

Shiv Chand

Vs

Ujagar Singh and Another

Civil Appeal No. 2874 of 1977

(V. Krishna Iyer, D. A. Desai JJ)

31.08.1978

JUDGMENT

KRISHNA IYER, J. -

1. An election petition became an infant casualty because of an alleged non-joinder of a necessary party as visualised by Section 82(b) of the Representation of the People Act, 1951 (the Act, hereafter). That premature dismissal, by-passing investigation into the merits, has driven the petitioner-appellant to this Court where he has urged that the ends of law and justice have been stultified by the strangely technical view taken by the High Court in its dismissal order.
2. A few facts, and then, a brief discussion, the point being res integra so far as this Court is concerned. The appellant before us is the election-petitioner, having been a defeated candidate in the General Elections held in June, 1977. There were quite a few candidates, including one Shri Mal Singh, who appears to have retired from the contest for the seat although duly nominated as a candidate. The respondent was returned as the successful candidate and the disappointed petitioner challenged the election by filing a petition wherein, inter alia, he made allegations constituting a corrupt practice against the returned candidate and Shri Mal Singh. To such a pleading Section 82 is attracted. That provision states that a petitioner shall join as respondent to his petition any candidate against whom allegations of any corrupt practice are made in the petition. By this mandate, the petitioner was bound to implied as respondent Shri Mal Singh. But he omitted to do so initially. The respondent, in his written statement, raised a preliminary objection that the failure to join Shri Mal Singh as a respondent entailed dismissal of the election petition. The case was adjourned for arguments on the preliminary issue to September 15, 1977. In the meanwhile, on September 8, 1977, an interlocutory application was filed by the election-petitioner under Order 1, Rule 10(2), Order 6, Rule 17 and Section 151, Code of Civil Procedure, seeking to implead as respondent 2, the said Mal Singh. In the alternative, he prayed for deletion of the allegation of corrupt practice against Shri Mal Singh. On the same day, Shri Mal Singh filed an application under Section 86(4) of the Act praying that he be impleaded as respondent to the election petition. Thus, there was a motion for impleadment by the election-petitioner as well as by Shri Mal Singh and they were disposed of together by an order which is under appeal.
3. It is fairly clear that Shri Mal Singh was a necessary party since a corrupt practice was imputed to him. He made an application to be impleaded as respondent exercising the procedural right he had under Section 86(4) of the Act which reads thus :

86(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and

subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation. - For the purpose of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

4. Shri Mal Singh did apply within the stipulated period, and a plain reading of the provision just reproduced entitles him to be joined as a respondent. Any candidate shall be entitled to be joined as a respondent, on the clear wording of the section and since Shri Mal Singh is a candidate he is entitled to be joined as a respondent. When the text is plain, in the absence of compelling reasons, there is no justification for truncating its sense. If Shri Mal Singh is impleaded on his application then the election petition will have on the party array the candidate against whom allegations of corrupt practice have been made in the petition. That is to say, Section 82(b) will stand fulfilled. It is obvious that Section 82(b) requires the presence of every candidate against whom a corrupt practice has been alleged. What is imperative is the presence as a respondent of such a candidate, not how or at whose instance he has been joined as a respondent. The purpose is obvious and twofold. When injurious averments are made against a candidate natural justice necessitates his being given an opportunity to meet those charges, because the consequence of such averments being upheld may be disastrous for such candidate. Secondly, in the absence of the party against whom charges have been levelled the reality of the adversary system will be missed. Above all, the constituency is vitally concerned with the investigation into and proof or disproof of corrupt practices of candidates at elections. Thus, the public policy behind Section 82(b) is the compulsive presence of the candidate against whom corrupt practice has been imputed. It is of no consequence whether he has been joined at his own instance or by the election-petitioner. In the present case, the petitioner did move to bring on record Shri Mal Singh but that was rejected. The petitioner alternatively sought to delete the corrupt practice imputed to Shri Mal Singh. That too was refused, if we may say so, rightly. The short question is whether the court was right in rejecting the request of Shri Mal Singh to be ranked as a respondent when his application was otherwise in order.

5. We are satisfied that if he is impleaded as a respondent the election petition cannot be dismissed under Section 86(1) of the Act. That Provision states that the High Court shall dismiss an election petition which does not comply with the provisions of Section 82. The test is whether the election petition complies with Section 82, not whether the election-petitioner has failed to comply with Section 82. The substance of the matter must govern, because hyper-technicality, when the public policy of the statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat a vital judicial process, namely, investigation into the merits of the election petition.

6. The result of the discussion is that Shri Mal Singh was entitled to have been impleaded as respondent. The refusal by the court to do so is illegal and based on a misinterpretation. Had he been impleaded the dismissal of the election petition would have been illegal.

7. Let us examine the reasons given by the learned Judge for the course he has adopted. Counsel for the respondent, in supporting the reasoning of the High Court, has relied on a ruling in R. Satyanarayana v. Saidayya. (AIR 1969 AP 151) The argument which has appealed to both the courts is the same and we regard it as fallacious. We do not propose to examine the discretionary dismissal of the application by the election-petitioner under Order 1, Rule 10, et al, to implead Shri Mal Singh. We confine ourselves to Section 86(1) and Section 86(4) of the Act. According to the learned Judge, Section 86(4) has to be read down to cover only such candidates as are not required to be

impleaded as respondents under Section 82 of the Act. For one thing, the grammatical construction of "any candidate" does not admit of such a narrow and artificial meaning. The reason given by the court hardly impresses us. Indeed, we are not able to conceive easily of a case where a candidate who is neither the returned candidate nor one against whom corrupt practices are imputed would care to implead himself as respondent. He serves no purpose by getting so impleaded except the teasing and draining experience of being a litigant. The mere assertion by the trial Court that Section 86(1) would be rendered nugatory by a candidate like Mal Singh taking recourse to the provisions of sub-section (4) of Section 86 does not carry conviction nor are we able to glean into the intention of the legislature as the learned Judge states. Shri Mal Singh, having been a candidate, is one entitled to come within Section 86(4). On his application the court shall implead him. In this view, the question of substantial compliance and the mandatory or directory nature of the prescription in Section 82(b) do not arise.

8. Shri Mehta relied upon Mohan Raj (Mohan Raj v. Surendra Kumar Taparia, (1969) 1 SCR 630 : AIR 1969 SC 677) heavily. The question raised there was whether the provisions of the Code of Civil Procedure, especially Order 6, Rule 17 and Order 1, Rule 10 could be used in such a manner as to defeat the procedural policy and statutory imperative of Section 82 of the Act. Obviously that cannot be done because the provisions of the Representation of the People Act where they lay down specific prescriptions must prevail and cannot be frustrated by importing the Code of Civil Procedure. Here, however, Section 86(4) of the Act itself entitles Mal Singh to be joined as respondent. That right cannot be defeated and once he comes on record as party the petition is in order and cannot be dismissed for non-joinder. Procedural tyranny compounded by lexically unwarranted technicality cannot be tolerated in a court. Moreover, once Mal Singh comes on the party array by virtue of Section 86(4) the fatal infirmity, if any, must be judged with reference to the petition as amended by the addition of the new respondent. It is the amended petition consequent on the addition under Section 86(4) of Mal Singh that has to be tested in the light of Section 86(1) read with Section 82(b) of the Act.

9. Several decisions have been cited before us by both the sides to buttress up their respective stances but we find only marginal relevance for those decisions and do not burden the judgment with the citations.

10. In this view, issue 2 was wrongly decided by the High Court. We hold that Shri Mal Singh should have been impleaded as a respondent. Since he has applied in this Court also for the same relief we direct him to be joined as a respondent to the election petition. We are not impressed with the submission of Shri Mehta for the respondent that there are suspicious features suggestive of collusion between the election-petitioner and Shri Mal Singh and that for that reason the petition to implead filed by Shri Mal Singh should be dismissed. It is quite conceivable that Shri Mal Singh against whom serious allegations have been made in the election petition would have sought to be impleaded so that he could clear the aspersions made against him, to the satisfaction of the constituency through an adjudication in the court. Even assuming that there was an element of collusion that would not deprive him of his entitlement under Section 86(4) of the Act. Perhaps, the respondent (successful candidate) may well rely on these and other features when enquiry is made into the merits of the matter and seek to persuade the court that when petitioner himself was willing to abandon the allegations and Shri Mal Singh appeared on the scene under coincidentally dubious circumstances, the charge was liable to be disbelieved. It is not for us in this Court to express any opinion, one way or the other, on the matter except to point out that even assuming Shri Mehta's assumption of mala fides of collusion it has no bearing on the right of Shri Mal Singh to be joined as a respondent.

11. The upshot of the above discussion is that the appeal has to be allowed, that Shri Mal Singh has to be impleaded as respondent 2, that the finding on Issue 2 should be set aside and the election petition remanded to the trial Court to be restored to file for expeditious disposal on merits. We allow the appeal but, in the circumstances, direct the parties to bear their costs throughout.

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