

ÍITEM NO.IC
(for judgment)

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 638 OF 2007

K.K. RAMACHANDRAN MASTER

Appellant (s)

VERSUS

M.V. SREYAMSKUMAR & ORS.

Respondent(s)

(Heard by Hon'ble Mr. Justice D.K. Jain and
Hon'ble Mr. Justice T.S. Thakur)

Date: 06/07/2010 This Appeal was called on for judgment today.

For Appellant(s)

Mr. Romy Chacko, Adv.

For Respondent(s)

Mr. Himinder Lal, Adv.

Mr. Ranjith K.C., Adv.

Hon'ble Mr. Justice T.S. Thakur pronounced the judgment of the
Bench comprising Hon'ble Mr. Justice D.K. Jain and His Lordship.

The appeal is allowed in terms of the reportable judgment. No
costs.

(Rajesh Dham)
Court Master

(Indu Satija)
Court Master

(signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 638 OF 2007

K.K. Ramachandran Master

...Appellant

Versus

M.V. Sreyamakumar & Ors.

...Respondents

JUDGMENT

T.S. THAKUR, J.

1. Election to the Kerala State Legislative Assembly was held in April, 2006. Among other constituencies that went to poll on 29.4.2006 was 029 Kalpetta LA Constituency with as many as 11 candidates in the fray. The candidates included the appellant as a nominee of Indian National Congress (I) a constituent of the United Democratic Front ('UDF' for short). Janta Dal (S) a constituent of the Left Democratic Front had set up respondent No.1 as its candidate, while respondent No.2 was sponsored by Bhartiya Janata Party. Respondents No.3 and 4 were similarly contesting on the mandate of the Bahujan Samaj Party and All India Anna Dravid Munnetta Kazhakam respectively. The remaining candidates were all independent. The result of the election came on 11th of May, 2006, which declared the first respondent elected with a margin of 1841 votes over the appellant his nearest rival. Most of the other candidates in the fray lost their deposits.

2. Aggrieved by the election of respondent No.1 the appellant filed election petition No.8 of 2006 before the High Court of Kerala at Cochin alleging that the returned candidate had committed several corrupt practices that rendered his election liable to be set aside. The petition was contested by the elected candidate inter alia on the ground that the same suffered from fatal defects that rendered it liable to be dismissed without a trial. The election petition did not, according to the respondent, state either the material facts or give the necessary particulars so as to disclose a complete cause of action justifying a trial. It was also alleged that the petition was not properly verified and was, therefore, liable to be dismissed on that additional ground as well. All these contentions urged on behalf of the respondent found favour with the High Court resulting in the dismissal of the petition by the order impugned in the present appeal. The High Court observed that the averments made in the petition were insufficient to disclose a complete cause of action or give rise to a triable issue. It found fault with the verification of the petition in as much as the same did not disclose the source of information on the basis of which the election petitioner had

made allegations of corrupt practices against the respondent. The verification did not, according to the High Court, make any distinction between what was true to the knowledge of the petitioner and what he believed to be true on the basis of information received.

3. Section 86 of the Representation of People Act mandates that the High Court shall dismiss an election petition if the same does not comply with the provisions of Sections 81, 82 or 117 of the said Act. Sections 81, 82 and 117 of the Act deal with presentation of the petition, parties to the petition and security for costs. It is common ground that the election petition filed by the appellant in the instant case did not suffer from any defect relatable to any one of the said three provisions. Dismissal of the election petition by the order impugned in this appeal is, not therefore, referable to Section 86 of the Act, which implies that the High Court has dismissed the election petition on the premise that the averments made in the election petition alleging commission of corrupt practices do not disclose material facts as required under Section 83 of the Act. Section 83 reads as under:-

"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.]"

4. There is in the light of the above no gainsaying that an election petition must contain a concise statement of the material facts on which

the petitioner relies and 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 practices and the date and place of the commission of each such practice. It also requires that the petition be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings.

5. The provisions of Section 83 (supra) have fallen for interpretation in several cases leading to a long line of decisions that have understood the said provisions to mean that while an election petition must necessarily contain a statement of material facts, deficiency if any, in providing the particulars of a corrupt practice could be made up by the petitioner at any later stage. The provision has been interpreted to mean that while a petition that does not disclose material facts can be dismissed as one that does not disclose a cause of action, dismissal on the ground of deficiency or non-disclosure of particulars of corrupt practice may be justified only if the election petitioner does not despite an opportunity given by the Court provide the particulars and thereby cure the defect. We do not consider it necessary to refer to all the decisions delivered on the subject as reference to some only of such decisions should in our opinion suffice.

6. In *Samant N. Balkrishna v. George Fernandez*, (1969) 3 SCC 238 this Court held that Section 83 was mandatory and requires the election petition to contain a concise statement of material facts and the fullest possible particulars of the corrupt practices if any alleged. The use of word "material facts" observed by the Court shows that facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact could consequently lead to an incomplete cause of action. The function of particulars is however only to present a full picture of the cause of action with such further information in detail as is sufficient to make the opposite party understand the case he is called upon to meet. There may be some overlapping between material facts and particulars but the two are

quite distinct, observed the court. Material facts will show the ground of corrupt practice and the complete cause of action while particulars will give necessary information to present a full picture of the same.

7. In *Raj Narain v. Indira Nehru Gandhi*, (1972) 3 SCC 850, this Court had another opportunity to interpret the provisions of Section 83 and to cull out the principles that would determine whether an election petition complied with the requirement of the said provision. This Court cautioned that just because a corrupt practice has to be strictly proved did not mean that a pleading in an election proceedings should receive a strict construction. Even a defective charge, observed the Court, did not vitiate a criminal trial unless it was proved that the same had prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction and be slow in dismissing an election petition lest it frustrates an action only on technical grounds. The court also observed that a charge of corrupt practice is no doubt a very serious charge but the court has to consider whether the petitioner should be refused an opportunity to prove the allegations made by him merely because the petition was drafted clumsily. The following passages from the decision in *Raj Narain's* case (*supra*) are apposite in this regard:

"While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds.

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The charge of corrupt practice in an election is a very serious charge. Purity of election is the very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations? Should the court refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative.

otherwise it would give an opportunity to him to amend or cure the defect. This court also held that while dealing with election petitions the Court should not adopt a technical approach only to dismiss the election petitions on the threshold.

10. In *Virender Nath Gautam v. Satpal Singh*, (2007) 3 SCC 617, this Court made a distinction between the need for supporting material facts and the means by which such facts are proved by the party alleging the same:

"There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

11. The question whether a defect in the verification of the pleading is fatal is also no longer *res integra* in the light of the decision in *F.A.*

Sapa v. Singora, (1991) 3 SCC 375 and *Sardar Harcharan Singh*

Brar's case (*supra*) where this Court held that defective verification or affidavit is curable. What consequences, if any, may flow from an allegedly defective affidavit, is required to be judged at the trial of an election petition but such election petition cannot be dismissed under Section 86(1) of the Act for any such defect.

12. Coming then to the facts of the case at hand the appellant had challenged the election of respondent No. 1 on the ground that the latter had committed corrupt practices within the meaning of Section 123(1)(A), 123(4), 123 (5) and 123(6) apart from violating the provisions of Section 127A and 133 of the Representation of People Act and Rules 86 and 90 of the Conduct of Election Rules, 1961. In the course of the hearing before us, however, the appellant confined his

challenge to the election on the grounds referable to Section 123(4), 123(5) and 123(6) of the Act only.

13. Section 123(4) of the Act makes publication of any statement of fact which is false, and which relates to the personal character or conduct of any candidate a corrupt practice if any such statement is reasonably calculated to prejudice the prospects of that candidate's election and if such publication has been made by a candidate or his election agent or by any other person with the consent of the candidate or his election agent.

14. The appellant's case as set out in the election petition is that a notice in the form of a newspaper under the title 'Janasabdam' was printed, published and circulated by the first respondent and his election agent containing totally false, defamatory, incorrect and baseless allegations, deliberately intended to lower the dignity, status, reputation and personality of the petitioner amongst the voters of his constituency. According to the averments made by the appellant in paragraph 6 of the election petition, the said notice/newspaper was published at the Mathrubhumi Press, Kozhikode in the name of one Rasheed whose age and address is not known to the appellant but who according to the publication was said to be the Joint Secretary, Media Trust, Sulthan Bathey. The averments made by the appellant in the election petition further state that one Mr. M.P. Veerendrakumar, the father of the respondent No.1 is the Managing Director of "Mathurbhumi" Daily in whose press the aforementioned notice/newspaper titled 'Janasabdam' was published. It is also the case of the appellant that although only 35 thousand copies of the notice are said to have been printed but actually as many as 1,20,000 copies were printed, published and distributed from door to door in all the nooks and corners of the constituency by the first respondent, his election agent and other agents and active workers. The election petition finds fault with the publication of the said notice/newspaper on several counts. Firstly, it is alleged that the notice/newspaper carried a news item under the title "The Health Minister directly do priest hood for bribe" in which the appellant was accused of bribery in connection with

the appointment of part time sweepers in Health Service Department in Wynad District. The news item read that the appellant had demanded Rs.25,000 to Rs.50,000 for providing appointments and another amount of Rs.25,000 to Rs.50,000 for regularizing such appointments. The news item alleged that the appellant had entrusted his Additional Private Secretary with the duty of collecting the bribe amount from the candidates. The statements made in the newspaper were, according to the appellant, totally baseless and deliberately cooked up with a view to lowering the dignity and status of the appellant in the estimation of the electorate by tarnishing the image of the appellant and thereby with a view to gaining undue advantage for respondent No.1 in the election process.

15. Secondly, it finds fault with the publication aforementioned in as much as the same carried a news item under the heading 'The representative of people who brought shame to Wynad' under which caption it was alleged that the Kerala Lok Ayukta had prima facie found a case against the appellant and issued a notice to him. According to the appellant, the Lok Ayukta had found a prima facie case against the appellant but the same was in utter violation of the principles of natural justice and without affording any opportunity of being heard to the petitioner. The Division Bench of the High Court of Kerala had, therefore, stayed the finding of the Lok Ayukta which stay order was in force even on the date of the filing of the petition. The appellant alleged that the publication of the news item in 'Janasabdham' referred to above created a strong impression in the mind of an average person that the appellant was a very corrupt, wicked and crooked person, not committed to the welfare of the people.

16. Thirdly, the appellant found fault with the publication of a news item in the very same newspaper/notice under the title 'The phone call that trapped the Minister'. The appellant alleged that he never sought any assistance or issued any direction to the DMO at any juncture and that he had never threatened or coerced the officer over the mobile phone as was alleged in the said news item. So also the news item

under the caption 'Be aware! Bigger than bitten is in the hole' and 'The game has to be played is not the game already played' were highly defamatory and deliberately made to tarnish the dignity and status of the appellant in the minds of the voters and to prejudicially affect the prospects of his election schedule to be held on 29th April, 2006.

17. A reading of the averments made in paragraphs 13 to 23 of the election petition would show that the same gave particulars of how the published material was transported from Kozikode to the residential house of the first respondent at Puliyarmala in Kalpetta by 11.30 p.m. on 26th April, 2006 and how the same were split into small bundles consisting of 80 to 100 copies per bundle and how 8 to 12 bundles each were distributed among 143 booths of the constituency on 28th April, 2006 between 8.00 a.m. to 5.15 p.m. by the first respondent, his election agent, polling agents, other agents, workers and campaigners with the consent and connivance of the first respondent. The averments in these paragraphs not only give the registration numbers of the vehicles in which the material was transported but also the names of the persons who actually distributed the said material amongst the voters of the constituency. The names of the persons who informed the appellant about the distribution of the printed material have also been indicated by the appellant in sufficient details. For instance, according to the averments made in paragraph 14 of the petition at booth no.120 of the constituency, the printed material referred to earlier was distributed to various houses by one Mr. Ealias son of Ouseph, Kunnathukudy House, Triikkaipatta, Meppady, Wynad District and by others named in the said paragraph. This distribution work was, according to the appellant, with the consent and connivance of respondent No.1. So also details of the printed material at other booths in the constituency and other members relating to the distribution of the said material have been set out in sufficient detail in paragraphs 15 to 23. The election petition specifically alleges that the printing, publication and distribution of the material by the first respondent, his election agent and other agents, workers and campaigners was with his consent and connivance which materially affected the result of the

election in so far as the same concerned the appellant and the returned candidate.

18. Apart from the publication of the notice titled ``Janasabdam" the election petition also refers to publication of an incorrect, baseless and false news item in 'Mathrubhumi Daily' dated 28th April, 2006 at the instance of the respondent by Shri M.P. Veerendrakumar, the father of the said respondent under the caption 'MLA cancels the consented works'. Paragraph 29 of the election petition specifically alleged that the said publication was at the instance of the first respondent in which it was falsely alleged that the appellant had cancelled the sanction granted for effecting improvements to four roads, under the Special Development Fund. The petition alleged that the four roads mentioned passed through more than 10 booths of the constituency of Kalpetta Legislative Constituency of which 14000 people of the constituency were regular beneficiaries/users. The appellant alleged that the publication of the baseless and false news item on the eve of the election scheduled to be held on 29th April, 2006 without affording an opportunity to explain the real facts to the public as well as to the affected voters was totally mala fide and was calculated to prejudicially affect his election prospects. Another publication made in Mathrubhumi Daily issue dated 29th April, 2006 under the caption 'Allegations by Priest against former Minister Ramachandran' were also, according to the appellant, false and made at the instance of the first respondent. In the said news item the appellant had been accused of demanding rupees one lakh from a UD Clerk in the Primary Health Centre also working as Priest of Moolamattom St. George Orthodox Church. The petition alleged that the allegation that the appellant had demanded bribe from the said person who was suspended from service by the Health Services Authorities upon inspection, was totally false, baseless and cooked up at the instance of the first respondent and published in the Mathrubhumi at his instance. The appellant alleged that the publication of such a damaging news item which was totally false, baseless and motivated on the eve of the election was intended to cause irreparable loss to the appellant by creating confusion and doubts about his character, personality and dignity in the minds of the

electorate city those belonging to Christian faith. The petition also refers to the publication of a photograph of Fr. George Vakkanampadam in the cassock to create emotional distress for the Christian electorate by giving an impression as though the appellant had not only illegally suspended but also demanded bribe from the said Mr. Vakkanampadam and delayed completion of the disciplinary proceedings against him. The appellant alleged that publication of the news item was mala fide and intended to prejudice his electoral prospects.

19. The election petition further alleged that another news item published in the 'Deshabhimani Daily dated 6th April, 2006 with the title 'What is happening at the Kalpetta is the people's trial against corruption - Sreyamskumar' in which the first respondent is alleged to have accused the appellant of indulging in corrupt practices throughout. The election petition alleged that the publication of the said news item was mala fide and with intention to cause prejudice and harassment to the petitioner and to secure undue advantage to the first respondent.

20. Apart from the publication mentioned above the appellant also accused the first respondent of making a false statement in a public speech delivered by him on 27th April, 2006 in which the first respondent delivered a talk at Kalpetta near the bus stand attended by 500 persons at 4.30 p.m. alleging that the Lok Ayukta had issued a direction to arrest and produce the appellant on 6th June, 2006 and his arrest was delayed due only to the ensuing election. The election petition also alleged that a similar talk was delivered by Mr. U.A. Khader, Councillor, Kalpetta Municipality, who was actively supporting the first respondent and by Shri V.P. Varkey son of Paily, Vattathody House, Vazhavatta P.O., Wynad who was functioning as the District President of Kisan Janata of Wynad for and on behalf of the first respondent, as duly authorized by the first respondent. The election petition also referred to a talk delivered by Shri K.K. Hamsa, who is the State General Secretary of Janata Dal (S) at Meppady town on 27th April, 2006 alleging that Lok Ayukta had issued an arrest warrant against the appellant. The persons who informed the appellant about the said talks allegedly containing accusations against the appellant

have also been set out in the election petition.

21. We do not consider it necessary to refer in further details to the specific averments made by the appellant in support of the charge that respondent No.1 had committed corrupt practices within the meaning of Section 123(4) of the Representation of People Act. All that we need to say is that the averments made in the election petition sufficiently disclose a cause of action. The averments set out the material facts & give sufficient particulars that would justify the grant of an opportunity to the appellant to prove his allegations. In as much as the High Court found otherwise, it in our opinion, committed a mistake. At any rate if there was any deficiency in the particulars required to be furnished in terms of Section 83(b) of the Act the High Court could and indeed ought to have directed the petitioner to disclose and provide the same with a view to preventing any miscarriage of justice on account of non-disclosure of the same. So long the material facts had been stated, which were stated in the present case, the absence of particulars, if any, could not justify dismissal of the petition by the High Court.

22. What is stated above is true even in regard to the averments made by the appellant in paragraphs 25 and 26 of the election petition wherein the appellant had accused the first respondent of committing a corrupt practice within the meaning of Section 123(5) of the Act. Section 123(5) makes hiring and securing of vehicles whether on payment or otherwise for the free conveyance of any elector to and from any polling station with the consent of a candidate or his election agent, a corrupt practice. Paragraph 25 and 26 of the election petition specifically allege that the first respondent, his election agent and other agents and workers had secured vehicles for transport of the voters to and fro polling stations contrary to Section 123(5) of the Act. The averments made in the said paragraphs not only give the registration numbers but also the names of the owners/drivers of the vehicles used for providing free transport of the voters of different booths indicated in the said paragraphs. The averments made in the paragraphs 25 and 26 of the election petition constitute a statement of material facts required

in terms of Section 83A of the Act. Although the particulars given in the said paragraphs, in our opinion, give rise to justify a trial yet if there were any deficiency in the disclosure of the particulars the High Court could direct the petitioner to furnish the said particulars. Dismissal of the petition on the ground that the averments did not constitute material facts and did not give rise to a complete cause of action was not a correct appreciation of the said averments.

23. The same is true even in regard to the averments made in paragraph 35 of the election petition in which the petitioner had alleged that the respondent No.1 had committed a corrupt practice within the meaning of Section 123(6) of the Act by incurring or authorizing expenditure in contravention of Section 77. In paragraph 35 of the election petition the appellant had clearly alleged that the first respondent had spent an amount of Rs.78 lakhs for his election as against the outer limit of Rs.10 lakhs stipulated under Section 77 of the Act read with Rule 90 of the Election Rules, 1961. The averments disclosed in sufficient details the basis on which the said allegation was made.

24. In the result, we allow this appeal, set aside the impugned order of the High Court and remand the matter back to the High Court for disposal of the election petition in accordance with the law keeping in view the observations made hereinabove. We make it clear that anything said by us in the foregoing paras of this judgment shall not be understood as expression of any final opinion on the merits of the case set up by the appellant or the defense set up by the respondent No.1. The observations made hereinabove are limited to the determination of the question whether the High Court was justified in dismissing the election petition at the threshold as it did. The parties are directed to appear before the High Court for further directions on 6th September, 2010. No costs.

.....J.
(D.K. JAIN)

.....J.
(T.S. THAKUR)

New Delhi
July 6, 2010