

**SUPREME COURT OF INDIA**

Raj Narain

Vs.

Indira Nehru Gandhi

C.A.Nos.108 of 109 of 1972

(K. S. Hegde, P. Jaganmohan Reddy and K. K. Mathew, JJ.)

15.03.1972

**JUDGEMENT**

**HEGDE, J.:-**

1. These appeals by special leave arise from the election petition filed by the appellant challenging the validity of the election of respondent No. 1 (who will hereinafter be referred to as the respondent) to the Lok Sabha, from Ram, Bareilly constituency, in the General Election to the Lok Sahaba held in March, 1971.

2. After the pleadings of the parties were completed and the issues framed, the appellant applied to the Court under Order XI of the Civil Procedure Code for leave to deliver interrogatories in writing for the examination of the respondent. The respondent object to the same on the ground that the provisions of Order XI, Civil P. C. cannot be applied to election petitions. In her objection-statement, the respondent reserved her right to object to the interrogatories sought to be served at a later stage. The application filed by the appellant for leave to serve interrogatories on the respondent was heard by Broome J. The learned Judge by his order dated September 14, 1971 overruled the

objections of the respondent and directed as follows:

"Accordingly I allow the application A-29 and grant leave to the petitioner to deliver the accompanying interrogatories for the examination of respondent No. 1. The affidavit in reply shall be filed by 4-10-1971."

3. The respondent appealed against that order to this Court after obtaining special leave. That appeal was withdrawn during the course of the hearing.

4. During the pendency of that appeal, the respondent filed an application before the High Court under Rule 7, Order XI, Civil P. C. praying that the interrogatories served on her may be set aside as they were 'unreasonable, vexatious, oppressive, unnecessary and irrelevant.'" As many as 31 interrogatories had been served on the respondent. All these interrogatories object to each one of them. At the hearing of that petition, it appears it was contended on behalf of the respondent that the allegations in the election petition did not afford any basis for Issues 1 to 3. Consequently the interrogatories served were irrelevant as well as unnecessary. The entire argument before the trial Judge proceeded on the basis that the facts stated in the petition did not disclose the corrupt practices which were the subject-matter of Issues 1 to 3. The learned Judge accepted that contention and set aside some of the interrogatories served on the respondent. Proceeding further, he struck out Issues 1 to 3. Thereafter the appellant applied to that Court for amendment of Paragraphs 2 and 5 of the election petition by giving better particulars. The learned Judge rejected that application on the sole ground that by the amendment in question, the appellant was seeking to add to material facts and hence they cannot be accepted after the period of limitation for filing the election petition. Civil Appeal No. 108 of 1972 is directed against the Order setting aside the interrogatories served and the striking out of Issues 1 to 3 and Civil Appeal No. 109 of 1972 arises from the order rejecting the application seeking permission to amend the election petition.

5. Issue No. 2 had not been pressed before the trial Court nor was it pressed before us. Therefore we need not consider whether that issue should be restored. Issue No. 3 is largely consequential to Issue No. 2 though a portion of that issue bears on issue No. 1. Hence at present we are only concerned with Issue No. 1 and that portion of the third issue which has a bearing on Issue No. 1. Both those aspects will be covered if issue No. 1 is recast thus :

"whether respondent No. 1 obtained and procured that assistance of Yashpal Kapur in furtherance of the prospects of her election while he was still a Gazetted Officer in the service of Government of India. If so from what date ?"

6. We can now leave out of consideration issue No. 3.

7. The main question to be decided in these appeals is whether the allegations made in the election Petition can be said to disclose the corrupt practice which is the subject matter of Issue No. 1.

8. Section 123 of the Representation of the People Act, 1951 (to be hereinafter referred to as the 'Act') begins by saying that "The following shall be deemed to be corrupt practices for the purposes of this Act."

9. Sub-section (7) of Sec. 123 to the extent material for our present purpose reads :

"The obtaining or procuring or abetting or attempting or obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :

(a) gazetted Officers :

x x x x x x"

10. The appellant's contention is that the respondent after she became a candidate in the election in question obtained the services of Yashpal Kapur when he was still a gazetted officer in the Government of India for the furtherance of the prospects of her election. In order to establish that plea he must plead and prove :

(1) That the respondent obtained the assistance of Yashpal Kapur when he was a gazetted officer;

(2) That the assistance obtained by her was for the furtherance of the prospects of her election and

(3) That she obtained that assistance after she became a candidate.

11. A 'candidate' is defined in Section 79 (b) of the Act. That section says :

"candidate" means a person who has been or claims to have been duly nominated as a candidate 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."

12. The respondent became a candidate within the first part of Section 79 (b) when she was nominated on February 1, 1971. But if she had held herself out as a prospective candidate with the election in prospect before her nomination, she must be deemed to have become a candidate from the date she so held out.

13. In order to establish his plea the appellant has to establish that the assistance of Yashpal Kapur was obtained when he still was a Government servant and at the time such an assistance was obtained, the respondent had become a "candidate."

14. Now let us turn to the averments in the election petition which alone is relevant for finding out whether the corrupt practice referred to in issue No. 1 is made out. Relevant averments are said to be in Paragraphs 2, 5 and 6. They read as follows :

"2. That the respondent No. 1 Shrimati Indira Nehru Gandhi and the respondent No. 2 Swami Advaita Nand were also candidates in the said election from the 22-Rae Bareilly Parliamentary constituency for the Lok Sabha.

5. That the said Shri Yashpal Kapur was Gazetted Officer in the Government of India, holding the post of an officer on Special Duty. The respondent No. 1 Shrimati Indira Nehru Gandhi obtained and procured the assistance of the said Shri Yashpal Kapur for the furtherance of the prospects of her election from the constituency aforesaid inasmuch as the said Shri Yashpal Kapur was a gazetted Officer in the service of the Government of India when his assistance was obtained and procured (a corrupt practice under section 123 (7) of the R. P. Act, 1951 was committed by the respondent No. 1. Shrimati Indira Nehru Gandhi). The said Shri Yashpal Kapur on the directions of Shrimati Indira Nehru Gandhi organised the electioneering work for her in the constituency as her election agent during the entire period for even before the filing of the nomination paper the filing (?) the counting and the declaration of the result of the election. The election of the respondent No. 1 is liable to be declared void on the ground of the commission of this corrupt practice under Section 100 (1) (b) of the Representation of the People Act, 1951.

6. That as the petitioner's candidature was being supported not only by Samyukta Socialist Party to which the petitioner belonged but also by the Jan Sangh, the Indian National Congress (Organization), Bhartiya Kranti Dal and the Swatantra Parties and since the candidature of respondent No. 1, Shrimati Indira Nehru Gandhi was being supported by the Muslim Majlis, Muslim League and the Communist Party of India, it was apprehended by Shrimati Indira Nehru Gandhi and her election agent Shri Yashpal Kapur that an overwhelming majority of Hindu voters might cast their votes for the petitioner against Shrimati Indira Nehru Gandhi. It was accordingly decided by them to induce the respondent No. 2 Swami Advaita Nand to also stand as a candidate in the election. The said Shri Yash Pal Kapur, the election agent of Shrimati Indira Nehru Gandhi offered and paid a sum of Rupees 50,000/- to the respondent No. 2 Swami Advaita Nand as a gift with the object of directly inducing him to stand as a candidate at the said election. The offer and payment of the amount of Rupees 50,000/- was made by the said Shri Yashpal Kapur to Swami Advaita Nand on the 28th January 1971 in the town of Rae Bareili. A corrupt practice of 'bribery' under Section 123 (1) (A) (a) was thus committed by Shri Yashpal Kapur, election agent of Smt. Indira Nehru Gandhi and her election is therefore liable to be declared void under Section 100 (1) of the R. P. Act."

15. It is true that the election petition nowhere specifically says as to when the appellant became a "candidate". But it is clear from a reading of Paragraphs 5 and 6 that according to the appellant, the respondent became a "candidate" even before she was nominated on February 1, 1971. The Petition proceeds on that basis. It is not clear from the petition that how long before her nomination the respondent held herself out as a prospective candidate. But all the same, it is obvious from those averments that the respondent is alleged to have obtained the assistance of Yashpal Kapur when he continued to be a gazetted officer for organizing her electioneering, work. The expression "electioneering" is explained in Universal English Dictionary as "act of canvassing for votes, speaking in public and otherwise promoting the election of a particular candidate for Parliament."

16. Reference to Yashpal Kapur as an election agent on a date prior to the date when he was appointed as such - his nomination as an election agent could not have been done before February 1, 1971 - is clearly a misnomer but that is irrelevant. The mention in Paragraph 5 of the election petition that Yashpal Kapur organised the electioneering work in the constituency at the direction of the respondent even before her nomination and again the reference to her candidature in January in paragraph 6 shows that according to the petitioner the respondent was a "candidate" even before her nomination and further that she obtained the assistance of Yashpal Kapur when he was still a gazetted officer. There is no gainsaying the fact that the election petition was not artistically drawn up. That unfortunately is the case with most of our pleadings. But if the petition is read reasonably, as it should be, it is clear that the allegation of the petitioner is that the services of Yashpal Kapur were obtained by the respondent when she had already become a candidate and when she so obtained his assistance, Yashpal Kapur was still a gazetted officer. It is true that one of the ingredients of the corrupt practice alleged i.e. that when the respondent obtained the assistance of Kapur, she was a candidate is not specifically set out in the petition but from the allegations made, it flows as a necessary implication. While a corrupt practice has got to be strictly proved but from that it does not follow that a pleading in an election proceeding should receive a strict construction. This Court has held that even a defective charge does not vitiate a criminal trial unless it is proved that the same has prejudiced the accused. If a pleading on a reasonable construction could sustain the

action, the court should accept that construction. The courts are reluctant to frustrate an action on technical grounds. The charge of corrupt practice in an election is a very serious charge. Purity of election is the very essence of real democracy. The charge in question has been denied by the respondent. It has yet to be proved. It may or may not be proved. The allegations made by the appellant may ultimately be proved to be wholly devoid of truth. But the question is whether the appellant should be refused an opportunity to prove his allegations? Should the court refuse to enquire into those allegations merely because the appellant or someone who prepared his brief did not know the language of the law. We have no hesitation in answering those questions in the negative. The implications of the rule of law are manifold.

17. It was contended on behalf of the respondent that the relevant provisions of the Act precluded the appellant from proving his allegations. Therefore let us look at those provisions in the Act i.e. Clauses (a) and (b) of S. 83. (1) and cl. (5) of S. 86 for finding out whether the charge has to be rejected in limine.

Section 83 (1) (a) and (b) read ;

"(1) An election petition -

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. x x x"

18. Sub-s. (5) of S. 86 prescribes :

"The High Court may upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

19. From these two provisions, it follows that if the allegations made regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and further those allegations cannot be amended after the period of limitation for filing an

election petition; but the court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified. The scope of these provisions has been considered in several decisions of this Court. The leading decision on this point is *Harish Chandra Bajpai v. Triloki Singh*, 1957 SCR 370 = (AIR 1957 SC 444). It is not necessary to go to that decision as the ratio of that decision has been elaborately explained by this Court in *Samant N. Balakrishna v. George Fernandez*, (1969) 3 SCR 603 = (AIR 1969 SC 1201). Dealing with the scope of Ss. 83 and 86 (5). This Court observed that S. 83 requires that the petition must contain a concise statement of the material facts on which the petitioner relies and the fullest possible particulars of the corrupt practice alleged. 'Material facts' and 'particulars' may overlap but the word 'material' shows that the ground of corrupt practice that the ground of corrupt practice and the facts necessary to formulate a complete cause of action must be stated. The function of the particulars is to present as full a picture of the cause of action as to make the opposite party understand the case he will have to meet. Under S. 86 (5), if corrupt practice is alleged in the petition, the particulars of such corrupt practice may be amended or amplified for ensuring a fair and effective trial, that is, more and better particulars of the charge may be given later, even after the period of limitation: but if a corrupt practice is not previously alleged in the petition, an amendment which will have the effect of introducing particulars of such a corrupt practice will not be permitted. after the period of limitation, because, it would tantamount to making a fresh petition. The same view was taken by this Court in *Hardwari Lal v. Kanwal Singh*, (1972) 1 SCC 214 = (AIR 1972 SC 515). From these decisions, it follows that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition, for a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the court even after the period of limitation. The controversy in this case is whether the election petition discloses a cause of action for trying Issues No. 1. We thin it does. The allegation made in paragraphs 2, 5 and 6 of the petition, if read together do show that the allegation against the respondent is that she obtained the assistance of Yashpal Kapur, a gazetted officer, to support her candidature by organising her electioneering work. These allegations bring out all the ingredients of the corrupt practice alleged though they are lacking in better particulars such as the date on which the respondent became a candidate and the date on which Yashpal Kapur was entrusted with the responsibility of organizing the electioneering work of the respondent. The absence of those particulars does not per se invalidate the charge. They can be supplied even now with the permission of the Court. In this connection it is necessary to mention that the respondent in her written statement did not say that the allegations in question did not raise a triable issue. No such objection appears to have been taken at the time of the framing of the issues or in any of her pleadings. It seems that the objection was taken up for the first time when the petition to set aside the interrogatories was heard. We are saying all these only to show as to how the parties understood the allegations at the earlier stages, of the proceedings.

20. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it. What then is the principle underlying S. 86 (5)? In our opinion that aim of that section is to see that a person accused of a corrupt practice must know precisely what he is accused of so that he may have the opportunity

to meet the allegations made against him. If the accusation made is nebulous and is capable of being made use of for establishing more than one charge or if it does not make out a corrupt practice at all then the charge fails at the very threshold. So long as the charge levelled is beyond doubt, S. 86 (5) is satisfied; rest is mere refinement. They either pertain to the region of particulars or evidence. That section is not designed to interdict a mere clumsy pleading like the petition before us. The purpose of that section is to see that every charge of corrupt practice should be brought before the court before the prescribed period of limitation and none thereafter so that the trial of the case may not be converted into a persecution by adding more and more charges or by converting one charge into another as the trial proceeds. The best illustration of the problem that S. 86 (5) tries to meet is found in Haridwari Lal's case, (1972) 1 SCC 214 = (AIR 1972 SC 515) (supra). The allegations made in paragraph 16 of the petition therein were as follows:

"That the respondent committed the corrupt practice of obtaining and procuring or attempting to obtain and procure the assistance for the furtherance of the prospects of his election from the following persons who are in the service of the Government and belonging to the prohibited classes within the meaning of Section 123 (7) of the Act -

1. Shri Chand Ram Rathi, Lecturer in Political Science, Government College, Gurgaon.
2. Shri Culab Singh, B.A.,B. Ed., Govt. High School Jharsa (Gurgaon).
3. Pt. Bhim Singh, Asstt. Sub-Inspector, Police-Security Lines. Lytton Road, New Delhi.
4. Ch. Chhatar Singh, M.A. B.T., Teacher, V. and P. O. Bharai via Bahadurgarh, District Rohtak.
5. Ch. Mukhtiar Singh, Inspector of Police, Delhi.
6. Ch. Raghbir Singh, M.A., B. T. Bahadurgarh.

The respondent has written letters under his own signatures to the above Government servants soliciting their help and assistance in furtherance of the prospects of his election."

21. These were all the material facts stated in the petition. From those averments, it was not possible

to make out from whom among the government servants mentioned, the returned candidate alleged to have obtained or procured assistance for the furtherance of the prospects of his election and who are those from whom he is alleged to have attempted to obtain and procure the assistance for the said purpose. That petition was also silent as regards the type of assistance obtained or procured or attempted to be obtained or procured. In that case, it was necessary to state the type of assistance obtained or procured or attempted to be obtained or procured because a candidate can take the assistance of government servants in certain respects. The allegations made in the petition were so elastic that it could have been used for establishing multitude of charges, leaving it free to the petitioner to pick and choose the charge he is in a position to establish. That was an intolerable position for his opponent. In substance, the petitioner therein had merely quoted the relevant provisions of law; he had failed to state the material facts to bring out the charge sought to be levelled. He had cast a wide net. This is not so in the case before us. Herein all the ingredients of the corrupt practice viz. (1) that the respondent obtained the assistance of Kapur; (2) Kapur was a government servant and (3) his services were obtained in support of the candidature of the respondent by organising her election campaign, are mentioned in the petition. The question when the respondent became a candidate is merely a matter of evidence.

22. For the reasons mentioned above, we think that the learned Judge was not justified in striking out Issue No 1. On the other hand, he should have reframed that issue, as mentioned earlier. Before leaving this question, it is necessary to mention one other fact. Yashpal Kapur appears to have tendered his resignation to the office he was holding on January 13, 1971. The certified copy of the notification produced shows that the President accepted his resignation on the 25th of January 1971 and the same was gazetted on February 6, 1971. The order of the President shows that he accepted Yashpal Kapur's resignation with effect from January 14, 1971. The learned trial Judge without examining the true effect of the President's order has abruptly come to the conclusion that Yashpal Kapur's resignation became effective as from January 14, 1971. This conclusion, in our opinion, requires re-examination. It is necessary to examine whether a government servant's resignation can be accepted with effect from an earlier date. At any rate whether such an acceptance has any validity in considering a corrupt practice under S. 123 (7). If such a course is permissible, it might enable the government to defeat the mandate of S. 123 (7). The question as to when a government servant's resignation becomes effective came up for consideration by this Court in *Raj Kumar v. Union of India*, (1968), 3 SCR 857 = (AIR 1969 SC 180). Therein this Court ruled that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Hence the question as to when Yashpal Kapur's resignation became effective will have to be examined with reference to his conditions of service. This examination having not been done, the conclusion of the learned trial Judge that it became effective on January 14, 1971, has to be ignored.

23. For the foregoing reasons, we set aside the order of the trial judge striking out Issue No. 1 and the last part of Issue No. 3 and restore Issue No. 1 as amended by us.

24. Now coming to the appeal against the order on the amendment application, the learned trial judge disallowed the amendments sought on the sole ground that if those amendments are allowed it will amount to amending the statement of material facts and the same is not permissible in view of S. 86 (5). We have already found that that conclusion of the learned trial judge is not correct. The amendment application was moved even before the trial of the case commenced. It is not shown how the amendments sought in respect of paragraphs 2 and 5 of the petition can prejudice the case of the respondent. They are merely clarificatory in character. This Court ruled in *Balwan Singh v. Lakshmi Narain*, (1960) 3 SCR 91 = (AIR 1960 SC 770), that an election petition was not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out. It further observed that if an objection was taken and the tribunal was of the view that the full particulars have not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars. It was only in the event of non-compliance with the order to supply the particulars that the charge which remained vague could be struck out. In that case the amendment was sought after the evidence was closed in the cases. This Court allowed the same. Courts are ordinarily liberal in allowing amendment of pleadings unless it results in prejudicing the case of the opposite party. Any inconvenience caused by an amendment can always be compensated by costs. We think that the amendments asked for, should have been allowed and we allow the same. The election petition will be accordingly amended and the respondent will be afforded an opportunity to file any additional written statement, if she so desires.

25. This leaves us with the question of interrogatories. As many as 31 interrogatories have been served on the respondent as mentioned earlier. Out of them Nos. 24 of 30 have been allowed. Hence we need not consider them. Interrogatories Nos. 19 to 23 relate to Issue No. 2. Therefore they are rightly struck out. We now come to interrogatories Nos. 1 to 18 and 31. We have carefully examined those interrogatories. None of them touch the core of the allegations relating to commission of the corrupt practice which is the subject matter of Issue No. 1. They merely touch the fringe of the matter.

26. Order XI, R. 1, C.P.C. provides:

"In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

27. Questions that may be relevant during cross-examination are not necessarily relevant as interrogatories. The only questions that are relevant as interrogatories are those relating to "any matters in question" The interrogatories served must have reasonably close connection with "matters in question". Viewed thus, interrogatories 1 to 18 as well as 31 must be held to be irrelevant.

28. In the result Civil Appeal No. 108 of 1972 is allowed to the extent mentioned above. In other respects the same is dismissed. Civil Appeal No. 109 of 1972 is allowed in full. In the circumstances of these cases, we make no order as to costs.

Order accordingly.