

# SUPREME COURT OF INDIA

Gadnis Bhawani Shankar

Versus

Faleiro Eduardo Martinho

( Dr. A.S. Anand, CJI with R.C. Lahoti and K.G. Balakrishnan, JJ.)

Civil Appeal No. 3224 of 2000.

01.08.2000

After, respondent was declared elected. The appellant filed an election petition, challenging the election of respondent, principally on the ground of commission of corrupt practices. In the election petition, respondent alone was arrayed as a party-respondent. After service of notice, respondent raised a preliminary objection by filing an application under Section 86 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act'). It was averred that election petition was liable to be dismissed for non-compliance with the requirements of Section 82 of the Act. The preliminary objection was upheld and election petition was dismissed. Hence, this appeal.

3. Section 82(b) of the Representation of the People Act, 1951 provides :

"82 - A petitioner shall join as respondents to his petition -

(a) .....

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

4. Section, 86, which deals with trial of election petitions, provides in sub-clause (1) as follows :

"86(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

*Explanation* - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

5. In the instant case, Luis Alex Cardozo withdrew his nomination on 17th July, 1999. Election took place on 26th July, 1999. In the election petition, apart from various other allegations against the respondent, two allegations contained in paragraphs 30-D(ii) and 30-G alone are relevant for purposes of our discussion. Those paragraphs read thus :

"30-D - The corrupt practice committed by the respondent and his agents is as follows :

(i) ... ..

(ii) - Offering and promising of cabinet berths to some of the 8 dissident MLAs of Congress party and appointment on other important public offices to the remaining of them as also to one independent MLA who are namely Shri Subash Shirodkar, Shri Somnath Zuwarkar, Shri Sanjay Bandekar, Smt. Victoria Fernandes, Shri Luis Alex Cardozo, Shri Jose Philip D'Souza, Shri Mauvino Godinho, Shri Babu Azgaonkar ad Shri Isidoro Luis Fernandes (Independent).

G - The said 8 dissident Congress MLAs and one independent MLA in agreement to receive the aside gratification voted for the respondent at the said election."

6. The allegations, in a nutshell, contained in these two paragraphs are concerned, are to the effect that after withdrawal of his candidature, Cardozo agreed to receive gratification along with some other MLAs as a motive or reward to vote for respondent. Acceptance of or agreement to receive gratification as a motive or reward to vote at the election is a corrupt practice dealt with in Section 123-(1)(B) of the Act which provides :

"123 - *Corrupt practices* :

The following shall be deemed to be corrupt practices for the purposes of this Act :-

(1) "Bribery", that is to say -

(A) ... ..

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward -

(a) by a person for standing or not standing, as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

*Explanation.* - For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78."

7. A plain reading of the above provision shows that the receipt of, or *agreement* to receive, *any gratification*, as a motive or reward by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature would amount to commission of a corrupt practice. The averments noticed in paragraphs 30-D(ii) and 30-G of the

election petition (supra) contain allegations against Cardozo that he agreed to receive gratification as a motive or reward for voting in favour of the respondent. These averments would amount to allegations of commission of corrupt practice by Cardozo within the meaning of Section 123(1)(B) of the Act.

8. The argument of Mr. Krishnamani, learned senior counsel appearing for the appellant, however, is that since Cardozo had withdrawn from the contest, he could not be treated as a 'candidate', who was necessarily required to be impleaded as a party-respondent under Section 82(b) of the Act and if the corrupt practice was committed by him as a voter only, he was not required to be impleaded as a party respondent in the election petition. This argument does not appeal to us. Section 79(b) of the Act defines a 'candidate' to mean a person who has been or claims to have been duly nominated as a candidate at any election. There is no dispute that Cardozo had been duly nominated as a candidate at the election in question. A similar argument as raised by Mr. Krishnamani came up for consideration in *Har Swarup v. Brij Bhushan Saran and others, 1967(1) SCR 342*.

9. Wanchoo, J. speaking for a three-Judge Bench opined :-

"But the argument is that as the alleged corrupt practice was committed after the date of his withdrawal he would not be a candidate within the meaning of S. 82(b). We are of opinion that if the effect of withdrawal is said to be that a person nominated can no longer be considered to be a candidate only after his withdrawal, the date of withdrawal cannot be a dividing line as to the time upto which he can be treated as a candidate and the time after which he cannot be treated as a candidate. *If purity of elections has to be maintained a person who is a candidate as defined in S. 79(b) the Act will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under S. 82(b) of the Act.*"

(Emphasis ours)

10. In *Ram Pratap Chandel v. Chaudhary Lajja Ram and others, 1998(8) SCC 564*, the requirements of Section 82 of the Representation of the People Act were dealt with and the Bench held/opined that a candidate against whom a charge of corrupt practice had been made in the election petition, was required to be joined as a party to the election petition, irrespective of the fact whether he had withdrawn his candidature and not contested the election as such and had committed the corrupt practice after his withdrawal.

11. The Bench in Ram Pratap Chandel's case considered the judgment in *Mohan Raj v. Surendra Kumar Taparia & others, 1969(1) SCR 630*, which has been pressed into aid by Mr. Krishnamani before us distinguished it in the following words :-

We are in complete agreement with the exposition of law, as made above.

12. In our opinion, the allegations which have been made in the election petition are allegations of corrupt practice against Cardozo besides some others. Since Cardozo was a nominated candidate, it was necessary to implead him as a party-respondent

under Section 82(b) of the Act, irrespective of the fact that before the actual date of election, he had withdrawn his candidature and allegedly committed the corrupt practice after his withdrawal from the election. Thus, the answer to the question posed in the earlier part of the judgment is in the affirmative.

13. The learned Single Judge of the High Court committed no error in dismissing the election petition for non-compliance with the provisions of Section 82(b) of the Act. The appeal has no merits. It fails and is dismissed. Parties to bear their own costs.

Appeal dismissed.