BASHIR MUSA PATEL

v.

SATYAWAN GANPAT JAWKAR AND ORS.

DECEMBER 2, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Representation of Peoples Act, 1951 : Section 86(5).

Election Petition—Allegation of corrupt practices—Requirement to give required particulars—Power of Court to give directions—Election petition filed by respondents—Allegation of corrupt practices against appellant—Appellant's contention that required particulars of corrupt practices were lacking—Single Judge of the High Court held that particulars were lacking but directed the party to furnish the particulars—Challenge to direction issued by High Court—Held, having found that particulars were missing, the learned Judge had committed an obvious error in giving the direction to furnish those particulars; in other words, provided an opportunity to the respondents to fill in the gap which would gravely prejudice the appellant at the trial—The impugned direction stands set aside.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15705 of 1996.

From the Judgment and Order dated 11/12.2.91 of the Bombay High Court in E.P. No. 13 of 1990.

Jatin Jhaveri and H.J. Jhaveri for the Appellant.

A.M. Khanwilkar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the learned single Judge of the Bombay High Court, made on 11/12-2-1991 in Election Petition No. 13/90. It is not necessary to adumberate all the corrupt practices alleged to have been committed by the appellant mentioned in the election petition filed by the respondents. It would appear that the

A appellant had filed an application to dismiss the election petition on a preliminary ground that the required particulars of corrupt practices are lacking in the election petition and, therefore, no cause of action has been furnished to proceed further in the election petition. That objection was over-ruled. Subsequently, a petition has been filed to dismiss the election petition itself. In the impugned order, the learned Judge while holding that B "the particulars are lacking" has held that what is missing from the petition are "merely particulars" and held that under Section 86(5) of the Representation of People's Act, the Court has discretion to direct the party to furnish the particulars. Accordingly, he directed to furnish the particulars as mentioned in the operative part of the order which reads thus :

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"(1). In para 5 of the Petition in respect of each instance set out under sub-para (a) to (e) the petitioner shall state whether the instances set out therein have been managed by Respondent No. 1, or his Election Agent or by supporters of Respondent No. 1 with the consent of Respondent No. 1. If it is alleged that it is done D by supporters, Petitioner to state the names of the supporters and if the names are not available to state that the names are not available.

(2) In para 6(a) of the Petition, the names of the three persons E who had come to cast bogus votes to be supplied. If such names are not available, Petitioner to state that the names are not available.

(3) In para 6(b) of the Petition, Mr. Chinoy had, during the course F of his argument, clarified that it was not the case of the Petitioner that delible ink for marking fingers was used because it was so managed by Respondent No. 1 or his Election Agent or any of his supporters with the consent of the Petitioner or Respondent No. 1. The Petitioner to so state in the Schedule now to be given, Further the Petitioner must give the names of hirelings and goon- G das of Respondent No. 1, if available. if not available to so state. The Petitioner to also give the names of the Presiding and Polling Officers at the various Booths mentioned therein and who according to the Petitioner, have been favouring and/or openly supporting Respondent No. 1. The Petitioner also to state whether the acts H of booth capturing was managed by Respondent No. 1 and/or/ his

Election Agent and/or supporters (whose names must be supplied if available) with the consent of Respondent No. 1 or his Election Agent;

(4) In para 6(c) of the Petition in respect of each instances set out in sub-paras (i) to (v) the Petitioner to give the same particulars as those set out hereinabove in respect of para 6(b) viz. whether it is managed by Respondent No. 1 and/or his Election Agent and/or supporters of Respondent No. 1 with the consent of the Respondent No. 1 or his Election Agents, the names of the parties (if available), including the name of the persons (a) who have cast bogus votes, (b) who prevented the Petitioner's Chief Election Agent at the point of revolver, (c) who removed Book No. 17 (d) who threatened the Petitioner's Polling Agent with murder.

It being clarified that the Petitioner need not for the present give the names of marathi speaking persons who were not permitted to go to the Polling Stations. This as a possibility exists of these witnesses being approached.

(5) In respect of para 7 of the Petition, Mr. Chinoy has clarified that the Petitioner does not have and will not lead any positive evidence to show that the instances set out in this para have been managed or committed by Respondent No. 1 or his Election Agent and/or any supporters of Respondent No. 1 with the consent of the Respondent No. 1 or his Election Agent. Mr. Chinoy however clarifies that one of the arguments of the Petitioner will be that these have materially affected the result of Election of Respondent No. 1 and that the natural and only inference would be that they were managed by Respondent No. 1 or his Election Agent or by his supporters with the consent of Respondent or his Election Agent.

(6) As regards para 9 of the Petition, apart from the two Registration Numbers of the Vehicles mentioned in this paragraph and two further Registration Numbers of Vehicles mentioned in Exhibit 'J-I; to the Petition, if the petitioner is relying upon or has any other Registration Numbers of these vehicles also. The petitioner must also state, if available, the Booth numbers to which the voters were carried by to and by which vehicle. If available, the Petitioner

must give the names of the voters whom accordingly to the Petitioner, have been carried to the Polling Booths in those vehicles. The petitioner to also state whether the hirelings and/or grounds, and/or his Election Agent and/or supporters of Respondent No. 1 with the consent of Respondent No. 1 and/or with the consent of his Election Agent. If it is alleged that it is by supporters, the Petitioner must give names of the supporters, if available. If not to so state.

(7) Mr. Chinoy has clarified that even though there is reference to pamphlets and wall posters in para 10A of the Petition for the case made out in this para the Petitioner is only relying upon the pamphlets Exhibit 'X' to the Petition.

(8) In respect of para 10B, the Petitioner to state whether the Issue and circulation of pamphlets (Exhibit 'Y') was by Respondent No. 1 and/or by his Election Agent and/or supporters (with names, if available) with the consent of Respondent No. 1 and/or his Election Agent. The Petitioner to state when and where the pamphlets mentioned in sub-paras (a) and (b) were circulated. The Petitioner also to underline portions of Exhibits 'X' and 'Y' which according to him amounts, to campaigning on ground of religion and/or creation and/or promotion of enmity and hatred between two classes of citizen. If it is the case of the Petitioner that the entire documents does so, then the Petitioner to so state.

(9) In sub-paras (c) and (e) the Petitioner to give details like time and place where the speeches were made and the names of speakers. The Petitioner also to give the names and dates of the newspaper relied upon by them. The Petitioner to give similar details in respect of Press Conference and the campaigns mentioned in sub-para (e). The petitioner also to give in respect of each speech the gist of the speech which according to the Petitioner amounts to campaigning in the name of religion and/or creating or promoting feelings of enmity and/or hatred. In case, a speech or Press Conference or a campaign is by a Person other than Respondent No. 1 the Petitioner to state whether the same is with the consent of Respondent No. 1 and/or his Election Agent.

(10) The same particulars as set out hereinabove in respect of

pamphlets and the speeches also to be supplied in respect of Advertisement, paintings, posters, banners, referred to in para 10A of the Petition." A

This direction is now the subject matter of this appeal. Shri Khanwilkar, learned counsel for the respondent, in fairness, has stated that the Court cannot give a new cause of action by directing to furnish the particulars which are not already part of the election petition but he sought to sustain the order stating that these are only amplifications of the material allegations made of the corrupt practices in the election petition. Therefore, they are no new facts or constitute no new cause of action. We do not agree with the learned counsel. These facts do furnish the further particulars filling up the gaps which are found in the election petition. Having found that these particulars are missing, the learned Judge has committed an obvious error in giving the direction to furnish those particulars; in other words, providing an opportunity to the respondents to fill in the gap which would gravely prejudice the appellant at the trial. Under this situation, the impugned direction stands set aside and it would be open to the learned Judge to proceed with the trial of the matter in accordance with law. B C D

The appeal is accordingly allowed. No costs.

T.N.A. Appeal allowed. E