

I.A. 685/2016
BEFORE
HON'BLE MR. JUSTICE N. CHAUDHURY

JUDGEMENT & ORDER (ORAL)

This is an application under Order VI Rule 16 read with section 151 of the Code of Civil Procedure praying for striking out of pleadings in election petition No . 1/2015. The aforesaid election petition has been presented by an elector of Zhadima village in the district of Kohima challenging the election of the returned candidate who is the sole respondent on the ground of bribery. In paragraph 7 and 11 of the election petition two individual and distinct incidents have been mentioned by the election petitioner as grounds for setting aside the election of the returned candidate. The aforesaid two paragraphs relate to bribery. The whole election petition, therefore, is to be viewed from the stand point as to whether the paragraphs of the election petition are in conformity with such prayer made by the election petitioner and as to whether any unnecessary, frivolous and vexatious statements have been made which may amount to abuse of the process of the court.

2. The applicant herein being the returned candidate has agitated that the averments made by the election petitioner are full of unnecessary, scandalous and vexatious statements which only embarrass the trial and the public image of the returned candidate. The averments made in the election petition do not have any causal connection with the purpose sought to be achieved. Referring to paragraph 6 of the election petition, it is stated that the election petitioner has made bald and wild allegation against the whole State. Particularly, five lines of paragraph 6 have received strong criticism from the applicant herein to be scandalous, frivolous and vexatious statements. The said five lines of paragraph 6 are quoted below for ready reference:-

6. That the Petitioner states that Nagaland ranks one of the most corrupt States in India. Despite being one of the smallest states in India, election in Nagaland is the most expensive in India. Vote selling and buying with hard cash has become an established practice. Selling one's vote is no longer considered wrong.

3. Similarly, the applicant has challenged the averments made in paragraph 7 of the election petition wherein after having named only three persons, the election petitioner has proceeded to make allegation that the returned candidate wanted to influence all the 13 clans of Zhadima village for securing votes in his favour. Allegation was made that 5 representatives from each of the clan had attended the alleged meeting held on 09.10.2014 but thereafter details of the 5 persons have not been furnished. Although it is alleged that each of the voters had got Rs. 3,000/- but the total shown in that paragraph does not justify such allegations. According to the applicant, these statements only go to show that the statements are unnecessary, frivolous and vexatious without having any iota of truth in it. The applicant, therefore, prays that the paragraph 7 of the election petition is liable to be struck out under Order VI Rule 16 of the Code of Civil Procedure.

4. Coming to paragraph 8 of the election petition, it is the case of the applicant that there is an allegation about lodging of FIR with police, Chief Electoral Officer and also Chief Election Commissioner. According to the applicant, these allegations are devoid of any particulars.

5. Paragraph 9 of the election petition discloses that there was raid by Income Tax Department in the house of Peter Kuotsu in connection with the FIR lodged by the election petitioner and this was true to the knowledge of the election petitioner. According to the applicant, these statements have also no grain of truth in it and election petitioner is not supposed to have any personal knowledge in regard thereto. The statements are rather abuse of the process of the court to confuse the mind of the court.

6. Criticising the pleadings made in paragraph 10 of the election petition, the applicant states that the election petitioner herself claimed to have received

ved information from Diezelie Loucii for going outside the State of Nagaland for few days as it was not safe for her to stay in Kohima or in Dimapur. Under such circumstances, she fled. The applicant submits that these statements have got no causal connection with the election petition and even if such statements are correct this will neither support nor oppose the allegation of bribery made in the election petition. The statements are out and out unnecessary for the purpose of the election petition and so they are liable to be struck out under the provision of Order VI Rule 16 of the Code of Civil Procedure.

7. By filing an affidavit-in-opposition, the election petitioner has denied the allegations levelled and reiterated that the statements made in the aforesaid paragraphs of the election petition are very much essential to make out a case of background existing in the State of Nagaland because of which the incidents of have taken place. According to the election petitioner, none of the averments made in the election petition are unnecessary, frivolous or vexatious according to the election petitioner.

8. I have heard Mr. PK Khataniar, learned counsel for the petitioner and Mr. S Bharali, learned counsel for the opposite party. I have gone through the election petition and the application filed under Order VI Rule 16 of the Code of Civil Procedure along with the affidavit-in-opposition filed by the election petitioner.

9. The power conferred under Order VI Rule 16 of the Code of Civil Procedure is clear. In case a pleading is vitiated by unnecessary, frivolous or vexatious statements, court is given the power and jurisdiction to strike out such pleadings so that the proceedings of the court are not unnecessarily encumbered and trial is not embarrassed or delayed. Order VI Rule 16 provides that the court may at any stage of the proceedings order to strike out or amend any matter in any pleading which may be unnecessary, scandalous, frivolous, vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the suit, or which is otherwise an abuse of the process of the Court. The provisions made in clause (a), (b) and (c) of Order VI Rule 16 are so specific that there is hardly any doubt as to when can such a power and jurisdiction can be exercised. Be that as it may, the scope and ambit of these clauses have been clarified by the Hon'ble Supreme Court on a number of judgments. In the case of Sathi Vijay Kumar v. Tota Singh and others reported in (2006) 13 SCC 353, the Hon'ble Supreme Court has laid down the guidelines as to when and how power under Order VI Rule 16 is to be exercised. Paragraphs 27, 28, 29 and 33 of the aforesaid judgment are relevant for the purpose and the same are quoted below:-

27. The above provision empowers a Court to strike out any pleading if it is unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay fair trial of the suit or is otherwise an abuse of the process of the Court. The underlying object of the rule is to ensure that every party to a suit should present his pleading in an intelligible form without causing embarrassment to his adversary [vide Davy v. Garrett (1878) 7 CD 473 : 47 LJ Ch 218.

28. Bare reading of Rule 16 of Order VI makes it clear that the Court may order striking off pleadings in the following circumstances;

- (a) Where such pleading is unnecessary, scandalous, frivolous or vexatious; or
- (b) Where such pleading tends to prejudice, embarrass or delay fair trial of the suit; or
- (c) Where such pleading is otherwise an abuse of the process of the Court.

29. In Halsbury's Laws of England, (4th Edn.; Vol. 9; para 38), it has been stated:

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as an abuse of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, ext

ending its influence beyond the parties to the action, it may be punished as a contempt.

33. At the same time, however, it cannot be overlooked that normally a Court can not direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the Court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection [vide *Roop Lal v. Nachhtar Singh* (1982) 3 SCC 487; *K.K. Modi v. K.N. Modi* [1998] 1 SCR 601; *United Bank of India v. Naresh Kumar* (1996) 6 SCC 660].

10. Similarly, in the case of *K.K. Modi v. K.N. Modi* and others reported in (1998) 3 SCC 573, it has been cautioned that such exercise of power should be sparingly done with circumspection. Paragraph 44 of the aforesaid judgment is quoted below for ready reference:-

44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

11. In the case of *Manohar Joshi v. Nitin Bhaurao Patil* and another reported in (1996) 1 SCC 169, the Hon'ble Supreme Court, on the other hand, stressed need for exercise of power under Order VI Rule 16 in appropriate cases. In paragraph 29 of the aforesaid judgment, the Hon'ble Supreme Court observed that if at appropriate time power under Order VI Rule 16 of the Code of Civil Procedure would have been exercised by the High Court, in that event, irrelevant, inadmissible and unnecessary evidence could have been avoided. Such concern of the Hon'ble Supreme Court has been expressed in paragraph 29, 43, 46 and 47 which are quoted below for ready reference:-

29. Some other questions arising out of the remaining arguments of Shri Jethmalani and reply of Shri Ashok Desai which are referred later, have to be considered with reference to the pleadings of the parties, it is, therefore, appropriate at this stage to quote the relevant pleadings in the election petition and the written statement of the returned candidate.

43. Reliance in the election petition on the allegations of corrupt practices was for the ground under Section 100(1)(b) and not Section 100(1)(d)(ii); and it is under Section 100(1)(b) that the election has been declared to be void by the High Court. There was no attempt to plead and prove that the result of the election of the appellant was materially affected for these reasons to make out a ground under Section 100(1)(d)(ii) for declaring the election of the returned candidate to be void. It is in this manner the present case has to be viewed.

46. We have no doubt that the requisite consent of the returned candidate or his election agent which is a constituent part of the corrupt practices under Sub-sections (3) and (3A) of Section 123, and an ingredient of the ground under Section 100(1)(b) has nowhere been pleaded in the election petition either in connection with the allegations based on the speeches by Bal Thackeray, Pramod Mahajan and any other leader or the display of video and audio cassettes in the constituency, when this is an essential requirement for raising a triable issue of corrupt practice to bind the appellant with the consequences of such a corrupt practice and to invalidate his election. In our opinion, this alone is sufficient to i

ignore the entire pleading in the election petition relating to speeches by Bal Thackeray, Pramod Mahajan and any other leader as well as the display of video and audio cassettes since none of those acts is attributed to the appellant or his election agent. For this reason, it is also not necessary to consider the specific portions alleged to form parts of speeches of Bal Thackeray and Pramod Mahajan. Petitioner pleaded in paras 16 and 17 of the election petition. Same is the result of pleadings in paras 32 and 33 relating to the video and audio cassettes. In para 31 there is a general averment that the speakers went on to say that on the respondent (appellant in this appeal) being elected and the said alliance establishing a Hindu Government jobs would be given to all Hindus. No speaker is specifically named and what is alleged to have been said by the appellant in his speech in the meeting held on 24.2.1990 is contained only in para 30 of the election petition. Since the contents of para 31 cannot be related to the speech alleged to have been made by the appellant in that meeting, that too must be left out of consideration.

47. The only surviving allegation requiring consideration is in para 30 relating to the allegation made with reference to the speech made by the appellant himself. The portion in para 30 relating to the appellant (respondent in the election petition) which has to be considered is as under:-

The petitioner states that the respondent himself in his capacity as a candidate from the said constituency as well as a leader of the said alliance made appeals which offends the provisions of the said Act, For e.g. in the meeting held on 24.2.1990 at Shivaji Park, the respondent stated the first Hindu State will be established in Maharashtra. Similarly in various other public meetings, the respondent herein made objectionable appeals. Some of the meetings were reported in newspapers. The petitioner states that such meetings were held at Khaddke Building, Dadar on 21.2.1990, Prabhadevi on 16.2.1990, at Kumbharwada on 18.2.1990, and Khed Galli on 19.2.1990....

12. The aforesaid judgments, extracts whereof are quoted above would go to show that the court in one hand must be circumspect and cautious in exercising the power and at the same time should also be vigilant that no unnecessary, frivolous and vexatious statements are to be allowed to remain in the pleading so that a proceeding does not amount to abuse of the process of the Court or does not embarrass fair trial. Keeping in view the aforesaid law laid down by the Hon'ble Supreme Court and the provision of the Order VI Rule 16 of the Code of Civil Procedure, let us proceed to see as to whether the averments made in the present application under Order VI Rule 16 of the Code of Civil Procedure warrant exercise of such power.

13. In paragraph 6 of the election petition, a part of which has been quoted in the preceding paragraph, would go to show that the election petitioner has made omnibus allegation against the whole State of Nagaland describing the same to be one of the most corrupt States. It has been alleged in the election petition that the State of Nagaland is most expensive in India but neither any statistics has been furnished to justify the same nor does it have any relevance for the purpose of proving bribery in the present case. Making allegation in such omnibus way is scandalous against the people and the State of Nagaland which does not appear to be proper or correct and consequently unnecessary for the purpose of the present election petition. The aforesaid quoted five lines of paragraph 6, therefore, come within the scope of Order VI Rule 16 (a) of the Code of Civil Procedure and accordingly, this court feels that the first five lines of paragraph 6 which have been quoted above are not only unnecessary but also vexatious and accordingly they are liable to be struck out. These five lines are struck out from paragraph 6 of the election petition.

14. The applicant submits that the averments made in paragraph 7 and 8 of the election petition do not contain sufficient material particulars and that the statements are not duly supported by appropriate verification. Statements have been that money was distributed among some persons in Zhadima village and in next paragraph, the election petitioner claimed that she brought it to the notice of the appropriate authority immediately for taking appropriate action. The averments made in paragraph 7 and 8 may be correct or may not be correct but the same

cannot be said to be unnecessary, vexatious or frivolous. An election petition has been filed by an elector of the constituency challenging the election of the returned candidate on the ground of bribery and the averments made in paragraph 7 and 8 of the election petition provide those material facts which if substantiated in course of trial may ultimately result in affecting the election result. These statements cannot be said to be scandalous or vexatious as they relate to specific incidents irrespective of whether they are correct or incorrect. This being the position, paragraph 7 and 8 of the election petition cannot be struck out as claimed by the applicant herein.

15. Paragraph 9 of the election petition contains averments about complaint filed by the election petitioner and the outcome of such complaint. If an allegation has been levelled by the election petitioner before the appropriate authority in that event, subsequent action taken by the authority only goes to show that such complaint was made. The complainant, therefore, is required to prove the averments made in paragraph 9 of the election petition to justify filing of the election petition. The averments made in paragraph 9 of the election petition also refer to specific incidents correctness or otherwise of which will be decided in course of trial. These statements being matters of fact are entitled to be given a scope for being established and so they cannot be struck out in exercise of power under Order VI Rule 16 of the Code of Civil Procedure. The prayer made by the applicant for striking out this paragraph, therefore, is not acceptable.

16. Paragraph 10 of the election petition describes that the election petitioner received an information on 14.10.2014 that she should leave the State for the time being as the supporters of the returned candidate were looking for her. She accordingly escaped from the State and went to Guwahati for which she could not cast her vote. These averments made in paragraph 10 of the election petition would have been justifiable if the allegation was levelled that the election of the returned candidate is vitiated for giving threat to the voters. A perusal of paragraph 10 of the election petition does not show that any threat was given to the election petitioner either by the returned candidate or by his election agents or by anybody with the knowledge and consent of the returned candidate and so averments made in this paragraph cannot make out a cause of action for intimidating or threatening an elector. On a pointed question posed to the learned counsel for the election petitioner, the learned counsel fairly admitted that averments made in paragraph 10 have no direct connection whatsoever with the allegation of bribery made and since the election petition is based on the allegation of bribery, averments made in paragraph 10 are neither necessary nor relevant for the purpose of the present election petition. Accordingly, averments made in the paragraph 10 of the election petition are hereby struck out. The remaining paragraphs of the election petition do not make out any cause for exercising power under Order VI Rule 16 of the Code of Civil Procedure and as such they are not interfered with. The application filed under Order VI Rule 16 of the Code of Civil Procedure stands disposed of.

17. No order as to costs.

18. Registry shall strike out the aforesaid paragraphs of the election petition in red ink by keeping them in closed figure and by writing the words 'struck off under Order VI Rule 16 of the Code of Civil Procedure'.