five polling stations, intended to verify the VVPAT slips, was scheduled for 23rd May, 2018. This exercise was to be transparently conducted in the presence of all the candidates or their agents. However,



only the draw at the Greater Kailash constituency witnessed the Petitioner's presence, thus, raising doubts on the procedure's integrity.

RESPONDENT'S STANCE

3. Respondent primarily raised the following objections:

3.1. *Lack of concrete evidence*: Petitioner's accusations are broad, imprecise, and lack substantial evidence or documentation supporting the claims of corrupt election practices. His general statements in the petition do not align with the allegations made under Sections 77, 80(a), 100(b) or (d), 123, 125A, 126, and 127A(2) of the Act. Without concrete facts that indicate a genuine cause of action, the petition should be dismissed, in view of the jurisprudence laid down by the Supreme Court.²

3.2. *Timeline and procedural oversights*: As per Section 81 of the Act, any petition challenging an election should be submitted within 45 days from the announcement date of the successful candidate's election. The Delhi High Court's Election Rules mandate that such submissions should occur during official 'court hours.' In the present situation, while the election results were declared on 23rd May, 2019, making 07th July 2019 the deadline for petition submission, the Petitioner submitted it on 08th July, 2019 – a day after the deadline – as 07th July, 2019 was a Sunday (court holiday). Moreover, the submission bore acknowledgement of the court staff, time-stamped at 05:15 PM, suggesting that it was filed outside of regular court hours. This late

¹ (1975) 3 SCC 646.

² Respondent relied on the following judgements on the issue:

(a) *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233.

(b) *C.P. John v. Babu M. Palissery and Ors.*, (2014) 10 SCC 547.

(c) *Kanomohzi Karunanidhi v. A. Santhana*, 2023 SCC OnLine SC 573.

(d) *Manoj Kumar Shokeen v. Raghuvinder Shokeen*, 2016 SCC OnLine Del 5187.



submission renders the petition time-barred and, thus, ineligible for consideration. Additionally, Petitioner's endorsement on the petition, as mandated by Chapter XXVI of the Delhi High Court (Original Side) Rules, 2018 is also missing.

3.3. *Faulty affidavit*: The affidavit accompanying the petition is not compliant with the Act and 1961 Rules.

ANALYSIS AND REASONING

Understanding the Court's jurisdictional ambit

4. The initial step in examining the veracity of this dispute requires understanding of the Court's jurisdictional parameters. Respondent primarily leans on Section 83 along with other pertinent provisions of the Act, while also invoking Order VII Rule 11 of CPC for the petition's rejection. For the sake of convenience and clarity, the relevant provisions from the Act are extracted below:

“81. Presentation of petitions—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation - In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

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 be 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.

86. 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[...]³

Allegations of corrupt practices

5. The Act envisions a balance between ensuring electoral integrity and protecting elected representatives from frivolous or ill-founded challenges. As such, before addressing Petitioner's allegations, the Court must first ascertain the petition's conformity to the prescribed procedural prerequisites. Respondent's plea for dismissal hinges on the argument that the petition lacks substantive details indicative of corrupt practices. While civil courts routinely dismiss claims that do not establish a clear cause of action, in election disputes, this standard is of paramount importance. The contours of the Court's role in such matters is shaped by a few landmark rulings. For instance, the decision in *Samant N. Balkrishna and Anr. v. George Fernandez & Ors.*,³ emphasizes that leaving out crucial information can jeopardize the validity of a petition. The notable case of *Udhav Singh v. Madhav Rao Scindia* crystallized the understanding that primary facts, which serve as the foundation stones for constructing a cause of action or defence, earn the distinction of being 'material facts'.⁴ The ruling in *Azhar*

³ (1969) 3 SCC 239.

⁴ (1977) 1 SCC 511.



Hussain v. Rajiv Gandhi also necessitates that Petitioners must meticulously detail underlying facts when alleging corrupt practices.⁵

Election petition and its essential contents

6. At the heart of any election petition, lies Section 83 of the Act. This pivotal provision details the mandatory elements that an election petition must possess. Specifically, it mandates that the petition must provide a clear and concise statement of the essential facts upon which the challenge rests. Indeed, while stressing on completeness, mandate of Section 83 has been emphasized through various judicial rulings.⁶ To miss even a single critical detail can be considered a transgression of Section 83(1)(a) of the Act, warranting rejection.

Evaluating the allegations

7. The term “material facts” is pivotal when scrutinizing an election petition. Essentially, these are facts which, if established, would legally justify the Petitioner’s claim. The concept of material facts demands specific and clear information to be presented in the petition to enable Respondent to understand the precise allegations and prepare an adequate defence. In this context, it is crucial to emphasize the importance of providing detailed and well-supported pleadings to ensure transparency and efficiency in the legal process. The inclusion of material facts, as mandated by the statute, is intended to uphold the integrity of the electoral process, and prevent the abuse of the legal system for political or malicious purposes. Specific pleadings also assist the Court in effectively adjudicating the case, avoiding

⁵ 1986 (Supp) SCC 315.

⁶ *Borgaram Deuri v. Premodhar Bora and Ors.*, (2004) 2 SCC 227 and *Gajanan Krishnaji Bapat v.*



the need for additional clarifications, and expediting the resolution of disputes. It is well-established in law that the omission of any material fact pertaining to a corrupt practice renders the cause of action incomplete, which is fatal to an election petition.⁷ Material facts form the backbone of the Petitioner's case, and their absence could lead to the dismissal of the petition. To truly comprehend the weight of an allegation, one must consider the context. This involves looking beyond the mere words of the petition to the surrounding circumstances, ensuring a holistic understanding. The Act emphasizes the need for specificity. It is not enough to make vague allegations; Petitioner must delve into details. This includes, but is not limited to, specifics of the alleged corrupt practices, individuals involved, and the timings and locations of such acts. In light of the above, the Court's task is to critically assess whether the petition genuinely presents a valid cause of action deserving its intervention. The Court shall now delve into the allegations laid out in the petition, by extracting and evaluating Petitioner's averments in the petition, as follows:

"F) That on 19.04.2019 and 23.04.2019, respondent had filed her nomination forms being Candidate of BJP in 04 New Delhi Parliamentary Constituency. At the time of filing of nomination form, large number of vehicles around 200 and near about 5000 persons were came present in the office of Returning Officer, Office of the District Election Officer (New Delhi District, 12/1, Jam Nagar House, New Delhi-110011. The above mentioned persons were doing road show while coming from the office of BJP to the office of Returning Officer. However, the respondent has not lodged a true accounts of her election expenses maintained under section 77 of R.P. Act to the District Election Officer incurred on 19.04.2019 and 23.04.2019 in the Expenditure Register.

G). That on 24.04.2019 the respondent organized a Nukkar Sabha and Rally and used many vehicles in the same but he has not lodge true accounts of expenditure incurred on petrol/diesel in the election expenditure register.

H) That the respondent has not lodge a true account of her election expenditure expenses maintained under section 77 R.P. Act,1961 incurred on 25.04.2019 for

Dattaji Raghobaji Meghe, (1995) 5 SCC 347.

⁷ Refer: **Azhar Hussain** (Supra), **Samant N. Balkrishna** (Supra) and **Udhav Singh** (Supra).



single penny.

I) That on 26.04.2019 the respondent has shown 32 vehicles including commercial vehicles used in election and no true account has been lodged in the election expenditure register for the said date. That registration numbers vehicles were not disclosed by the respondent in day to day account in the expenditure register.

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R) That the respondent similarly has not showing correct expenses in the day to day account of her election expenses for maintaining the purity of election process, facilitating maintenance of correct account of election expenses by the returned candidate incurred on meetings and rallies conducted on 05.05.2019 and vehicles charges are not lodged in the expenditure register.

X) That the Respondent also failed to maintain day to day true account of election expenditure as required under section 77 of R.P. Act, 1951 and lodge said before District Election Officer, the complete detail of expenses regarding Loud speaker, car, e-rickshaw, Hand puller Rickshaw, Tata Chota Hathi, rallies, Nukkar Sabha and public meeting. Sofa Set, chairs. Tents etc. used for public meeting which were organized from 23.04.219 to 12.05.2019 in 10 MLA constituency i.e. 23-Karol Bagh, 24-Patel Nagar, 25-Moti Nagar, 38-Delhi Cantt., 40- New Delhi, 42-Kasturba Nagar, 43-Malviya Nagar, 44-R.K.Puram, 50-Greater Kailash

Y) It is pertinent to mention here that the election of the Respondent as Returning candidate may be declare null and void being a corrupt practice under Section 77 and 123 of Representation of People Act, 1951.

Z) That as per the Appendix-A issued by the District Election Officer, New Delhi, in which the complete detail has been mentioned regarding the printing stationary of Pamphlet, Sticker, poster, T-Shirts etc, but without getting prior approval from the competent authority, they have printed the stationary in much excess approximately Rs. 50 lacs which is totally violation of the Rules and the format issued by the District Election office, New Delhi.”

8. As can be seen from the afore-noted excerpt, while the petition is replete with allegations of corrupt electoral practices, it notably lacks the requisite material facts and specific details. Petitioner argues that Respondent exceeded the permissible election expenditure limit of Rs. 70 lakhs, but the basis for this claim remains vague. Throughout the petition, the central contention seems to be that Respondent understated the expenses related to election activities in the official register. However, there is a conspicuous absence of specific details highlighting the discrepancies between the declared amounts and the alleged actual expenditures.



Petitioner's claims appear to be predicated on conjectures and assumptions rather than on solid evidence. For instance, while alleging that the Respondent undervalued the expenses of election-related activities, there is no clarity on the actual costs of goods and services employed during the campaign, such as vehicle rentals, fuel costs or venue charges for meetings. Petitioner has not elucidated the facts that would indicate adoption of corrupt practices, as defined in Section 123 of the Act. There is no positive statement explaining how Respondent's impugned activities furthered her prospects and the manner in which such assistance was obtained.⁸ Petitioner has not set-out the concise details of persons involved, mode of undervaluing of expenditures and manner of alleged fabrication of the accounts register. The lack of specific details regarding expenses incurred on various election-related activities and the undervaluation of expenditures undermines the credibility of the accusations. Thus, the Court is of the opinion that Petitioner has failed to plead any material fact *qua* a corrupt election practice, as envisaged in Section 83(1)(a) and (b), which could plausibly aid his case for annulment of Respondent's election.

Non-compliance with mandatory provisions relating to verification of pleadings

9. Next, we shall examine the objection relating to verification of pleadings. In accordance with Section 83(1)(c) of the Act and the 1961 Rules, it is imperative that any election petition bringing forth allegations of corrupt practices is substantiated by an affidavit, adhering to the format delineated by the regulations, more specifically, Rule 94A of the 1961

⁸ *Azhar Hussain (Supra)*.



Rules. The prescribed format, encapsulated in Form 25 to the aforesaid Rules, is as follows:

“I,, the petitioner in the accompanying election petition calling in question the election of Shri/ Shrimati.....(respondent No.....in the said petition) make solemn affirmation/ oath and say –

(a) that the statements made in paragraphs.....of the accompanying election petition about the commission of the corrupt practice ofand the particulars of such corrupt practice mentioned in paragraphs.....of the same petition and in paragraphs.....of the Schedule annexed thereto are true to my knowledge;*

(b) that the statements made in paragraphs.....of the said petition about the commission of the corrupt practice ofand the particulars of such corrupt practice given in paragraphs.....of the said petition and in paragraphs.....of the Schedule annexed thereto are true to my information;*

(c)

(d)

etc.

Signature of deponent.

Solemnly affirmed/ sworn by Shri/ Shrimati.....at.....this.....day of.....20.

*Before me,
Magistrate of the first class/notary/
commissioner of oaths.]*

**Here specify the name of the corrupt practice”*

10. The affidavit accompanying the Petitioner’s petition deviates from the prescribed format. Given the quasi-criminal nature of allegations concerning electoral malpractices, it is paramount that these assertions are treated with the gravity they deserve. Procedural stipulations, like the mandatory affidavit, are in place to ensure that the petitioners acknowledge the gravity of their claims. In the current case, the affidavit vaguely alludes to the statements made about corrupt practices, without explicitly delineating which ones are based on the Petitioner’s direct knowledge. The affidavit



only contains a general averment that the facts mentioned in paragraphs A to AU of the affidavit are true to his knowledge. Additionally, both the petition and the affidavit fall short in pin-pointing the origins of the claims which are not to his personal knowledge. Therefore, while it might be possible to rectify the shortcomings in the affidavit, a comprehensive evaluation of the situation, including the absence of material facts and the Supreme Court's verdict in *V. Narayanaswamy v. CP Thirunavukkarasu*,⁹ lends weight to the objections raised by Respondent regarding the rejection of the petition.

Limitation under Section 81 of the Act

11. On limitation, the statutory timeframe for filing a petition challenging an election is 45 days from the date of result declaration. In the case at hand, the last day to file the petition was 07th July, 2019, which fell on a Sunday (non-working day). Therefore, Petitioner lodged the case on the next working day – 08th July, 2019. Respondent's limited grievance on this aspect is that the petition was not filed during court hours. However, this line of argument does not resonate with the Court's perspective. Given the technological advancements and the introduction of digital filing mechanisms, the traditional constraints of filing within specific court hours have evolved. A narrow interpretation of the rules, suggesting petitions be filed exclusively during court hours would undermine the very purpose of online submission systems. In essence, while the office might have been non-operational, the window for filing remained open. Thus, the Petitioner's action of filing the petition at 05:15 PM, well within the prescribed limit, does not compromise its maintainability.

⁹ (2000) 2 SCC 294.



CONCLUSION

12. Upon a comprehensive scrutiny, the Court finds that the present election petition fundamentally lacks ‘material facts’, which are essential to confer it with a cause of action. Sans any underpinning material, the Petitioner’s broad averments are insufficient to sustain the allegations of electoral corrupt practices. The incurable defect in the affidavit accompanying the petition (as stipulated under Rule 94A of the 1961 Rules), further fortifies the Respondent’s case for rejection of the petition.

13. Therefore, the application is allowed and disposed of.

EL.PET. 8/2019

14. In view of the foregoing discussion, the petition being bereft of a cause of action, is dismissed under Order VII Rule 11 of the CPC. Pending applications are also disposed of.

SANJEEV NARULA, J

AUGUST 29, 2023

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