

Amin Lal

Vs

Hunna Mal.

Civil Appeal No. 670 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, Raghubar Dayal, R. S. Bachawat, J. R. Mudholkar JJ)

29.09.1964

JUDGMENT

MUDHOLKAR J.

The short point for consideration in this appeal from the judgment of the Punjab High Court is whether the Election Tribunal, Rohtak, was justified in dismissing the election petition under sub-s. (3) of s. 90 of the Representation of the People Act, 1951 (hereafter referred to as the Act) preferred by the appellant on the ground that it did not comply with the provisions of s. 82 of the Act.

The appellant is a voter in 64-Hissar city constituency of the Punjab Legislative Assembly and the respondent was a candidate for election to the Assembly from that constituency, the polling in which took place on February 24, 1962. Eleven persons had been nominated for election from that constituency, one of whom was Suraj Bhan, brother of the respondent. Five candidates, including Suraj Bhan, withdrew their candidature within the time prescribed for the purpose with the result that names of only six candidates were published under s. 38 of the Act. Several grounds were set out by the appellant in his election petition for setting aside the election. One of those grounds was that the respondent, his agents and other persons acting with the consent of the respondents were guilty of committing corrupt practices. In paragraph 9(c)(i) of the petition as presented to the Election Commission on April 8, 1962 the appellant had alleged as follows :

"That the respondent by himself and through his agents with his consent has been guilty of the corrupt practice of promoting or attempting to promote feelings of enmity and hatred between different classes of the citizens of India on grounds of religion, community and language. The respondent was in fact a candidate sponsored by Shri Devi Lal of Chautala a rebel Punjab Congress leader who had left the Congress fold and joined hand with Professor Sher Singh, Leader of the Haryana Lok Samiti. The very creed of this Samiti was the promotion of or attempt to promote feeling of enmity and hatred between the residents of Punjab region and residents of Hindi region. This Samiti has in way divided the Punjab State into two communities Punjabis and non-Punjabis. The chief target of the leaders, workers, candidates sponsored by the Samiti and their agents and workers were the Congress candidates, who were pitched against them in every constituency of the Hindi region whom they described as being the henchmen of Shri Partap Singh Kairon, the Chief Minister of the Punjab, who, according to respondent and his agents was a staunch Sikh and chief supporter of the cause of the residents of Punjabi region at cost of the residents of the Hindi region and specially the non-Sikhs among them. They described the

Congress candidates Shri Balwant Rai in this constituency as being an enemy of the residents of Hindi region specially and non-Sikh residents of the Hindi region and preached that if elected he would be a great obstacle in the way of the non-Sikh residents of the Hindi region and would be a cause of the death knell of Hindi language as well. This poisonous propaganda on the basis of two communities Punjabis and non-Punjabis and also on the basis of two religions Sikhs and non-Sikhs and on the basis of two languages Hindi and Punjabi was resorted to by the respondent, his chief agent Shri Devi Lal with his consent throughout the constituency right from the date of the filing of the nomination paper by the respondent up to the date of poll through the various pamphlets, posters and the writings in the paper titled as 'Haryana Kesri' a mouth-piece of the ideology of Shri Devi Lal rebel congress leader. These pamphlets, posters and newspapers containing the poisonous propaganda were got published by the respondent or by the office of the group headed by Ch. Devi Lal from the office of the 'Haryana Kesri' controlled by Shri Devi Lal with the consent of the respondent and got distributed by the respondent through his workers and agents throughout the constituency at a large scale. These writings will be got produced later on when available."

In the written statement filed by the respondent on July 11, 1962 he raised certain preliminary objections, one of which was to the effect that the petition failed to comply with the requirements of the provisions of s. 83(1) of the Act as it did not contain a concise statement of material facts and as it did not set out full particulars of the alleged corrupt practices. According to him, the allegations were false and that the vagueness consisted in failing to give the names of the agent or other persons who were alleged to have committed corrupt practices. The appellant in his reply asserted that all the known particulars so far as possible in respect of the various allegations of corrupt practices had been given in detail. Thereupon the Tribunal framed the following preliminary issue :

"Whether any of the allegations of alleged corrupt practices as detailed in paragraph 9 of the petition, are vague, indefinite and devoid of particulars as required by law and if so, to what effect ?"

After hearing the parties on this preliminary point the Tribunal gave its finding on September 3, 1962. According to the Tribunal the petition suffered from the defects pointed out by the respondent. It, therefore, gave an option to the appellant either to apply for leave to amend the petition or to amplify the particulars of corrupt practices in the light of the observations made by it in its order and directed that if the appellant did not choose to do either of these things the charges which were vague would be struck off. In pursuance of this order the appellant made an application for amendment of the petition and filed along with it an amended petition. This was done on September 6, 1962. One of the portions of the petition which was amended was the latter part of para 9(c)(i) and as amended it reads thus :

"This poisonous propaganda on the basis of two communities Punjabis and non-Punjabis and also on the basis of two religions Sikhs and non-Sikhs and on the basis of two languages Hindi and Punjabi was resorted to by the respondent, his chief agent Shri Devi Lal with his consent throughout the constituency through the various pamphlets. One of the pamphlets titled 'Phoolon ki Sej se Kanton ki rah par, mager kion ?' containing the speech of Shri Devi Lal dated 5-2-1962 of the type the one of which is attached this amended petition, the title page of which purports to have been printed from the Half-Tone Art Press, Delhi by one Dr. Ganpati Singh Verma, 3,

Darya Ganj, Delhi, as its publisher and the rest of which purports to have been printed at Shivji Mudranalaya, Kinari Bazar, Delhi. And the other one titled, 'The case of Haryana and Hindi Region' by Professor Sher Singh, President, Haryana Lok Samiti presented to Dass Commission in which the case of Haryana was put in before the Dass Commission by Professor Sher Singh in such a way as to spread hatred between the Sikhs and non-Sikhs population of Punjab State through the various figures given in it of the State Government servants of all ranks employed in the two regions, were distributed by respondent No. 1, his brother Sh. Suraj Bhan and is near relation Shri Lakshmi Chand Gupta, Contractor Gurgaon at a large scale in Hissar town on the 11th February, 1962 and at Adampur Mandi and Uklana Mandi on the 12th February, 1962 and at Barwala on the 13th February, 1962."

On September 9, 1962 the respondent filed a written statement in answer to the amended election petition. In respect of paragraph 9(c)(i) the respondent, besides denying the contents of that paragraph, again asserted that the allegations were vague. This was followed by the replication by the appellant dated September 11, 1962. On September 12, 1962 issues were framed. On that very day the respondent preferred an application before the Tribunal for dismissing the petition under s. 90(3) of the Act. One of the grounds on which he sought the dismissal of the petition was that Suraj Bhan who was alleged by the appellant to have been guilty of corrupt practices was a candidate validly nominated for election, that he was a necessary party to the petition and that as he was not made a party thereto the petition was liable to be dismissed under sub-s. (3) of s. 90 of the Act. On November 16, 1962 the appellant filed a reply to the respondent's application in which he said that the allegation against Suraj Bhan was not of corrupt practices and that Suraj Bhan could not be said to have been a candidate for election within the meaning of s. 82(b) of the Act. He further contended that the requirement of making a candidate a party does not extend to the amended petition especially when the amended petition was filed in pursuance of an order of the Tribunal. On the same day he made an application under O.I, r. 10 of the Code of Civil Procedure for permission to join Suraj Bhan as a respondent to the petition. In paragraph 9 of that application the appellant made an alternative prayer to the effect that in case he was not permitted to join Suraj Bhan as a respondent to the petition he may be allowed to further amend the petition by the deletion of the words "his brother Shri Suraj Bhan" in paragraphs 9(c)(i) of the amended petition, in the 5th line from the bottom of cl. (c)(i) of para 9. His application was opposed by the respondent. The Tribunal, after hearing the parties dismissed the appellant's application dated November 16, 1961 as well as the election petition. The appellant then preferred an appeal before the High Court of Punjab but that appeal failed. The High Court, however, granted him a certificate under Art. 133(1)(c) of the Constitution and that is how it has come up to this Court.

The ground on which the petition has been dismissed by the Tribunal is that it does not comply with the requirements of cl. (b) of s. 82. The relevant provision reads thus :

"A petitioner shall join as respondents to his petition -

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(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

(b) of s. 79 defines a candidates thus :

"'candidate' means a person who has been or claims to have been duly nominated as a candidates at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

Suraj Bhan was a duly nominated candidate and though he withdrew his candidature within the time permitted by the rules he must, for the purpose of s. 82, still be regarded as a candidate. As pointed out by this Court in *Mohan Singh v. Bhanwarlal* (A.I.R. 1964 S.C. 1366) a person who was duly nominated as a candidate for election would not cease to be a candidate for the purpose of Parts VI, VII and VIII of the Act merely because he withdrew his candidature. Therefore, according to this Court where a petition contained any imputation of corrupt practice against a person it could not be regarded as properly constituted unless he was impleaded as a respondent.

Mr. Setalvad's contention, however, is that what sub-s. (3) of s. 90 of the Act contemplates is a petition as originally filled by the petitioner and not an amended petition. His argument is that under this provision not merely the Tribunal but also the Election Commission has the power of dismissing an election petition on the ground that it does not comply with the provisions of s. 82. Since there is, according to him, no provision for amendment of an election petition during the time the Election Commission is seized with it, and since under sub-s. (3) of s. 90 the powers of the Tribunal are identical with those of the Election Commission under s. 85, we must take the expression "election petition" to mean an unamended election petition. It is not necessary for us to consider whether the Election Commission can permit amendment of an election petition, but assuming that it has no such power it does not follow that the Tribunal to whom the petition has been sent for trial has no power to dismiss it after it has been amended by the petitioner. The procedure regarding the trial of election petitions is contained in Chapter III of the Act, the first section in which is s. 86. That section deals with the appointment of an Election Tribunal. It provides that if the petition is not dismissed under s. 85 by the Election Commission, it shall be referred to an Election Tribunal for trial. Sub-section (1) of s. 90 provides that subject to the provisions of the Act and rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil procedure, 1908 to the trial of suits. Under O. VI, r. 17 of the code of civil procedure a civil court has power to permit amendment of pleadings and, therefore, it is obvious that the Tribunal can exercise the same power with respect to a petition referred to it for trial as the civil court. Sub-section (3) provides that the Tribunal shall dismiss the petition if it does not comply with the provisions of s. 81 or s. 82 notwithstanding that it has not been dismissed by the Election Commission under s. 85. It would follow from this that the power of the Tribunal to dismiss an election petition is not in any way affected by the fact that it was not dismissed by the Election Commission under s. 85. Indeed, this provision gives an independent power to the Tribunal to dismiss an election petition on the ground of non-compliance with the provisions of ss. 81 and 82 despite the fact that the Election Commission has of chosen to dismiss it upon those grounds under s. 85. Since an election petition can be permitted by the Tribunal to be amended, a petition which has been amended would, from the date of amendment, be the only petition before it. Therefore, that would be the petition with respect to which it could exercise the powers conferred upon it by sub-s. (3) of s. 90. To hold otherwise would lead to the result that the powers conferred by the legislature on the Tribunal by this provision will become non-exercisable in respect of one category of election petitions. There is nothing in s. 90 which deprives the Tribunal of any of the powers conferred upon it by the aforesaid provision. No other provision has been brought to our notice which has the effect of taking away the express powers conferred by sub-s. (3) of s. 90 on the Tribunal by reason of an amendment of the petition. We cannot, therefore, accept his contention.

The next contention is that there was no allegation of corrupt practice against Suraj Bhan. We have already set out the amended portion of paragraph 9(c)(i) of the petition and there the appellant had clearly alleged that certain pamphlets were distributed, amongst others, by Suraj Bhan, one of which was titled : "Phoolon ki sej se kanto ki rah per, magar kion ?" and the other was "The case of Haryana and Hindi Region." It is alleged that these pamphlets were couched in language which tended to spread hatred between the Sikhs and non-Sikhs in the State of Punjab. Under sub-s. (3-A) of s. 123 of the Act the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate amounts to a corrupt practice. The allegations against Suraj Bhan are thus obviously allegations of corrupt practice.

Mr. Setalvad then contended that the appellant did not thereby allege that it was the intention of Suraj Bhan to promote or attempt to promote feelings of enmity etc. He also contended that the allegations in the petition are, strictly speaking, against the respondent and not Suraj Bhan and that merely alleging that Suraj Bhan distributed the pamphlets without imputing to him the knowledge, express or implied, of the contents of the pamphlets does not amount to an allegation of corrupt practice. In support of this he pointed out that the appellant had expressly submitted to the Tribunal that no allegation of corrupt practice was ever intended to be made against Suraj Bhan. This is not quite correct because the Tribunal in para 16 of its order has observed as follows :

" It has not been seriously challenged that (sic) in fact it cannot be challenged that the allegations made against Suraj Bhan in the amended petition amount to allegations of corrupt practice."

Apart from that the allegation against the respondent himself is in practically the same terms as that against Suraj Bhan and other persons mentioned in paragraph 9(c)(i) of the petition. The appellant did not say in his petition that the respondent had no knowledge express or implied of the contents of the pamphlets. Yet, according to him, he was guilty of corrupt practice by distributing and causing the distribution of the pamphlets through Suraj Bhan and others. If the averments contained in the aforesaid paragraph are, therefore, not to be regarded as allegations of corrupt practice against Suraj Bhan they could also not be regarded as allegations of that type against the respondent. If that were so, the whole of paragraph 9(c)(i) would lose its meaning and significance. Indeed, both the High Court and the Tribunal have regarded the allegations therein as allegations of corrupt practices and we ourselves do not see how else they could be construed.

Mr. Setalvad then contended that the Tribunal had no power to allow or direct the amendment of the election petition as it is not a suit between two parties but is a proceeding in which the entire constituency is interested and referred in this connection to two decisions of this Court in *K. Kamaraj Nadar v. Kunju Thevari* ([1959] S.C.R. 583) and *Mallappa Bassappa v. Basavaraj Ayyappa* ([1959] S.C.R. 611).

In the Act as it stood prior to its amendment in 1956 the provisions of the Code of Civil Procedure relating to trial of suits were made applicable to trial of election petitions by s. 90(2). Those provisions are now reproduced in s. 90(1) of the Act. As regards allegations of corrupt and illegal practices s. 83(2) provided, as does s. 83(1)(a) now, that full particulars of the parties alleged to be guilty of such practices be given. Sub-section (3) empowered the Tribunal to permit amendment of the particulars. This latter provision has been deleted. But while it was still in force this Court held

in Harish Chandra Bajpai v. Triloki Singh ([1957] S.C.R. 370) that despite this provision, the Tribunal had power to permit amendment under O. VI, r. 17, Code of Civil Procedure in regard to matters other than those falling within sub-s. (3) of s. 83. Bhagwati J., who was a party to this decision and who delivered the judgment of the Court in the two cases earlier referred to has not expressed any dissent from this view. What he did say in those cases, in so far as permission to amend is concerned was that the Tribunal had no power to grant it so as to enable the petitioner whose petition did not comply with the provisions of s. 81 or s. 82 to remedy the defect. In the case before us, the Tribunal did not, by giving an option to the appellant either to amend the petition or furnish particulars or to have para 9(c)(i) struck off as being vague enable the appellant to remove a defect pertaining to the presentation of a petition or joinder of parties (which are matters dealt with by ss. 81 and 82). We agree, with what has been said in Harischandra Bajpai's case ([1957] S.C.R. 370) and hold that the Tribunal was competent to allow or give an option to the appellant to amend the petition.

The next contention of learned counsel is that since the petition had become defective by reason of the amendment the Tribunal should either have permitted the appellant to join Suraj Bhan as a respondent or to further amend the petition by deleting reference to Suraj Bhan. A party can avail himself of the provisions of O.I. r. 10(1), C.P.C. subject to the law of limitation. Assuming that a Tribunal can permit the joinder of parties, we must point out that under s. 81 of the Act an election petition has to be presented within 45 days of the date of the election of the returned candidates. The application under O.I. r. 10 was made more than eight months after the election of the respondent and was thus inordinately late and could, therefore, not be granted. As regards joinder of Suraj Bhan in exercise of the powers conferred on a court by O.I. r. 10(2) all that we need say is that the matter was in the discretion of the Tribunal and we would not lightly interfere with what the Tribunal has done. As regards the last submission, it cannot be forgotten that the appellant did have the choice when the Tribunal made its order on September 3, 1962 to decline to amend and suffer para 9(c)(i) being struck off. He chose to amend and has lost the right to adopt the alternative. Moreover, those a decision in Kamraj Nadar's case ([1959] S.C.R. 583) may not strictly apply to allow a further amendment for a avoiding the penalty under s. 90(3) of the Act would have been grossly improper and the Tribunal was right in rejecting it.

In the circumstances we dismiss the appeal but make no order as to costs.

Appeal dismissed.

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