

Krishan Chander

Vs

Ram Lal

Civil Appeal No. 2384 of 1972

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

10.08.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant is a voter on the electoral roll of Karnal Assembly Constituency. He challenged the election held on March 11, 1972, for the membership of the Haryana Vidhan Sabha from Karnal constituency. At that election 16 candidates filed their nominations which were declared as valid nominations. Out of these, eight candidates withdrew their candidature. The respondent and seven others were the contesting candidates. After the polling on March 11, 1972, counting took place on March 12, 1972, and the respondent was declared elected having polled 17,719 votes; the other candidates Shanti Devi polled 16,857 votes, Balwan Singh 1,692 votes, Piyare Lal 1,243 votes, Kali Ram 1,203 votes, Kalu Ram 616 votes, Radhey Sham 542 votes and Kashmira Singh 180 votes.

2. The appellant filed a petition on April 24, 1972, challenging the election of the respondent Ram Lal on the allegations, inter alia, that the respondent, his election agent and other persons with his consent, had committed various corrupt practices detailed in the petition as falling within the meaning of sub-sections (1) to (7) of Section 123 of the Representation of the People Act - hereinafter referred to as 'the Act'. For the purposes of this appeal, the various allegations made against the respondent in the election petition are not relevant. It is only necessary to state that certain allegations of corrupt practices were made in paragraphs 11 and 12 of the petition against Piyare Lal, Kali Ram and Kalu Ram. The petition was verified by the appellant as required under the rules. The appellant also filed an affidavit in which he stated that paragraphs 11 and 12 among other paragraphs were based on information received and were believed to be true. The respondent filed a written statement on September 25, 1972, contesting the allegations of various corrupt practices made by the appellant and further raised some preliminary objections one of which was that the petition was liable to be dismissed for non-compliance with the provisions of Section 82 of the Act inasmuch as the persons against whom allegations of corrupt practice have been made such as Piyare Lal, Kali Ram and Kalu Ram had not been joined as respondents to the petition. The appellant, however, averred in reply that Ram Lal respondent alone was required to be made a party and it was not necessary to implead any other candidate or candidates as the allegations of corrupt practice were levelled against the successful candidate and not against other candidates. The learned Judge who tried the petition, after hearing the petitioner in person and the respondent's counsel, framed the following two issues :

(1) Whether it was necessary for the petitioner to implead Sarvshri Ram Piare, Piyare Lal, Kali Ram, Kalu Ram and Kashmira Singh as parties to the petition in view of the allegations in paras 9, 10, 11, 12 and 20 of the election petition ?

(2) If issue No. 1 is found in favour of the respondent, what is the effect of non-impleadment of these persons as respondents to the petition ?

3. It was conceded by the respondent's counsel that there was no imputation of any corrupt practices against Shanti Devi, Balwan Singh and Radhey Sham and accordingly there was no necessity to implead them. It was, however, urged that Comrade Ram Piare and the remaining four candidates, namely Piyare Lal, Kali Ram, Kalu Ram and Kashmira Singh, having been charged with committing corrupt practices set out in the aforesaid paragraphs were necessary parties. The learned Judge held that Comrade Ram Piare had withdrawn his candidature before the prescribed date, therefore, he was not a necessary party to the petition nor was there any allegation against him that he was prevailed upon to withdraw by bribery, receipt of gratification or reward which would constitute a corrupt practices within the meaning of Section 123 of the Act. Even in respect of Kashmira Singh the allegation that he was persuaded to retire from the contest and sit silent in the election if he could not help the respondent could not amount to corrupt practice. The Court, however, came to the conclusion that the petitioner had in paragraphs 11 and 12 of the petition made allegations of corrupt practices against Piyare Lal, Kali Ram and Kalu Ram and in view of these allegations failure to implead them as parties to the petition contravened the mandatory provisions of Section 82 of the Act. In this view the election petition was dismissed. Against this decision, the appellant has come up in appeal before us.

4. The petitioner who argued the appeal in person contends, inter alia, firstly, that as the affidavit filed by him in support of the election petition merely stated that the allegations contained in paragraphs 11 and 12 were based on information received and he had not stated what the sources of information were, that part of the petition in which the allegations of corrupt practices were made against Piyare Lal, Kali Ram and Kalu Ram cannot form the basis of a triable issue. Consequently the allegations against the respondent should have been enquired into; secondly, that the learned Judge should have on the pleadings framed and tried all issues arising out of the petition and not merely issues confined to a preliminary point. Where issues of fact and law arise out of the petition it is contended that evidence should have been recorded and findings given in respect of all those issues; thirdly, the appellant submits that while Section 82(a) is mandatory, Section 82(b) is directory, as such the petition cannot be dismissed; fourthly, the allegations in paragraphs 11 and 12 of the petition did not constitute corrupt practice inasmuch as the allegations only state that money was paid, but there was no express averment that it was accepted by the persons concerned; and lastly, it was contended that Section 82(b) is violative of Article 14 of the Constitution in that it was harsh and would result in the dismissal of the petition in which allegations of corrupt practices were made against the successful respondent who committed them, merely because proper allegations were not made against the persons who were not elected.

5. In support of his first contention the appellant has referred to decisions rendered under Order 6, Rule 15 and Order 19, Rule 2 of the Code of Civil Procedure. These decisions, in our view, have no relevance and do not support the submission of the appellant that in the affidavit in support of the petition if he has not stated the sources of information on which the several allegations in the petition are based, those allegations cannot be deemed to have been made. Order 6, Rule 15(2) states that the person verifying shall specify, by reference to numbered paragraphs of the pleadings what he verifies on his knowledge and what he verifies upon information received and believed to be true. This provision, as we shall presently show, is no different to that required to be stated on an affidavit by the proviso to Section 83(1), read with Rule 94-A and Form 25 of the Conduct of Election Rules, 1961. Order 19, Rule 2 has no relevance as that deals with evidence being given on affidavit and if either party insists the Court may order the deponent to attend for cross-examination.

6. At the outset it may be stated that the provision for setting out the sources of information where the allegations have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition. Under sub-section (1) of Section 83 an election petition has to contain a concise statement of the material facts on which the petitioner relies; it has to 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 and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The affidavit in Form 25 prescribed under Rule 94-A is as follows :

"I..... the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati..... (respondent No.....in the said petition) make solemn affirmation on oath and say -

(a) that the statements in paragraphs..... of the accompanying election petition about the commission of the corrupt practice of *..... and the particulars of such corrupt practice mentioned in paragraphs..... of the same petition and in paragraphs..... of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs..... of the said petition about the commission of the corrupt practice of *..... the particulars of such corrupt practice given in paragraphs..... of such corrupt practice given in paragraphs..... of the said petition and in paragraphs..... of the schedule annexed thereto are true to my information.

#(c)(d)(e) Signature of deponent.Solemnly affirmed/sworn by Shri/Shrimati..... at this.....day of..... 19 Before me,* Here specify the name of the Magistrate of the first class/corrupt practice. Notary/Commissioner of Oaths."##

There is nothing in this form which requires the petitioner to state under clause (b) of Form 25 the source or sources of his information. The appellant has referred us to Order XI, Rule 13 of the Supreme Court Rules as also to Rule 12(A) of the Punjab High Court Rules, in which when the deponent in the affidavit filed in support of the petition states that he has made the allegations in the paragraph or paragraphs specified on information, he is required also to disclose the sources of information. But when there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under order VI, Rule 15(2) C.P.C. On this ground alone the submission of the appellant can be rejected. But as he has cited several cases, a few of them may be examined to show that they do not help him.

7. In *Amulya Chandra Bhaduri v. Satish Chandra Giri and Others* (AIR 1932 Cal 255 : 35 CWN 1267 : 33 Cri LJ 369 : 136 IC 901.) what was considered was whether the affidavit in support of the petition under the Contempt of Courts Act, 12 of 1926, disclosed the sources of information in respect of the allegations made in the petition for Contempt of Court. It was observed that in cases of this nature, as is well known, the practice of the Court was to enable the parties concerned to

know what are the points they have got to answer in charge of contempt and the practice has always been that the opposite parties, namely, the parties charged with contempt cannot be called upon to answer to anything which is not set out specifically in the grounds used before the courts at the time when the rule was issued. *Wasudeoraoji v. A. D. Mani* (AIR 1951 Nag 26 : 52 Cri LJ 452 : ILR 1951 Nag 266.) is also a case under the Contempt of Courts Act, 1926, and does not support the submission of the appellant. There is nothing in these decisions which state that the affidavit in support of an election petition should itself disclose the sources of information. The election petition under Section 83(1)(b) itself must contain all the particulars that are necessary and in the affidavit in support of that petition the petitioner is required to say which of the allegations made in various paragraphs of the petition are true to his knowledge and which of them are true to his information. If any sources of information have not been set out and the respondent cannot answer them without particulars, he can always apply for better the Act and the rules made thereunder, it cannot be said that because the sources of the information have not been given, the allegations made in the petition have to be ignored.

8. The decision in *Smt. Sahodrabai Rai v. Ram Singh Aharwar and Others* ((1968) 3 SCR 13 : AIR 1968 SC 1076 : (1968) 2 SCJ 650 : 36 ELR 52.) states nothing further than that under the Representation of the People Act, details of corrupt practice or averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if the requirement regarding service of the election petition is to be wholly complied with. No doubt it was observed in this case that the trial of election petition has to follow as far as may be the provisions of the Code of Civil Procedure. But these observations were made in respect of the need to furnish along with the plaint copies of all the documents filed with the plaint when summoning the defendants. The Court observed that the plaintiff is required to file one copy of the documents and not as many copies as there are defendants in the case. It is clear that the documents which are filed with the plaint have to be accompanied by one copy of the documents. This is because the copy is compared with the original and the copy is endorsed by the clerk of court and the document is sometimes returned to the party to be produced into court later. The copy takes the place of the document concerned and is not to be sent out of the parties with the plaint. The election law does not provide anything different. This case also does not assist the appellant.

9. It is unnecessary for us to refer to other decisions which are not germane to the contentions urged before us. In our view, there is no defect in the election petition. There is no force in the submission that because the source of information had not been disclosed the allegations of corrupt practices made in the petition have to be ignored. It may also be pointed out that the logical result of the contention urged by the appellant that the affidavit is defective, if accepted, would make the election petition itself not maintainable for having filed a defective affidavit. On this ground itself the petition could be rejected, but such is not the position in law and in our view the election petition does not suffer from any defect on this score.

10. The next submission of the appellant that all issues should have been framed and tried instead of only one issue on the preliminary point is equally without force. Section 82(2) enjoins who the parties to the petition should be, and among those, apart from the returned candidate whose election is challenged, any other candidate against whom any allegations of corrupt practices are made in the petition should be joined. If this requirement is not fulfilled, sub-section (1) of Section 86 makes it mandatory for the High Court to dismiss the election petition for non-compliance with provisions of

Section 82 of the Act. The contention of the appellant that while clause (a) of Section 82 is mandatory, clause (b) of that section is only directory, is not tenable because reading Section 83 with Section 82 makes both clauses (a) and (b) of the latter section mandatory and non-compliance with the requirements thereof visits the petitioner with the penalty of having his petition dismissed. In view of these provisions, it is incumbent upon the High Court, where the allegation is that the requirements of Section 82 are not complied with, to determine that issue as a preliminary issue. If the respondent has made out his case on that issue, the Court is left with no option but to dismiss the petition for non-compliance with the mandatory provisions of Section 82. This Court has held in Charan Lal Sahu v. Nandkishore Bhatt and Others ((1973) 2 SCC 530.) that non-compliance with the provisions of Section 117 of the Act which is one of the sections mentioned in sub-section (1) of Section 86 merits dismissal of the election petition.

11. Before dealing with the third and fourth submissions, it is necessary to see what the allegations made by the petitioner in paragraphs 11 and 12 are. The following are the allegations in respect of these paragraphs :

"11. That through Sh. Sardha Ram, President, Municipal Karamchari Dal, Karnal and Sh. Prithvi Raj, President, District Municipal Subordinate Employees Union, Karnal, the respondent Sh. Ram Lal and Sh. Hargobind, Senior Vice-President, Municipal Committee, Karnal induced Sh. Piare Lal a caste brother of Mr. Sardha Ram to stand at the election for the Karnal Assembly Constituency for that deal Sh. Sardha Ram was promised that he would not be dismissed again even if his appeal had been dismissed by the learned Commissioner Ambala Division and Sh. Prithvi Raj would be given extension of his service. It was further promised by the respondent at the house of Sh. Piare Lal Ward No. 9, Jundle Gate, Karnal that he would bear the entire election expenses of Sh. Piare Lal for the purpose and he was paid Rs. 3,000/- for standing in the elections in advance as gift by the respondent on February 10, 1972. It was further agreed upon that the Jan Sangh workers would also work for Sh. Piare Lal. He was actually supplied workers and loud speaker fitted Rikshaw for propaganda work. So this inducement to Sh. Piare Lal to stand at the election is a corrupt practice in the meaning of the Section 123(1)(A)(a) of the Representation of People Act and election is void.

12. That the respondent Sh. Ram Lal accompanied by his agents Sh. Sunder Lal Dhawan, Sh. Baldev Raj Anand and also Sh. Prithvi Raj Anand Officiating Health Officer, Municipal Committee, Karnal, went to the house of Sh. Kali Ram resident of Sadar Bazaar, Karnal and offered him Rs. 2,000/- as inducement to stand as candidate at the election, they further offered him that the entire election expenses and substantial workers would also be supplied by Sh. Ram Lal and his party as the Congress nominee belonged to Jat Community of the Chief Minister of Jats always have been torturing the Harijans. Sh. Kali Ram on February 10, 1972, took them to the house of Sh. Kalu Ram resident of Jawahar Market, Karnal where Sh. Kalia was sitting with his friends Sh. Ved Parkash and Sh. K. K. Marwaha and after discussions Sh. Kalu said that the respondent everytime makes Sh. Piare Lal stand at the elections and why he did not come to him first as Sh. Piara Lal was not superior or more influential in Jhimers of Karnal. Upon this it was settled that Sh. Kalu should also stand and for that purpose he was also paid Rs. 2,000/- on the spot and so was Sh. Kali Ram paid Rs. 2,000/-. Next day, i.e., on February 11, 1972, Sh. Kali Ram accompanied by Kalu filed their nomination papers and they both praised that they

would not withdraw their candidature come what may and from next morning, i.e., from February 12, 1972, both of them were given loud speaker fitted Rikshaw and worker for propaganda sake till March 9, 1972. This gratification and offer to the persons to stand in elections and with promise on their part not to withdraw till end of elections is a corrupt practice within the meaning of Section 123(1)(A)(a), (B). So election is void."

13. A perusal of the contents of paragraph 11 will show clearly that the respondent had promised Piare Lal at his house that he would bear the entire expenses and in furtherance of that promise had paid Rs. 3,000/- for his standing in the elections in advance as gift on February 10, 1972. This inducement to Piare Lal to stand at the election has been alleged as a corrupt practice within the meaning of Section 123(1)(A)(a) of the Act. Similarly allegations in paragraph 12 are that the respondent offered to Kali Ram and Kalu Ram on February 10, 1972, Rs. 2,000/- each to stand as candidates for elections and that on February 11, 1972, Kali Ram accompanied by Kalu Ram filed their nomination papers. This gratification and offer to the persons to stand in elections so that they may later withdraw from the elections to help the respondent was a corrupt practice within the meaning of Section 123(1)(A)(a) & (B). In our view, there can be no manner of doubt that the averments in paragraphs 11 and 12 amount to allegations of corrupt practice. The argument of the appellant that there is nothing in paragraphs 11 and 12 from which it can be gathered that Piare Lal, Kali Ram and Kalu Ram had accepted the gratification, when it is categorically stated that the amounts had been paid to the persons on the spot and that these amounts were paid to induce them to stand for the elections and in pursuance thereto such person or persons stood for the elections with the object of withdrawing subsequently after the nomination papers were held valid, appears to us to be spacious. The case of Mohan Singh v. Bhanwarlal and Others ((1964) 5 SCR 12 : AIR 1964 SC 1366.) cited by the petitioner has no application, because on the facts of that case there was no express averment that one of the candidates had withdrawn his candidature as a consequence of a promise made to him by the successful candidate that a job will be secured for him, as such it was held that it did not disclose an allegation of corrupt practice. The High Court, in our view, was right in holding that paragraphs 11 and 12 contained allegations of corrupt practices alleged to have been indulged in by the three persons named therein. Once an allegation of corrupt practice is made against the candidates who have offered themselves for the elections, sub-section (b) of Section 82 of the Act applies, and the failure to implead the three persons named in the petition is fatal to the maintainability of the petition.

13. The last contention that Section 82(b) is violative of Article 14 of the Constitution is equally far-fetched. The provision that non-compliance with any of the provisions of Section 82 makes it obligatory on the High Court to dismiss the petition cannot be said to be discriminatory, merely because substantial allegations against the respondent who had been successful at the elections cannot be tried for non-compliance with those requirements, if other unsuccessful candidates against whom corrupt practices are alleged are not made parties. A petition challenging the election of a successful candidate is required to set out certain particulars and to join certain persons as necessary parties to that petition, and if it omits to comply with any of the mandatory provisions of the Act the petition is liable to be dismissed under Section 86(1). The petition cannot be split up in a manner as to maintain it in respect of allegations of corrupt practices only against some persons and not against other persons who are required to be necessary parties.

14. In any election, where a candidate challenges the validity of the election of a successful candidate, and further asks that he be declared duly elected, all contesting candidates must be made parties to the petition. The reason for this provision is obvious, because other candidates who have contested have interest in the result of the election and they may even challenge the petitioner's prayer for his being declared duly elected. Where corrupt practice is alleged, the need for maintaining the purity of elections requires that where it appears to the Court that persons whether candidates or not have indulged in corrupt practice, it should make an enquiry in respect of such corrupt practice which has been proved at the trial. This is evident from Section 99 which requires that the Court at the time of making an order under Section 98 should also make an order naming all persons who have, during the trial, been proved guilty of corrupt practices and also state the nature of those corrupt practices. Where any person against whom corrupt practice is alleged is a party he will naturally have sufficient opportunity to defend himself against such allegation, but a person who is not a party and against whom corrupt practices have been proved at the trial, natural justice requires that he be also afforded an opportunity to contest that finding. In order to facilitate him to do so the proviso to clause (b) of sub-section (1) of Section 99 requires the Court to give the person concerned notice to appear before the Court and to show cause why he should not be also named. If any person whether he be a candidate at the election or not, is found guilty of any corrupt practice as provided in Section 123 he will incur a disqualification under Section 8-A for a period of six years from the date on which the order under Section 99 takes effect. If such are the consequences of being found guilty of corrupt practices in cases where a person is not made a party to the petition, and corrupt practice against him is discovered during the trial, then a person who challenges an election, and with the knowledge that other candidates have indulged in corrupt practices deliberately omits to make them parties debarring them from any opportunity to defend themselves, he is visited with the penalty of having his petition dismissed for non-compliance with the mandatory provisions of Section 82. The concept of fair trial requires that all candidates who are known to the petitioner to have indulged in corrupt practices should be made parties, and this is the reason why Section 82(b) has been enacted. Section 82 differs from the proviso to clause (b) of sub-section (1) of Section 99 in that the former contemplates joining of parties who are known to the petitioner at the time of filing his petition, whereas the latter deals with the cases which are discovered during the trial and which were not known to the petitioner at the time of filing the petition.

15. Apart from ensuring the purity of elections, and finality in regard to all election matters, one other consideration seems to be the expeditious disposal of election petitions. Before the amendment of Section 82 by Act 27 of 1956 the unamended section made it incumbent on a petitioner "to join as respondents to his petition all candidates who were duly nominated at the election other than himself, if he was so nominated". The reason for the amendment of Section 82 has been stated in the notes on clauses to the Amendment Bill No. 33 of 1955 to be that the section as it stands holds up the trial of an election petition because of the difficulty in serving a notice on all those who have been nominated. It is further stated : "Naturally, it is only the returned candidate who takes any interest in contesting the election petition. Moreover, there is a provision in Section 90 which enables any other candidate to join as a respondent. It is accordingly proposed in this clause that Section 82 should be revised so that it is necessary to join as respondents only those candidates who are interested prima facie in the outcome of the petition". After the amendment the candidates under clause (b) of Section 82 are not impleaded merely because they are necessary parties in an election petition in which a declaration is sought that the election of all or any of the candidate would be void, but are impleaded as parties because there are allegations of corrupt practices against them in the election petition. Where action is taken under Section 90 an order under Section 98 of the Act

dismissing the election petition or declaring the election of all or any of the returned candidate to be void and/or declaring the petitioner or any other candidate to have been duly elected, would delay the disposal of the election petition, because notice will have to be given to all the persons named under the proviso to sub-clause (ii) of clause (a) of sub-section (1) of Section 99. The provisions of Section 82(b) would avoid any such delay as they make it obligatory for a person filing an election petition when he makes an allegation of corrupt practice against any candidate to make him a party on pain of the petition being dismissed under Section 86(1) if he omits to do so. It may also be pointed out that a person who offers himself to stand as a candidate at an election holds out to the voters that if elected he will truly and effectively represent them in the Assembly to which he is elected. The voters of the Constituencies equally expect from their candidates who have offered themselves at the election a high degree of integrity and honesty, and if there are allegations in an election petition that any of the candidates have indulged in corrupt practices, it would be in consonance with the purity of elections that they should be made parties and the allegations of corrupt parties enquired into after giving them an opportunity to meet those allegations. Under Section 90 though it is not required that those against whom corrupt practices have been proved should be made parties, yet they are required to be named for the purposes of being debarred from offering themselves as candidates in future. This then is the rationale underlying the mandatory requirements of Section 82(b). In any view of the matter, Article 14 has no application, because the object of Section 82 is one and indivisible in that it is incumbent on any person coming to Court to challenge an election to come with clean hands and not attempt to prevent a full and complete enquiry or perhaps dictated by his own interests to thwart fair trial by picking and choosing the parties to the petition.

16. As none of the contentions urged by the appellant has any validity, this appeal is dismissed with costs.

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