

HIGH COURT OF CHHATTISGARH, BILASPUR

(Single Bench: Hon'ble Shri Sunil Kumar Sinha, J)

Election Petition No. 09 of 2009

PETITIONER

Padam Nanda S/o Ganga, aged 45 years, permanent resident of village Polampalli, present residence : Salwa Judum Camp, Dornapal, Tahsil : Sukma, District Dantewada

Versus

RESPONDENTS

- 1 Lakhma Kawasi S/o Shri Hadma, aged about 45-50 years, resident of village: Nagaras, Post office Sona Kukanar, Tahsil: Sukma, South Bastar, District Dantewada (C.G.)
- 2 Rama Sodi S/o Kosa, aged 40 years, resident of village: Munga, Post office: Korra, Tahsil: Sukma, District: Dantewada
- 3 Kartam Hungaram S/o Madaram Kartami, aged 45 years, resident of village: Udlatarai, Post Office: Pakela, Tahsil Sukma, District Dantewada
- 4 The Election Commission of India, Nirwachan Sadan, New Delhi
- 5 The Election Commission of Chhattisgarh, Raipur

AND

Election Petition No. 03 of 2009

PETITIONER

Kichche Joga, son of Shri Hidma, aged about 38 years, residing in Salwa Judum Relief Camp, Dornapal, Tehsil Sukma, District

Dantewada (C.G.)

Versus

- RESPONDENTS**
- 1 Lakhma Kawasi S/o Shri Hadma, aged about 45-50 years, resident of village: Nagaras, Post office Sona Kukanar, Tahsil: Sukma, South Bastar, District Dantewada (C.G.)
 - 2 The Returning Officer, 90- Konta Legislative Assembly, Konta, District South Bastar, Dantewada (C.G.)

(Election Petitions under Sections 80, 80A and 81 of the Representation of People Act 1951)

Appearance:

Mr. B.P. Sharma, Mr. Sameer Urao and Mr Manish Thakur, Advocates for the Petitioners.

Mr. S.C. Verma, Advocate for Respondent No.1

JUDGMENT
(21.01.2014)

Sunil Kumar Sinha, J.

(1) These 2 Election Petitions challenge the election of first respondent from Constituency No. 90 i.e. Konta, in Assembly Elections 2008 on identical grounds, therefore, they are being disposed of by this common judgment.

The Facts:

(2) The first respondent and 3 other candidates contested Assembly Elections, 2008 of Chhattisgarh Legislative Assembly

from Constituency No.90 i.e. Konta Constituency. Polling took place on 14.11.2008 and the result was declared on 8.12.2008. The first respondent was elected by a margin of 192 votes. He was a candidate of Indian National Congress. The petitioner in Election Petition No. 03/2009 was an electorate and his name finds place in voter list of Konta Constituency, whereas, the petitioner in Election Petition No. 09/2009 was a candidate of Bhartiya Janta Party. He polled 21438 votes and the first respondent polled 21630 votes.

(3) The petitioners have taken the grounds that many voters of Constituency No.90, who were residing in Salwa Judum Camps, were deliberately not allowed by the State Authorities to cast their votes. Their Photo Identity Cards were deliberately not distributed by the State Authorities in connivance with respondent No.1. The nomination of respondent No.1 was improperly accepted as details of property of his family was not given and he had not furnished information regarding pendency of criminal cases. It was also alleged that irregularities were committed at the time of counting of votes of Polling Booth Nos. 50 & 56 and Government Machinery was used by respondent No.1, and the State Authorities had assisted him in winning the election. They also took the ground that correct expenditure incurred by respondent No.1 was not declared and it was over and above the limit fixed.

Election Petitions No. 09 of 2009 & 03 of 2009

(4) Respondent No.1 has filed his written statement(s) and denied the above allegations.

(5) Separate issues were framed in both the Election Petitions.

They are as under:-

Issue framed in Election Petition No. 03 of 2009:

1. Whether the petitioner and thousands of other persons (votes of Konta Constituency No. 90) residing in Salwa Judum Camps were deliberately not allowed by the State Authorities to cast their votes ? If Yes, its effect ?
2. Whether the nominations of respondent No.1 was improperly accepted ?
3. Whether the irregularities were committed at the time of counting of votes of Polling Booth No. 56 ? If Yes, its effect ?
4. Whether for furtherance of the prospects of election of respondent No.1, assistance of the Government Machinery was obtained making his election void ?
5. Whether the expenses incurred by the returned candidate is over and above the limit fixed ? If Yes, its effect ?
6. Reliefs & Costs ?

Issues framed in Election Petition No. 09/2009:

Election Petitions No. 09 of 2009 & 03 of 2009

1. Whether about 1500 votes of Konta Constituency No.90 residing in Salwa Judum Camps were deliberately not allowed by the State Authorities to cast their votes ? If Yes, its effect ?
2. Whether the Photo Identity Cards were deliberately not distributed by the State Authorities to about 2000 voters, in connivance with respondent No.1.
3. Whether irregularities were committed at the time of counting of votes of Polling Booth Nos. 50 & 56 ? If Yes, its effect ?
4. Whether for furtherance of the prospects of election of respondent No. 1, assistance of the Government Machinery was obtained making his election void ?
5. Whether the correct expenditure incurred by respondent No.1 was not declared ? If Yes, its effect ?
6. Reliefs & Costs ?

(6) Since the grounds taken in both the Election Petitions were almost identical, learned counsel for both the parties agreed to record consolidated evidence in both the Election Petitions, which was ordered by this Court on 06.02.2013.

(7) The petitioners' examined Sunil Kumar Kujur (PW-1), Omprakash Choudhary (PW-2), Kichche Joga (PW-3 - petitioner in E.P. No. 03 of 2009), Manoj Dev (PW-4), Padam Nanda (PW-5 - petitioner in E.P. No. 09 of 2009) and Rajat Kumar (PW-6).

(8) Respondent No.1 examined himself as DW-1 and he also examined Jagannath Sahu (DW-2), Manoj Chaurasiya (DW-3) & Rohit Pandey (DW-4) in support of his contention.

(9) We have heard counsel for the parties.

Discussion on the Issues relating to Corrupt Practices:

(10) Mr. B.P. Sharma, learned counsel appearing on behalf of the petitioners, first contended that the voters residing in Salwa Judum Camps were deliberately not allowed by the State Authorities to cast their votes. In fact, their photo identity cards were deliberately not distributed by the State Authorities, which act they did in connivance with respondent No.1. Issue No.1 in E.P. No. 03/2009 and issues Nos. 1 & 2 in E.P. No. 09/2009 have been framed in this regard. Many circulars in relation to distribution of photo identity cards have been brought on record which show that proper instructions were issued by the Election Commission to the concerned authorities for distribution of the voter identity cards and permitting the voters of Salwa Judum Camps to cast their votes on certain other identity proofs if the voter identity card was not available with them, but it does not come in the evidence that the voter identity cards were deliberately not distributed to the voters of

Salwa Judum Camps or if they were holding other proofs, even then they were not permitted to cast their votes. The evidence brought on record in this regard is vague and general.

(11) Kichche Joga (PW-3) has deposed in Para-3 of his evidence that he and his family member were not having voter identity cards, therefore, they could not cast their votes. They had gone to the Polling Booth along with *Rason* cards, but the officers present there did not allow them to cast their votes on the basis of their *Rason* cards. He added that about 5000 persons were not allowed to cast their votes in the above manner.

(12) Kichche Joga (PW-3) did not disclose the names of those voters who have not been allowed to cast their votes. Even he did not mention the name of any one of them. He also did not mention the particulars of the Polling Booths on which such incidents had taken place. Even he did not mention the names/designation or any other identification of the concerned authorities who did not permit the voters, who were holding *Rason* cards, to cast their votes. We further note that there were many Polling Booths. Thus Kichche Joga (PW-3) may not be having knowledge of all the Polling Booths and in absence of material particulars, it appears, that he has given number of such voters on imagination.

(13) That apart, the allegations are made that the voter identity cards were deliberately not distributed by the State Authorities and it was done in connivance with respondent No.1. We find that no material particulars have been brought on record in this regard. The names of the State Authorities have not been stated either in pleadings or in the evidence of petitioner's witnesses. Lakhma Kawasi (DW-1) has denied these allegations and has deposed in clear words that at that time there was BJP Government in the State and Dr. Raman Singh was the Chief Minister. Lakhma Kawasi (DW-1) was a candidate of Indian National Congress. He has stated that as per his knowledge, no irregularities were committed in his election.

(14) In Gajanan Krishnaji Bapat and another -Vs- Dattaji Raghobaji Meghe and others, AIR 1995 SC 2284, it was held that "In the case of an election petition, based on allegations of commission of corrupt practice, the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift. This proposition, however, does not mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the

petitioner and to particularly prove such facts which are within his special knowledge. Though, the nature of allegations in cases alleging corrupt practices are quasi-criminal and the burden is heavy on him who assails an election but unlike in a criminal trial, where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election petitioner leads cogent and reliable evidence to prove the charges leveled against the returned candidate as, only then, can it be said that the former has discharged his burden. The election petitioner has to establish the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action. ”

(15) In the instant case, though the allegations of corrupt practices have been made, but they have not been proved on the standard laid down for proving a fact in issue relating to corrupt practice. The pleadings in this regard are vague and material particulars are not there. The evidence is also vague and general. In such a situation these issues cannot be held as proved.

(16) Issue No. 4 in both the Election Petitions also relate to allegations of corrupt practice. Though a plea was taken that respondent No. 1 had taken assistance of the government machinery, but the election petitions are lacking in material particulars in this regard also. In Azhar Hussain -Vs- Rajiv Gandhi, 1986 (Supp) SCC 315, the allegations were relating to obtaining assistance from the person in service of the Government. In the said case averments made in the petition did not show who had obtained or procured assistance from the person in service of the State; how the assistance was procured; how it was said that it was with the consent of the returned candidate or his election agents. The Supreme Court held that the pleadings in this regard were vague. Unless the particulars with reference to Section 83 are there it can not be said that the petition disclosed a cause of action in regard to the corrupt practices with the assistance of the Government authorities. It was held that in absence of material facts and particulars, the Court could not have rendered a verdict in favour of the election petitioner, in case, the returned candidate had not appeared to oppose the election petition. The Supreme Court further held that no amount of evidence could cure the basic defect in the pleading and the pleadings as it stood must be construed as one disclosing no cause of action.

(17) In the instant case also, there is no material to show as to who had obtained or procured assistance from the person in service of the State; how the assistance was procured; how it was said that it was with the consent of respondent No.1 or his election agents. The pleadings in this regard are vague. We have already stated that there are no particulars with reference to Section 83. The petitioner in E.P. No. 09/2009 was a candidate of Bhartiya Janta Party (BJP) and respondent No.1 was a candidate of Indian National Congress. At the relevant time, there was BJP Government in the State. Thus unless there is sufficient material to show, ordinarily, it does not appear to be reasonable that the officers and authorities of the BJP Government would assist a candidate of Indian National Congress. Thus, the petitioners have utterly failed to prove these issues in their favour.

(18) Issue Nos. 5 in both the Election Petitions relate to non-disclosure of correct expenditure incurred by respondent No.1 and that the expenditure incurred were over and above the limit fixed.

(19) In E.P. No. 03/2009, it has been contended that Mr. Ajit Jogi had visited Sukma for propagating to elect respondent No.1 and in this regard a political rally was organized by respondent No.1 on

10.11.2008. A huge amount has incurred on it and respondent No.1 was asked to pay the expenditure for making helipad. The allegations are made that details of all these expenditure are not mentioned by respondent No.1. In E.P. No. 09/2009, the petitioner has pleaded that respondent No.1 has submitted false account of his expenditure because he had not added expenditure incurred upon visit of Mr. Rahul Gandhi, General Secretary of Indian National Congress, who visited Jagdalpur on 10.11.2008 for election campaign of respondent No.1. This had incurred an expenditure of Rs.50 lakhs which was liable to be included in the election expenditure of respondent No.1. It was thus pleaded that on the one hand correct expenditure incurred by respondent No.1 were not shown and on the other hand the expenditure incurred by him were more than limits fixed.

(20) Section 77 (3) of The Representation of People Act 1951 (the Act) mandates that the total of the expenditure in connection with the election shall not exceed the prescribed limit and therefore the provisions of S. 123 (6) of the Act are related only to S. 77 (3) of the Act. If a candidate incurs or authorizes expenditure in excess of the prescribed limits, he commits the corrupt practice under S. 123 (6) of the Act and his election is liable to be set aside and he also incurs the

disqualification of being debarred from contesting the next election. From a plain reading of Ss. 123 (6) and 77 including Explanation I to the S. 77 of the Act, it is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorized by the candidate or his election agent. An expenditure incurred by a third person, which is not authorized by the candidate or his election agent is not a corrupt practice (**Vide: *Gajanan Krishnaji Bapat supra***).

(21) In the instant case, respondent No.1, in Para-7 of his cross examination, has clearly deposed that he had not called Mr. Ajit Jogi for his election campaign. At one place his election meeting was going on. He had also gone to the meeting because he was called.

(22) Except the bald statements of petitioners (PW-3 & PW-5) in their Election Petitions, there is no other evidence to show that Mr. Ajit Jogi was called by helicopter by respondent No.1 for his election campaign. It was argued that a letter granting permission (Ex.-P/21) by Sub-Divisional Officer for landing of the helicopter of Mr. Ajit Jogi was issued on the name of respondent No.1, therefore, it should be held that respondent No.1 had called Mr. Ajit Jogi and the expenditure incurred for visit of Mr. Ajit Jogi should have been accounted in the election expenditure of respondent No.1. I have

gone through the letter (Ex.-P/21), it does not reveal from the said letter that either Mr. Ajit Jogi was called by respondent No.1 or he was authorized by him for canvassing in his election by holding the said meeting. There is no proof that the expenditure for landing of the helicopter of Mr. Ajit Jogi was incurred or authorized by respondent No.1 or his election agent. As held in *Gajanan Krishnaji Bapat* (supra) an expenditure incurred by third persons, who is not authorized by a candidate or his election agent is not a corrupt practice. That apart only bald statements of the petitioner(s) in this regard would not be sufficient in terms of Section 83 of the Act. The requirement is that the petitioner(s) must disclose the source of their information in the election petitions. The election petition(s) and the evidence of the petitioner(s) (PW-3 & PW-5) are lacking in these particulars and the evidence led in that behalf is insufficient and vague. Proof of corrupt practice has a serious consequence. Therefore, strict rule of pleading and proof is required and the standard of proof also is required like a criminal trial.

(23) About the visit of Mr. Rahul Gandhi, though a plea has been taken in Paras- 9.i to 9.v in E.P. No. 09/2009 filed by Padam Nanda (PW-5), but no iota of evidence has been led in this regard. There is absolutely no material to substantiate the said plea. Moreover, as contained in the said Election Petition (09/2009), Rahul Gandhi had

visited Jagdalpur which does not fall within the Konta Assembly Constituency. In light of the above discussion, the above issues, (Issue No. 5 in both the Election Petitions) are held as not proved.

Discussion on the other Issues:

(24) The tenure of the election under challenge has already been completed and fresh elections have taken place during the pendency of the election petitions, therefore, these issues now may not carry much importance.

(25) The petitioner in Election Petition No. 03/2009 has contended that the nomination of respondent No.1 was improperly accepted (Issue No. 2 in E.P. No. 03/2009). According to him, respondent No. 1 has suppressed the fact of pendency of a criminal case. He did not give details of the properties owned by his sons namely - Kawasi Harish and Kawasi Bonkeram. Respondent No.1 (DW-1) has deposed on oath, in Para-5, that no criminal case was pending against him at the time of submission of the nomination. He added that simply a F.I.R. was registered whose description was given by him. He admitted vide Para-6 that he has two sons namely- Kawasi Harish and Kawasi Bonkeram, but they were major and residing separately. He has no knowledge about the properties owned by them. The column of declaration would show that respondent No.1

has declared his own assets and the assets of his wife and had put cross marks in the columns of immovable properties of the dependents. Thus if landed properties were held by the above two sons of respondent No.1, in absence of proof that they were dependents or the properties were acquired by respondent No.1, it cannot be held on this ground that material facts were suppressed and the nomination paper of respondent No.1 was improperly accepted.

(26) It was also contended that irregularities were committed at the time of counting of votes and Polling Booth Nos. 50 & 56 (Issue No.3 in both the Election Petitions). It was contended in E.P. No. 03/2009 that in Polling Booth No. 56, there was discrepancy in documents of total votes cast in EVM and total votes shown to have been cast. In E.P. No. 09/2009 some more details have been given about Polling Booth No. 56 and there are also allegations in regard to Polling Booth No. 50. The petitioner(s) have not proved all these allegations by adducing proper and admissible evidence in this regard. Kichche Joga (PW-3 – petitioner in E.P. No.03/2009) has simply deposed in Para-12 of his affidavit filed under Order 18 Rule 4 C.P.C. that irregularities were committed in Polling Booth No.56. This is the only evidence led by him in this behalf. Padam Nanda (PW-5 – petitioner in E.P. No. 09/2009) has also deposed exactly in similar

fashion in Para-11 of his affidavit filed under Order 18 Rule 4 C.P.C. that irregularities were committed during the election in Polling Booth No. 56. The above paragraphs of their affidavits are exactly identical, which we quote:

“यह कि निर्वाचन के दौरान भी पुलिंग बुथ नं० 56 में अनुचित रूप से गणना इत्यादि की गई जिसके कारण जनता का सही प्रति निधित्व नहीं हुआ ।”

Except the above bald statements of the two election petitioners (PW-3 & PW-5), there is nothing on record to hold that irregularities were committed either at the time of polling or at the time of counting of votes of Polling Booth Nos. 50 & 56. Thus the above issues were also not proved.

Conclusion:

(27) For the foregoing reasons, I do not find any substance in the Election Petitions. The same are liable to be and are accordingly dismissed.

(28) No order(s) as to cost(s).

JUDGE

HEADLINE

1. Allegation of Corrupt Practices in the Election Petition – The standard of proof to be applied like a criminal case.
1. चुनाव याचिका में करप्ट प्रैक्टिस संबंधी आरोप – इन्हें प्रामाणित करने के लिए साक्ष्य का मानक दण्डिक प्रकरण के समान है ।

(B.O.)

(R.K. Vatti)
Private Secretary

Election Petitions No. 09 of 2009 & 03 of 2009

HIGH COURT OF
CHHATTISGARH,
BILASPUR

(Single Bench: Hon'ble Shri Sunil Kumar Sinha, J)

Election Petition No. 09 of 2009

Padam Nanda

Vs.

Lakhma Kawasi & Others
&
(Connected Election Petition No. 03 of 2009)

JUDGMENT

Post for Judgment : /01/2014

Judge
/01/2014