

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

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**SB:- Hon'ble Shri Justice G. S. Ahluwalia**

**EP 35 of 2019**

Vishnu Kant Sharma

Vs.

Chief Election Commissioner & Ors.

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Shri Vishnu Kant Sharma, petitioner is present in person.  
Shri D. K. Katare, learned Counsel for the respondents No. 1 to 3.  
Shri K. N. Gupta, Senior Counsel with Shri Sameer Kumar Shrivastava,  
counsel for the respondent No.4.

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**Order**

**(Passed on 13/12/2019)**

This Election Petition has been filed under Section 81 of Representation of the People Act, 1951, seeking the following relief :

- a. Issue writ order or direction in nature of mandamus commanding the opposite party no.1 to cancel the election which was held on 12-5-2019 in the Lok Sabha Seats no. 03 of Gwalior due to not followed the law laid down in Section 126 of The Representation of People Act, 1951.
- b. Issue writ order or direction in the nature of mandamus commanding to the opposite party no.1 to conduct a fresh by-election on the expenses of responsible political party/parties/candidate/candidates for the sake of democratic set up as well as public fund.
- c. That this Hon'ble Court may kindly impose punishment as per Section 126(2) of The Representation of People Act, 1951, who found guilty for same.
- d. Kindly issue any other writ order or direction which this Hon'ble Court may be deemed just and proper in eye of justice.

The necessary facts for the disposal of the present election petition in short are that on 12-5-2019, elections were held for the Indian Parliament and the respondent no. 4 was one of the candidates from Gwalior, whereas the election petitioner has also claimed that he too had contested the election. It is the case of the election petitioner that Section 126 of Representation of the People Act, 1951 (in short Act, 1951) prohibits public meetings during period of forty eight hours ending with hour fixed for conclusion of poll and accordingly, during the period of forty eight hours, there shall be no public meetings and election campaigns, which will include any kind of advertisement or election campaign on TV, Cable TV, Electronic or any Election Matter. However, on 12-5-2019, various political parties put their advertisement in various leading news papers in which they had made appeals in favor of the party as well as the candidates, whereas the same was prohibited after 6 P.M. of 10-5-2019. Accordingly, the election petitioner wrote to the Election Commission repeatedly pointing out the open violation of Section 126 of The Representation of People Act, 1951 and a request was made to take strict action against everyone who had deliberately violated the Act, 1951. It was also pleaded that although, the Election Commission of India is vested with the power of Superintendence, Direction and Control over the entire election process but no action was taken and since, the provisions of Section 126 of the Act, 1951 were violated by various political parties, therefore, the present election petition has been filed seeking the above mentioned relief(s).

I.A. No. 4818/2019 has been filed by respondent no. 4 under Order 7 Rule 11 C.P.C for dismissal of the election petition as barred by law.

I.A. No.4716/2019 has been filed by respondent no. 4 under Section 81 read with Section 86(1) of Act, 1951 for dismissal of Election Petition.

I.A. No. 43331/2019 has been filed by Election Commission of India for releasing the Electronic Voting Machines and VVPATs involved in the Election.

Another I.A. No. 4717/2019 has been filed by respondent no. 4 under Order 7 Rule 11 C.P.C. For dismissal of the Election Petition.

During the Course of arguments, this Court found that the Election Petitioner has neither filed the copy of the Election Result, nor has prayed for setting aside the election of the returned candidate/respondent no.4. On the contrary, the relief(s) have been sought seeking issuance of mandamus to the Election Commission of India.

Accordingly, the Election Petitioner was also heard on the question that whether the present Election Petition is maintainable in absence of relief for declaration of the election of respondent no.4 as void and whether the Election Petition is maintainable in the light of the provisions of Order 7 Rule 11 CPC or not?

It is submitted by the Election Petitioner, that he has no legal knowledge, therefore, defect(s) if any, may be ignored and the Election

Petition may be decided on merits.

Heard the Election Petitioner.

Order 7 Rule 11 C.P.C. reads as under :

**11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Section 81 of Act, 1951 reads as under :

**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.

(2) [*Omitted*]

(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.

Section 100 of Act, 1951 reads as under :

**100. Grounds for declaring election to be void.—**

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) [*Omitted*];

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

Section 101 of Act, 1951 reads as under :

**101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.**—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

The case of the Election petitioner is that all the political parties had violated the provisions of Section 126 of Act, 1951. Therefore, it is the case of the petitioner that in the light of the provisions of Section 100 (1)(iv) of Act, 1951, the violation of Section 126 of Act, 1951 would be a ground to challenge the election. Whereas in I.A. No. 4717 of 2019, it has been pleaded by the respondent no. 4, that the non-

compliance of Section 126 of Act, 1951 would not provide any ground to declare the election as void but as per the provisions of Section 126(2) of Act, 1951, the violation would be punishable.

In this petition, the Election Petitioner has not prayed for declaration of the election of the respondent no.4 as void. Even the copy of the Election Result has not been annexed with the Election Petition. Thus, this Court is of the considered opinion, that in absence of challenge to the election of the respondent no.4, this Court cannot declare his election as Member of Parliament from Gwalior, as void. Therefore, the question that whether the violation of provisions of Section 126 of Act, 1951 would amount to non-compliance of provision of this Act as provided under Section 100(1)(iv) of Act, 1951 or not, has become an academic issue in this petition.

Therefore, the moot question for consideration is that in absence of consequential relief of declaration of election of respondent no.4 as void, whether this Election Petition is barred under Section 34 of Specific Relief Act or not?

Section 34 of Specific Relief Act, 1963 reads as under :

**34. Discretion of court as to declaration of status or right.**—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits

to do so.

*Explanation.*—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

The Supreme Court in the case of **Arulmigu Chokkanatha**

**Swamy Koil Trust v. Chandran**, reported in **(2017) 3 SCC 702** has

held as under :

**35.** The plaintiff, who was not in possession, had in the suit claimed only declaratory relief along with mandatory injunction. The plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere declaration without relief of recovery of possession was clearly not maintainable and the trial court has rightly dismissed the suit.....

The Supreme Court in the case of **Venkataraju Vs. Vidyane**

**Donreradjapermal** reported in **(2014) 14 SCC 502** has held as under :

**23.** The very purpose of the proviso to Section 34 of the 1963 Act, is to avoid the multiplicity of the proceedings, and also the loss of revenue of court fees. When the Specific Relief Act, 1877 was in force, the 9th Report of the Law Commission of India, 1958, had suggested certain amendments in the proviso, according to which the plaintiff could seek declaratory relief without seeking any consequential relief, if he sought permission of the court to make his subsequent claim in another suit/proceedings. However, such an amendment was not accepted. There is no provision analogous to such suggestion in the 1963 Act.

**24.** A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earliest. (Vide



*Parkash Chand Khurana v. Harnam Singh and State of M.P. v. Mangilal Sharma.*)

**25.** In *Muni Lal v. Oriental Fire & General Insurance Co. Ltd.* this Court dealt with declaratory decree, and observed that:

“4. ... mere declaration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the court to refuse the grant of declaratory relief.”

**26.** In *Shakuntla Devi v. Kamla*, this Court while dealing with the issue held:

“21. ... a declaratory decree simpliciter does not attain finality if it has to be used for obtaining any future decree like possession. In such cases, if suit for possession based on an earlier declaratory decree is filed, it is open to the defendant to establish that the declaratory decree on which the suit is based is not a lawful decree.”

**27.** In view of the above, it is evident that the suit filed by the appellant-plaintiffs was not maintainable, as they did not claim consequential relief.....

Thus, it is held that in absence of consequential relief of declaration of election of respondent no.4 as void, this Court is of the view that the Election Petition filed by the petitioner is hit by the provisions of Section 34 of Specific Relief Act.

Further, under Section 81 of Act, 1951, an Election Petition can be filed calling in question, the election of a candidate on any ground as mentioned in Sections 100 and 101 of Act, 1951. In the present case, the election petitioner has not challenged the election of the respondent no.4, but has merely prayed for a direction to the Election Commissioner of India, for the quashment of the entire election process. This Court, while entertaining the election petition under Section 81 of Act, 1951, cannot exercise its powers under Article 226 of the

Constitution of India, but has to merely consider the fact that whether the election of the candidate is void due to non-compliance of any provision of the Act or not?

Since, the petitioner has not questioned the election of the respondent no.4 and has not filed the election result also, therefore, this Court is of the considered opinion, that not only this petition is barred under Section 34 of Specific Relief Act, but is also not maintainable under Section 81 of Act, 1951 as no relief has been claimed for declaration of the result of respondent no. 4 as void.

Accordingly, this Election Petition is **rejected/dismissed** under Order 7 Rule 11 C.P.C.

All other pending I.A.s are also disposed of accordingly.

No order as to costs.

**(G.S.Ahluwalia)**  
**Judge**

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