

Shri Udhav Singh

Vs

Madhav Rao Scindia

Civil Appeal No. 2751 Of 1972

(P. N. Bhagwati R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

SARKARIA, J. –

1. This appeal is directed against a judgment, dated October 27, 1972, of the High Court of Madhya Pradesh dismissing the election petition filed by the appellant to question the election of the respondent, to Lok Sabha.

2. Six candidates filed nomination papers for contesting the election to Lok Sabha from Guna parliamentary constituency in March, 1971. Out of them, Sarvshri Shiv Pratap Singh and Gaya Prasad withdrew their candidature after their nomination paper were found to be in order after scrutiny, Deorao Krishnarao Jadhav, Narayan Singh 'Albela' and Bundal Singh to contest the election. Shri Madhavrao Scindia respondent herein who was sponsored by the Jan Sangh was declared elected by a margin of 1,41,090 votes over his nearest rival, Shri Deorao Krishnarao Jadhav, sponsored by the Indian National Congress.

3. Udhav Singh, an elector of the constituency, filed an election petition on April 26, 1971, in the High Court challenging the election of the respondent on two main grounds viz., (1) that the respondent and/or his election agent had incurred or authorized expenditure in connection with the election in excess of the limit of Rs. 35,000 prescribed under Section 77(3) of the Act read with Rule 90 of the Conduct of Elections Rules, 1961. It was alleged that the respondent made a tour in the constituency by helicopters and showed Rs. 5,000 only as an expense towards the cost of the aviation fuel but did not show the hiring and other charges in respect thereof. It was further alleged that the respondent hired and used motor vehicles, not less than 18, but did not show the expenditure incurred in respect thereof in the statement of election expenses submitted by him to the Election Commission; (ii) that the workers of the respondent, with his consent, had threatened the electors with bodily injuries and criminally intimidated them not to vote for Shri Deorao Krishnarao Jadhav the Congress candidate. Five instances of such threats and intimidation interfering with the free exercise of electoral rights, were set out in clauses (i) to (v) of the original paragraph 10(III) of the petition, which, after amendment, was renumbered as para 11(iv). Clause (iv) of paragraph 11 is as follows :

That on or before February 22, 1971, Shri Mohan Prasad Ojha, a Congress worker of village Umri (tahsil Guna) was threatened at pistol point by the workers of the respondent with his consent, Shri Shiv Pratap Singh and others of Umri threatened not to vote and canvass in favour of the Congress candidate, Deorao Krishnarao Jadhav and threatening with dire consequences.

4. Process was issued to the lone respondent impleaded in the election petition. On May 28, 1971, an advocate put in appearance on his behalf. In the written statement presented on September 24, 1971 the respondent traversed the allegations of corrupt practices made in the petition. In answer to clause (iv) of paragraph 11 of the petition, the respondent stated :

The allegations of the petitioner that on or before February 22, 1971 Shri Mohan Prasad Ojha, a Congress worker of the village Umri (tahsil Guna) was threatened at pistol point by the workers of the respondent with his consent is denied. It is also denied that with the consent of the respondent, Shri Shiv Pratap Singh and others of Umri threatened him not to vote and canvass in favour of the Congress candidate Shri Devrao Krishnarao Jadhav and threatened him with dire consequences. This para is also lacking in material particulars as to who were the alleged workers, what was their names; their addresses, castes, etc. It cannot therefore, be enquired into. The allegation is incorrect, baseless and vague. It is also vague because particulars as to when, where and in whose presence the alleged consent of the respondent was given are not mentioned.

5. The main issues framed on October 1, 1971 were as under :

1. Has the respondent incurred or had authorised expenditure which was more than the prescribed limit laid down under the Representation of the People Act. 1951 or the Rules made thereunder, as detailed in para 10(1) and 10(II) of the petition ?

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2. (a) Did the worker of the respondent with his consent threaten the voters with injury, and criminally intimidated them in case they voted for D. K. Jadhav as detailed in paragraph 11 of the petition, and if so, what is its effect ?

6. Thereafter, the petitioner examined twelve witnesses on various dates, fixed in the case, from December 16, 1971 to July 24, 1972.

7. On August 3, 1972, an application (No. 58/72) was submitted by the respondent alleging that the election-petitioner has in paragraph 11(iv) of the petition alleged the commission of a corrupt practice within the meaning of Section 123(2) of the Act, by Shri Shiv Pratap Singh, one of the candidates, but has failed to join him as a respondent, and as such, his petition is liable to be dismissed under Section 86 on account of non-compliance with the mandate of Section 82(b). In this application, the respondent reproduced clause (iv) of para 11 of the petition as follows :

That on or before February 22, 1971, Shri Mohan Prasad Ojha a Congress worker of village Umri (tehsil Guna) was threatened at pistol point by the workers of the respondent with his consent, Shri Shiv Pratap Singh and others of Umri threatened him not to vote and canvass in favour of the Congress candidate, Deorao Krishnarao Jadhav and threatening him with dire consequences.

8. Notice of this application was given to the election-petitioner, who after taking several adjournments, ultimately filed a reply on August 28, 1972.

9. In his reply, the petitioner stated that paragraph 11(iv) as reproduced in the respondent's application was not a correct reproduction. It was further stated :

It is denied that there has been any allegation of corrupt practice against Shri Shiv Pratap Singh who was a candidate at the aforesaid election. The respondent also understood the same thing, that is why he did raise any objection for a long period of 11 months since the respondent filed his written statement.

* * * * *

However, though there is absolutely no doubt about the identity of the said Shri Shiv Pratap Singh, but the basic question giving rise to this application that an allegation of corrupt practice has been made against him in para 11(iv) of the petition is wholly incorrect and based on absolutely wrong interpretation of the statement of allegation made in the aforesaid paragraph.

10. The petitioner further stated that the objection as to non-joinder of necessary party not having been taken at the earliest, should be deemed to have been waived by the respondent.

11. In his rejoinder (I.A. 76/72, dated September 7, 1972), the respondent maintained that para 11(iv) had been correctly extracted by him in his application dated August 3, 1972, from the copy of the election-petition which was served upon him, certified to be true copy under the seal and signature of Shri R. K. Tankha, Advocate, the then Counsel for the petitioner. On September 5, 1972, at about 4.30 p.m. the Counsel for the respondent on inspecting the original election petition discovered to their amazement that the three words (now in bold type) had been erased and the erasures initialled. It was alleged that this tampering with the petition had been done to wriggle out of the fatal defect in the petition. The respondent prayed that the petitioner be recalled and allowed to be cross-examined on this point.

12. The learned trial Judge postponed consideration of these applications and of the objection as to non-joinder of Shri Shiv Pratap Singh till the conclusion of the trial. Thereafter the respondent examined his witnesses. He also examined his advocate Shri Baghel, who produced Ex. R-33, a copy of the copy of the petition, he had received from the office of the High Court. The respondent closed his evidence on July 9, 1972.

13. The learned trial Judge, heard these objections arising out of the non-joinder of Shri Shiv Pratap Singh, along with the final arguments in this case.

14. Shri Baghel, Counsel for the respondent, while appearing in the witness-stand was unable to say definitely whether Ex. R-33, was a true copy of the copy he had received from the High Court office. In view of this the learned Judge held that it had not been proved that these erasures in para 11(iv) under initials were made subsequently to the filing of the petition. He, therefore, considered clause (iv) of para 11 sans the words erased. There, as here, it was contended that the second part of clause (iv) of para 11 if properly construed would mean that

Shri Shiv Pratap Singh and others of Umri were threatened - and not that they threatened - not to vote and canvass in favour of the Congress candidate.

The learned judge repelled this contention with the observations that "in no circumstances of the case (it) is possible to read" para 11(iv) in the manner suggested by the petitioner. According to him the allegations in this paragraph constituted a charge under Section 123(2) of the Act against Shri Shiv Pratap Singh and his non-joinder as a respondent was fatal to the petition which was liable to be dismissed on that score alone under Section 86.

15. On merits he found issues Nos. 1 and 2 against the petitioner. In the result, he dismissed the election petition with costs. Hence this appeal by the petitioner.

16. We have heard arguments of the learned Counsel on both sides with regard to the non-joinder of Shri Shiv Pratap Singh.

17. It is common ground that Shri Shiv Pratap Singh was one of the candidates who had withdrawn his nomination papers for election from this constituency, after the same had been found in order by the Returning Officer. There was thus no doubt that he as a "candidate" for the purpose of the relevant provisions of the Act. If therefore the allegations made in clause (iv) of para 11 of the petition relate to him and amount to a charge of corrupt practice against him, his non-joinder as a respondent would be fatal, to the election-petition.

18. Mr. Dixit, the learned Counsel for the appellant, contends that this objection as to non-joinder was not taken in the written statement, that it was raised for the first time - about 14 months after the service of the notice of the election petition on the respondent - after the petitioner had examined all his witnesses in the case. It is submitted that this amounted to waiver. According to the learned Counsel, in view of the mandate of Order 8, Rule 2, Code of Civil Procedure, it was obligatory for the respondent to take all such pleas showing the petition to be non-maintainable, in his written statement. Since this was not done, the respondent should not have been allowed to raise this plea, namely, by an application when the case was in an advanced stage, and an amendment of the written statement was liable to be refused on the ground of laches.

19. On the other hand, Mr. Gupte, learned Counsel for the respondent, submits that it was not obligatory to take this objection in the written statement. It was a purely legal objection which for its determination did not require any facts to be pleaded and proved by the respondent. The fatal defect, it is submitted is patent on the face of the election petition. Mr. Gupte submits that Order 8, Rule 2, is not attracted because that provision, as its marginal heading shows, enjoins the pleading of new facts, only as distinguished from pure points of law. In the alternative, it is submitted that the application, dated August 3, 1972, whereby this objection was raised was in nature and substance additional pleading of the respondent which was accepted as such by the Court. The petitioner also submitted his reply thereto and he could not complain that he was taken by surprise. It is further urged that the provisions of Section 86, read with Section 82(b), are in the nature of a mandate to the court, which is bound to dismiss an election petition whenever it comes to its notice, whether on its own motion, or on the motion of the respondent, that there has been a non-compliance with the imperative of Section 82(b).

20. The material part of Section 82 reads thus :

Parties to the petition. - A petitioner shall join as respondent to his petition -

(a) * * * *##

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

21. Behind this provision is a fundamental principle of natural justice viz., that nobody should be condemned unheard. A charge of corrupt practice against a candidate, if established, entails serious penal consequences. It has the effect of debarring him from being a candidate at an election for a considerably long period. That is why Section 82(b) in clear, peremptory terms, obligates an

election-petitioner to join as respondent to his petition, a candidate against whom allegations of any corrupt practice are made in the petition. Disobedience of this mandate, inexorably attracts Section 86 which commands the High Court, in equally imperative language, to

dismiss an election petition which does not comply with the provisions of Section 82.

22. The respondent cannot by consent, express or tacit, waive these provisions or condone a non-compliance with the imperative of Section 82(b). Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the court of the statutory obligation cast on it by Section 86. As soon as the non-compliance with Section 82(b) comes or is brought to the notice of the court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of Section 86.

23. Considered in the light of the above enunciation, the respondent was not precluded from raising the objection as to non-joinder, merely because he had done so after the close of the petitioner's evidence, and not at the earliest opportunity.

24. Nor was the respondent obligated to raise this objection only by his written statement, and in no other mode. Rule 2 of Order 8 of the Code of Civil Procedure is a rule of practice and convenience and justice. This procedural rule is to subserve and not enslave the cause of justice. It lays down broad guidelines and not cast-iron traps for the defendant in the matter of drawing up his statement of defence. It says :

The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the plaint, as for instance fraud, limitation, release, payment, performances, or facts showing illegality.

25. The key-words are those that been underlined (herein in bold type). These words denote the broad test for determining whether a particular defence plea or fact is required to be incorporated in the written statement. If the plea or ground of defence 'raises issue of fact not arising out of the plaint', such plea or ground is likely to take the plaintiff by surprise, and is therefore required to be pleaded. If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint, itself, no question of prejudice or surprise to the plaintiff arises. Nothing in the rule compels the defendant to plead such a ground, not debars him from settling it up at a later stage of the case, particularly when it does not depend on evidence but raises a pure question of law turning on the construction of the plaint. Thus a plea of limitation that can be substantiated without any evidence and is apparent on the face of the plaint itself, may be allowed to be taken at any stage of the suit.

26. An objection on the ground of non-compliance with requirement of sections 82(b) is a plea of this category. It arises out of allegations made in the petition itself. Such a plea rises a pure question of law depending on a construction of the allegations in the petition, and does not require evidence for its determination. Such a plea therefore, can be raised at any time even without formal amendment of the written statement.

27. In the instant case, it was raised by an application, dated August 3, 1972, which was accepted by

the court as a supplementary pleading of the respondent, and the petitioner had also pleaded in reply to the same. There are several decisions wherein an objection as to non-joinder of a necessary party in an election petition was allowed to be raised by means of a simple application submitted long after the presentation of the written statement by the respondent.

28. In *Rao Abhe Singh v. Rao Nihal Singh* [(1968) 25 ELR 113 (Punj) : AIR 1964 Punj 209], a Division Bench (constituted by Dua and Grover, JJ.) allowed an objection as to non-joinder of a candidate, against whom a corrupt practice was alleged, to be raised by way of an application which was filed after practically the whole evidence in the case had been recorded.

29. Other instances wherein such an objection was allowed to be raised by a separate application without incorporating the same in the written statement by an amendment, are furnished by these cases : *Hari Gopal Dabe v. Smt. Vijaya Raje Scindia* [(1971) 33 ELR 119 (MP)]; *Jagan Nath v. Jaswant Singh* [AIR 1954 SC 210 : 1954 SCR 892]; *K. Kamaraja Nadar v. Kunju Thevar* [AIR 1958 SC 687 : 1959 SCR 583 : 14 ELR 270]; *Mallappa Basappa v. Basavaraj Ayyappa* [AIR 1958 SC 698 : 1959 SCR 611 : 14 ELR 296]; *S. B. Adityan v. Kandaswami* [AIR 1958 SC 857 : 1959 SCR 868 : 14 ELR 394]; *Mohan Singh v. Bhanwar Lal* [AIR 1964 SC 1366 : (1964) 5 SCR 12]; *Amin Lal v. Hunna Mal* [AIR 1965 SC 1243 : (1965) 1 SCR 393].

30. Having rejected the first contention of the appellant, we now pass on to the pivotal point in the case.

31. What should be the fair construction of the allegations in para 11(iv) of the petition ? Is it possible to read - as Shri Dixit wants us to read - this paragraph as containing a charge that Shri Shiv Pratap Singh and others of Umri were threatened by the workers of the respondent, not to canvass and vote for the Congress candidate ? Or, does it mean that Shri Mohan Prasad Ojha, an elector and a Congress worker was threatened by Shri Shiv Pratap Singh and others of Umri, not to canvass and vote for the Congress candidate, Shri Deorao Krishnarao Jadhav ?

32. Mr. Dixit submits that clause (iv) of para 11 falls in two parts, separated by a comma, and the allegations in each part are distinct from the other. The first part comprising the allegations,

That, on or before February 22, 1971, Shri Mohan Prasad Ojha, a Congress worker of village Umri (tehsil Guna) was threatened at pistol point by the workers,

according to Counsel, stands alone, and should not be read conjointly with the second part which speaks of Shri Shiv Pratap Singh and others of Umri. However, not very consistently with his argument, it is urged further that since the allegations in the first part are set out in passive voice, the contents of the second part should also be deemed to have been expressed in passive voice. If this methodology is adopted, the second part of para 11(iv) according to Mr. Dixit, would read like this :

Shri Shiv Pratap Singh and others of Umri (were) threatened not to vote and canvass in favour of the Congress candidate, Deorao Krishnarao Jadhav.....

33. We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation.

Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.

34. The construction of para 11(iv) suggested by Mr. Dixit is not possible without a radical change in its sense and tense, by unwarranted addition and excision of words. It would necessitate a material change in the tense by reading the verb "threatened" as "were threatened" so that what was clearly expressed by its author in active voice gets converted into a passive voice with consequent inversion and subversion of the original sense. Even the addition and attachment of the word "were" to the pre-existing verb "threatened" would not completely transform Shri Shiv Pratap Singh and others of Umri from "threateners" into the "threatened" unless the contraindicative phrase "and threatening with dire consequences" was also amputated.

35. In our opinion, the correct way of construing para 11(iv) is to take it as it stands, and read it not in parts but as a whole together with its preamble and the rest of the pleading. Thus read, the relevant allegation in clause (iv) of para 11 would fairly and clearly admit of only this construction :

That on or before February 22, 1971. Shri Mohan Prasad Ojha, a Congress worker and elector of village Umri (tehsil Guna) was threatened at pistol point with dire consequences by Shri Shiv Pratap Singh and others of Umri, the workers of the respondent with his consent, not to vote and canvass in favour of the Congress candidate, Deorao Krishnarao Jadhav.

36. In our opinion, this is the only reasonable construction that the language of para 11(iv) without undue stretching, straining and twisting, can bear. Indeed, from the relevant portions of the pleadings extracted earlier in this judgment, it is evident that both the parties, including the petitioner, had understood the allegations in para 11(iv) in the sense in which we have construed them. It was only after the presentation of the application, dated August 3, 1972, raising the objection, the petitioner or in an attempt - as the High Court rightly put it - "to wriggle out from the unfortunate position he was placed in not making Shiv Pratap Singh a party", has started claiming the antic interpretation quite different from the one flowing from the plain language and tenor of para 11(iv).

37. We have therefore no hesitation in repelling the second contention also, canvassed on behalf of the appellant.

38. The last contention of the learned Counsel for the appellant is that even if the second part of clause (iv) is construed as an allegation that Shri Shiv Pratap Singh and others of Umri threatened not to vote and canvass, then also, this allegation is so bereft of material facts and material particulars, that it does not constitute a complete charge of corrupt practice under Section 123(2). The material facts and material particulars, which, according to Counsel were, in view of the mandate of Section 83 required to be pleaded, but have not been pleaded are : the place where the threat was given, the kind and nature of the injury threatened, or injury, if any, actually caused, the particulars of the parentage, address of Shiv Pratap Singh and others, the fact that this Shiv Pratap Singh of Umri was the same who was one of the candidates at the election and that the person threatened was an elector, and how the threat constituted an interference with the free exercise of his electoral right. It is urged that in ascertaining whether or not the allegations in para 11(iv) constitute a complete cause of action relating to a corrupt practice, the court has to confine itself to this para, and cannot take into consideration even an admission of the petitioner appearing in evidence or in

any document extraneous to the election petition. Support for this contention has been sought from the decisions of this Court in Sheodhan Singh v. Mohan Lal Gautam [(1969) 3 SCR 417 : (1969) 1 SCC 408], Samant N. Balakrishna v. George Fernandez [(1969) 3 SCR 603 : (1969) 3 SCC 238] and Hardwari Lal v. Kanwal Singh [(1972) 2 SCR 742 : (1972) 1 SCC 214].

39. As against this, Mr. Gupte, has pointed out that all the material facts, as distinct from material particulars, necessary to constitute a complete charge of corrupt practice under Section 123(2) against Shri Shiv Pratap Singh, a candidate can be found in the petition if the same is read as a whole. In any case, the identity of this Shiv Pratap Singh as a candidate was admitted by the petitioner in the particulars supplied by him pursuant to an order of the court on August 8, 1972. Those particulars, according to the Counsel are to be treated as a part of the petitioner's pleading. It is further submitted that if there is any deficiency of particulars, as distinguishable from material facts, in para 11(iv), then also they could be supplied, even after the expiry of limitation for the petition, pursuant to an order of the Court, made at the instance of the respondent. The petitioner cannot, it is stressed, take advantage of his own default, in not setting forth full particulars of basic facts set out in the petition.

40. Section 83 lays down :

(1) An election petition -

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

(b) shall set forth full particular 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

(c) * * * *##

41. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause for action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of materials facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and

the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

43. "Particulars" on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a) 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

44. The distinction between 'material facts' and 'material particulars' was pointed out by this Court in several cases, three of which have been cited at the Bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A. N. Ray, J. (as he then was) said on this point in Hardwari Lal's case (supra) : [SCC p. 220 para 20]

It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by Counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action.

45. Bearing in mind the criteria for distinguishing material facts from material particulars, let us now see whether the allegations in para 11(iv) of the petition cover all the material facts constituting a complete charge of corrupt practice within the meaning of Section 123(2) against Shri Shiv Pratap Singh who was a candidate at the election.

46. The gist of the corrupt practice of "undue influence" as defined in sub-section (2) of Section 123 is

direct or indirect interference or attempt to interfere on the part of the candidate or his agent, (or of any other person with the consent of the candidate or his election agent) with the free exercise of any electoral right.

47. By way of illustration sub-clause (i) of clause (a) of the proviso lays down that if a person who threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of sub-section (2).

48. In a para 11(iv) the particular corrupt practice alleged is of the kind indicated in the aforesaid sub-clause (i) of the proviso. Reading para 11 as a whole. It is clear that it is pleaded that Shri Shiv Pratap Singh and others of Umri had administered a threat to Shri Mohan Prasad Ojha who was a Congress worker and an elector of Umri; that the threat was not to vote for the Congress candidate, Shri Jadhav, that the threat was of causing bodily injury to the said elector, that the threatener Shri Shiv Pratap Singh, was an election worker of the respondent and had administered the threat to the said elector, with the consent of the respondent. Reading para 11(iv) together with the contents of para 10 of the petition, the import is clear that this threatener was none else but "Shri Shiv Pratap Singh MLA, s/o Shri Brijendra Singh, r/o Umri House. Guna", who "during the election of the respondent acted as his agent".

49. It will thus be seen that all the "material facts" constituting a complete charge of corrupt practice under Section 123(2) against Shri Shiv Pratap Singh were stated in the petition. The approximate date of administering the threat - which was only a material particular as distinguished from a material fact - was also given. Only the place and the precise time of giving the threat were not stated. But these were, at best, only material particulars, and not "material facts". The occasion for furnishing such particulars would have arisen only if the respondent had asked for them. Similarly, further and better particulars of the address etc. of Shri Shiv Pratap Singh would fall within the category of particulars. By an application dated August 1, 1972, the respondent, obviously as a matter of abundant caution, asked for fuller particulars of Shiv Pratap Singh referred to in para 11(iv). The petitioner submitted his reply dated August 8, 1972, through his Counsel in which he furnished these particulars of the said Shri Shiv Pratap Singh :

Shiv Pratap Singh, s/o Brijendra Singh, aged about 35 years, occupation cultivation (at present M. L.A Guna) resident of Umri House, Guna, district Guna.

50. These particulars supplied by the election-petitioner were in the nature of his supplemental pleading. They could not be treated as something extraneous to his pleading. They could be legitimately looked into for construing paragraph 11(iv) of the petition. These particulars supplied by the petitioner were substantially the same as given in para 10 of the petition. These particulars supplied by the petitioner were substantially the same as given in para 10 of the petition. These particulars doubly confirmed the identity of Shiv Pratap Singh mentioned in para 11(iv) as the same person who was one of the candidates.

51. In sum, para 11(iv) of the petition contained allegations of a complete charge of corrupt practice against a candidate, Shri Shiv Pratap Singh and consequently in view of Section 82(b) it was obligatory for the petitioner to implead him, also, as a respondent. Failure to do so, would inexorably lead to the dismissal of his petition under Section 86.

52. Accordingly on this short ground, and for all the reasons aforesaid, we uphold the dismissal of the election petition and disallow this appeal with costs.

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