ALLAHABAD HIGH COURT

Chaturbhuj Chunnilal

Vs.

Election Tribunal, Kanpur

Civil Miscs. Writ Nos. 3216 and 3140 of 1957

(V. Bhargava and M.L. Chaturvedi, JJ.)

26.03.1958

JUDGMENT

V. Bhargava, J.

1. These two petitions under Article 226 of the Constitution raise the same identical important question of interpretation of the Representation of the People Act, 1951, as amended up-to-date (hereinafter referred to as the Act) and consequently they were heard together and are being decided by one single judgment.

2. The petitioners in both the petitions are the persons who presented election petitions to the Election Commission under Section 81 of the Act. In both cases, the petitioners were unsuccessful candidates at the last election for the U. P. Legislative Assembly and they presented election petitions impleading as respondents in those petitions the successful candidates. In each of the two constituencies, there was one other candidate who had withdrawn his candidature under Section 37 of the Act by a notice in writing to the Returning Officer. In the election petitions there were allegations of corrupt practices having been committed by the individuals who had withdrawn their candidature, but they were not impleaded as respondents in the election petitions. The election petitions were referred by the Election Commission to Election Tribunals for trial under Section 86 of the Act without dismissing them under Section 85 of the Act. In both petitions, at certain stages, objections were taken before the Election Tribunals that the election petitions should be dismissed under Section 90 (3) of the Act on the ground that a candidate against whom allegations of corrupt practice had been made in the petitions had not been impleaded as a party to the election petitions so that there was non-compliance with the provisions of Section 82 (b) of the Act. These objections were allowed and the petitions were dismissed. In the election petition out of which Miscellaneous Writ Petition No. 3140 of 1957 arises, an application was also made for amendment of the particulars by striking off the name of Dalip Singh, the person against whom allegations of corrupt practice had been made and who

had not been impleaded as a party though he was a candidate who had withdrawn his candidature under Section 37 of the Act. This application was dismissed before the dismissal of the petition. The present petitions under Article 226 of the Constitution have been presented by the petitioners in the two election petitions challenging the correctness of the decisions of the Election Tribunals.

3. The facts indicate that the main dispute before the Election Tribunals in both the cases was whether there had been non-compliance with the requirements of Section 82 (b) of the Act and whether as a result of that non-compliance the petitions have been rightly dismissed under Section 90 (3) of the Act. Section 82 of the Act is as follows:

> "A petitioner shall join as respondents to his petition-
> (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
> (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

It is to be noticed that the expression used in Clause (b) of Section 82 of the Act is "any other candidate" without any qualifying words except the expression "against whom allegations of any corrupt practice are made in the petition." In both the cases, allegations of corrupt practice were made against the candidates who had withdrawn their candidature so that the qualification laid down in Section 82 (b) of the Act did exist. The words "any other candidate" without any other qualifying words are on the face of it wide enough to cover every person who has been a candidate at any time. The plain language of this section consequently, if read without reference to other provisions of the Act, leads to the inference that any person who has been a candidate and against whom there are allegations of corrupt practice in the election petition must be impleded as a party to that petition.

4. The main controversy has, however, arisen because of the interpretation put upon the word "candidate" in this provision of law. It was urged on behalf of the petitioners in the present petitions that the word "candidate" should be given a limited meaning and should be held to refer only to that person who remains a candidate even up to the time of the actual poll, in a case where the election is decided by the poll. The word "candidate" has no doubt been used in common parlance in various meanings so much so that, even after an election is concluded, a person who had been a candidate at the election is often referred to as a candidate. On behalf of the petitioners reference was also made to the interpretation of the word "candidate" placed in *Morris v. Sir Francis Burdett*[1], where the defendant Sir Francis Burdett had been returned to Parliament without having made his appearance on the hustings or interfering in any way himself or by his agents in the election or having held himself out or authorised any one else to hold him

out as a candidate. So far as the interpretation of Section 82 (b) of the Act is concerned, however, the meaning attached to the word "candidate" in common parlance and the meaning assigned to it in the case cited above are irrelevant as the word "candidate" is defined in Section 79 (b) of the Act itself. The definition given in Section 79 (b) of the Act governs the interpretation of the word "candidate" as used in Parts VI, VII and VIII of the Act and Section 82 (b) is in Part VI. Consequently the word "candidate" in Section 82 (b) should be interpreted with reference to this

[1](1813) 105 ER 361

definition which is as follows:

> " "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." The decision of the present writ petitions therefore turns on the question whether a candidate who has withdrawn his candidature under Section 37 of the Act is included within the word "candidate" as defined in Section 79 (b) of the Act reproduced above. The arguments in these petitions have in these circumstances centred on the interpretation of this definition of the word "candidate".

It has also to be kept in view that even in Parts VI, VII and VIII this definition of the word "candidate" applies unless the context otherwise requires, so that another aspect that has to be seen is whether the context, in which the word "candidate" has been used in Section 82 (b) of the Act, requires any interpretation different from the meaning given to the word "candidate" in the definition.

5. Before we deal with the interpretation of the definition of "candidate" in Section 79 (b) of the Act, we may also take notice of the provisions of Clause (a) of Section 82 of the Act reference to which is necessary for interpreting Clause (b) of that section. The use of the word "other" in Clause (b) indicates that the persons who are necessary parties under this clause are those who are not already parties to the election petition under earlier clause (a). In Clause (a) election petitions have been divided into two classes. One class of petitions is that in which the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected. The second class of election petitions is that in which no such further declaration is claimed so that the only declaration claimed is that the election of all or any of the returned candidates is void. In cases of the first class, under Clause (a) all the contesting candidates other than the petitioner have to be joined as respondents to the election petition whereas in cases of the second class all the returned candidates have to be joined as respondents to the election petition. The expression "any other candidate" in Clause (b) of Section 82 would in these circumstances cover, in the case of election petitions of the first class, candidates other than the contesting candidates who in addition are candidates against whom allegations of corrupt practice are made in the petition. In the second class of cases the expression "any other candidate" would cover

candidates besides the returned candidates, provided that allegations of any corrupt practice are made against them in the petition. Reference to Clause (a) thus shows that the expression "any other candidate" would cover in the first class of election petitions all candidates besides the contesting candidates and in second class of cases all others besides the returned candidates. Reference to Clause (a) does not thus narrow down the scope of the words "any other candidate" so as to exclude candidates who may have withdrawn their candidature or who may otherwise have gone out of the contest. Reading Section 82 by itself, therefore, the expression "any other candidate" would appear to include all kinds of candidates except contesting candidates in the first class of cases and except returned candidates in the second class of cases, if allegations of any corrupt practice are made against them in the election petition.

6. The definition of the word "candidate" in Section 79 (b) of the Act also appears to us to be wide enough to cover all persons who enter the election contest by seeking nomination and who are either validly nominated or, if their nominations are rejected, claim to have been duly nominated. A limitation on this meaning was sought to be placed on behalf of the petitioners because of the expression "at any election" used in this definition. It was urged that the use of this expression "at any election" would indicate that a person would be a candidate for the purposes of Parts VI, VII and VIII only if he remained a candidate right up to the time of poll. In support of this argument reliance was placed by learned counsel for the petitioners on a decision of the Bombay High Court in *Sitaram Hirachand v. Yograjsingh*[2], and on a decision of this Court in *Sheo Kumar v. V. G. Oak*[3], Those were both cases in which the question of interpretation of the expression "candidates who were duly nominated at the election", as used in Section 82 of the Representation of the People Act, 1951 before its amendment by the amending Act, 1956, came up for interpretation. This Section 82 as used in the unamended Act can no longer be applied to the provisions of the present Act. Under the unamended Act Section 82 was as follows:

> "A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

Firstly, the language used in Section 82 at that time would indicate that the intention of joining candidates as respondents was merely to give them an opportunity to contest the election petition and it was in the light of this purpose that the Courts interpreted the expression "the candidates who were duly nominated at the election."
The Courts accepted the contention that candidates, who had withdrawn from the contest by withdrawing their candidature, could not be more interested in contesting an election petition than any other voter, so that it was not necessary to place a wide interpretation on the expression used in Section 82 at that time. The present language of Section 82 shows that persons who are to be impleaded as parties under Clause (b) of that section are not required to be impleaded as respondents with the sole purpose of contesting the prayer in the election petition of declaration of the election of all or any of the returned candidates as void. For that purpose, the persons who are to be impleaded as respondents are given in Clause (a) of Section 82 of the Act, in which the

election petitions have also been divided into two different classes as mentioned above. In one case the persons who are considered necessary respondents for the purpose of contesting the prayer in the election petitions, are all the contesting candidates other than the petitioner and in the other class of election petitions, they are the returned candidates. Persons who are impleaded under Clause (b) of Section 82 of the Act are only to be impleaded in case there are allegations of any corrupt practice against them in the petition. They are therefore not to be impleaded because they are necessary parties in an election petition in which a declaration that the election of all or any of the returned candidates is void is being claimed. They are to

[2] AIR 1953 Bom 293

[3] AIR 1953 All 633

be impleaded as parties because there are allegations of corrupt practice against them in the election petition. Clearly, therefore, Clause (b) of Section 82 of the Act introduces the requirement of certain persons being impleaded as respondents in the petition with a purpose which is entirely different and distinct from the purpose for which persons are to be impleaded as respondents under Clause (a) of Section 82 of the Act or the purpose for which persons were to be impleaded as respondents in an election petition under Section 82 of the unamended Act. Consequently any interpretation which was placed on the provisions of Section 82 of the unamended Act cannot serve any useful purpose when interpreting Clause (b) of Section 82 of the Act.

7. Reliance was, however, placed on certain observations of this Court in the case of AIR 1953 Allahabad 633, cited above where reference was made to the definition of the word "candidate" as given in Section 79 (b) of the unamended Act which was identical in language with that in the present Section 79 (b) of the Act. In the definition also the expression "at any election" has been used. After quoting the definition given in Section 79 (b) of the unamended Act, this Court proceeded to hold:

> "Clearly a wide definition had to be given to the word "candidate" as the object appears to have been to prevent corrupt or improper practices. The words "at any election" in Section 79, would in cases in which an actual election takes place, have reference to the exact time when the polling takes place. It is vital to note that the definitions given in Section 79 are subject to the context otherwise requiring." The Court also proceeded to consider the scope of the expression "duly nominated candidates" as used in Section 79 (b) of the unamended Act after referring to various provisions of that Act and held:
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> "It is clear from the scheme outlined above that it is only from among the list of duly nominated candidates who have not withdrawn their candidature and taken back their deposit that the list of valid nominations can be drawn up. It will also be seen that for the purpose of the election the candidate who allows himself to be nominated with due formalities, who survives the scrutiny of his nomination paper but withdraws his nomination before or on the date fixed for the withdrawal of the deposit ceases to be any kind of candidate at the election."

It appears to us that, when interpreting the expression "duly nominated as a candidate at any election" as used in the definition given in Section 79 (b) of the unamended Act, the Court had kept in view the other provisions of the then Act and consequently we consider that whatever comments were made for the purpose of arriving at the interpretation must be read as having been made in the light of all those provisions of that Act. After amendments by the amending Act of 1956, a number of other provisions of the Act have been changed and consequently comments made on the basis of those provisions, which have since been altered, cannot be held to be applicable to the amended Act for the purpose of interpreting its provisions. In the unamended Act, there was no provision at all for drawing up a list of validly nominated candidates at any stage prior to withdrawal of candidature from amongst those candidates whose nomination papers were not rejected and were held to be valid. Under that Act, after the nominations were filed before the Returning Officer the Returning Officer had to entertain objections against the nominations and decide them and then record on the nomination papers themselves whether those nominations were accepted or rejected. Thereafter, the candidates had to exercise their right of withdrawing their candidature if they desired to do so. It was after the withdrawals had been made and a notice of the withdrawals had been affixed that the Returning Officer for the first time prepared and published a list of valid nominations. The effect of course was that anyone whose name occurred in this list of valid nominations could not subsequently withdraw and there was further no provision permitting retirement from the contest subsequent to that stage, so that everyone whose name appeared in the list of valid nominations remained a candidate even at the time of the poll. Under the present Act, the scheme is different. Under Section 36 of the Act, the nominations are to be scrutinized and objections decided whereafter the Returning Officer had to proceed to prepare a list of validly nominated candidates, who are candidates whose nominations have been found valid, and this list is affixed to the notice-board. It is subsequent to the affixation of this list of validly nominated candidates that those, whose names appear in the list, can exercise their option of withdrawing their candidature, and, when the candidature has been withdrawn, the Returning Officer has to prepare and publish a fresh list which is described as a list of contesting candidates and in which are to be shown the names of candidates who were included in the list of validly nominated candidates and who had not withdrawn their candidature within the prescribed period. The expression "contesting candidates" has been introduced, for the first time by the amending Act of 1956. Further, under Section 55A of the Act introduced by the amending Act of 1956, provision has been made for a contesting candidate retiring from the contest by a notice in the prescribed form delivered to the Returning Officer. There was no such provision for retirement in the unamended Act so that under that Act any candidate whose name appeared in the list of valid nominations had to continue as a candidate up to the time of the actual poll; whereas under the present Act, even after a candidate's name has been published in the list of validly nominated candidates, he can cease to be a candidate at the poll either by withdrawing his candidature or by giving a notice of retirement from the contest. When these marked changes have been introduced in the Act, it seems to us that the interpretation which was put even on the definition of the word "candidate" in Section 79 (b) as it occurred in the unamended Act cannot be applied to the definition of the word

"candidate" in the present Act, even though the language in the definition has remained unaltered.

8. It is to be noticed that, in the definition of the word "candidate" in Section 79 (b) of the Act two sets of persons have been included. One set of persons consists of everyone who has been duly nominated as a candidate at any election and the other set includes every person who claims to have been duly nominated as a candidate at any election. In the case of persons who have been duly nominated as candidates at any election, there can be a question of withdrawal and retirement and the further question whether they had or had not remained candidates at the actual poll for the purpose of contesting the election. In the case of the other set of persons who only claim to have been duly nominated as candidates at any election, there will be no such question. No occasion can arise for their withdrawing their candidature or retiring from the contest because they cease to be in the contest, when their names are not shown in the list of validly nominated candidates. They cannot, further, under any circumstance be candidates at the time of the actual poll. The expression "at any election" in the definition qualifies persons who fall under either of the two sets. The position explained above makes it clear that at least persons covered by the definition of the word "candidate" and falling within one set of such persons can never be candidates at the poll even though an actual poll may be held for the purpose of deciding the contest. It is only persons in the other set, viz., those who have been duly nominated as candidates at the election, who can continue to be and appear as candidates at the actual poll. Since the expression "at any election" governs both classes of cases, this expression cannot in these circumstances be held to refer to the actual poll even in cases where an actual poll is held. If such an interpretation were to be accepted, it would mean that this expression "at any election" would have one meaning with respect to one set of persons and an entirely different meaning with respect to the other set of persons. The contention that this expression "at any election" with reference to persons who have been duly nominated as candidates would signify candidates who continue as such up to the actual poll would be inconsistent with the interpretation of this very expression with reference to the other set of persons who claim to have been duly nominated as candidates at the poll. In the present Act, therefore, the expression "at any election" used in the definition of the word "candidate" in Section 79 (b) cannot be interpreted in the manner in which it was open to interpretation under the unamended Act and consequently the interpretation which was placed by this Court in the case cited above cannot be applied to the present Act.

9. Learned counsel for the petitioners also drew our attention to the definition of "electoral right" given in Clause (d) of Section 79 of the Act and sought to infer from it that the definition of the word "candidate" in Clause (b) had been narrowed down so as to exclude persons who had withdrawn from being candidates. The definition in Clause (d) of Section 79 is as follows:

> " "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election."

The argument of learned counsel for the petitioners was that, under this definition, a person was given an electoral right to withdraw from being a candidate and if the meaning assigned to the word "candidate" in Clause (b) is applied to the word "candidate" as used in this Clause (d), the necessary inference must be that a person who withdraws from being a candidate cannot be held to be a candidate within the definition in Clause (b) and must be excluded from it. His argument, if accepted, would mean that the definition of the word "candidate" in Clause (b) should be narrowed down by taking into account the consequences of the definition of "electoral right" in Clause (d). We do not consider that it would be the correct way of proceeding to interpret Clauses (b) and (d).The word "candidate" though defined in Clause (b) applies to the other clauses as well as to the other provisions of Part VI and to Parts VII and VIII only if the context does not otherwise require.

It seems to us that the word "candidate" as used in Clause (d) in the definition of "electoral right" must as a result of the context, be interpreted to have been used in a sense different from that given to it in the definition in Clause (b). The proper course would be not to interpret the definition of "candidate" with reference to the definition of "electoral right" but to interpret the word "candidate" used in the definition of "electoral right" as connoting a meaning different from that given in the definition because of the context. When putting forward this argument, learned counsel attempted to substitute a part of the definition for the word "candidate" in the definition of "electoral right" and to read it as follows:

> " "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, 'a person who has been duly nominated as a candidate at any election' or to vote or refrain from voting at an election."

On this substitution it was urged that an "electoral right" included the right to withdraw from being a person who has been duly nominated as a candidate at any election and this right having been exercised by withdrawal of candidature under Section 37 of the Act, that person would cease to be "a person who has been duly nominated as a candidate "at any election". The fallacy in this argument becomes apparent if, instead of substituting merely one part of the definition, an attempt is made to substitute both parts of the definition of the word "candidate" in the definition of "electoral right". The second part of the definition of "candidate" refers to a person who claims to have been duly nominated as a candidate at any election and if this part of the definition is substituted in the definition of "electoral right" the definition of that expression would be as follows:

> " "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, 'a person who claims to have been duly nominated as a candidate at any election', or to vote or refrain from voting at any election."

On the face of it, this definition becomes meaningless. A person who merely claims to have been duly nominated as a candidate at any election can have no occasion to withdraw his candidature

and no question can arise of his withdrawing from being a candidate. In the circumstances, the proper method of interpretation is that the word "candidate" as used in the definition of "electoral right" must be lead in a more limited sense and not as equivalent to the word "candidate" as defined in Clause (b) of Section 79 of the Act. A reference to the definition of "electoral right" in Clause (d) of Section 79 of the Act does not therefore lend any assistance to the interpretation of the definition of the word "candidate" given in Clause (b) of Section 79 of the Act. So far as the definition is concerned, the word "candidate" includes "every person who has been duly nominated as a candidate at any election" and this expression is wide enough to include any candidate who may have withdrawn his candidature under Section 37 of the Act or who may have retired from the contest under Section 55A of the Act, even though the result of the election may be decided by an actual poll.

10. Learned counsel for the petitioners also urged that the use of the present participle "has been duly nominated" in the definition of the word "candidate" should lead to the interpretation that it covers only those persons who continue to be candidates right up to the time when the election is actually decided by declaration of the result; and', in case any person ceases to be a candidate at that time by withdrawal or retirement, it should be held that he is not a person who has been duly nominated as a candidate at the election. The effect of using the present participle 'has been" was considered by a Bench of this Court in *Mubarak Mazdoor v. K. K. Banerji*[4], where it was held, when interpreting the second proviso to sub-section (3) of Section 86 of the Act, as being equivalent to "is" or "at one time was". That case is, however, sought to be distinguished by learned counsel on the ground that, in that case, the expression "has been" was interpreted where it was followed by a noun and was not followed by a participle. The expression that was interpreted in that case was "a person who has been a Judge of a High Court". The expression that has to be interpreted in the present case is "a person who has been duly nominated as a candidate". No doubt this distinction drawn by learned counsel has to be considered but it appears to us that in spite of this distinction, there is no reason to hold that by the definition of the word "candidate" only those persons are meant who continued to be candidates up to the time of the poll. As urged by learned Advocate General on behalf of the respondent in one of these writ petitions, it seems that, when the word "candidate" was defined in Section 79 (b) of the Act, there was no question of taking into account any time element for determining as to who was candidate for purposes of Parts VI, VII and VIII. Parts VI, VII and VIII deal with election petitions, corrupt practices and disqualifications. All the situations envisaged in these three Parts arise after the election is over, the result has been declared and an election petition is to be or has been filed. Since there are no further steps to be taken in the election itself at this stage, no one would at this time be a candidate, who has been duly nominated, at the election. Everyone would be a person who at some earlier period of time had been duly nominated as a candidate at the election. The definition of the word "candidate" given in Section 79 (b) of the Act is thus for the purpose of being applied at a time when no one continues to be a person duly nominated as a candidate at an election, so that the expression "has been duly nominated as a candidate at an election" can refer and must refer to a person who had been duly nominated as a candidate earlier before the result

of the election was declared. Under these circumstances, there is no reason at all to make any distinction between persons who were duly nominated candidates at some earlier stage of the election but not at some later stage. It seems to us that the expression "a person who has been duly nominated as a candidate at any election" is meant to connote persons whose names appear in the list of validly nominated candidates under Section 36 (8) of the Act.' They may withdraw their candidature under Section 37 so as not to be contesting candidates or they may retire from the contest under Section 55A of the Act and cease to be candidates at the poll. They must all be described as persons "who have been duly nominated candidates at the election", when this description has to be applied after the result of the election has been declared. The language used in the definition and the purpose for which the definition has been given thus lead to the inference that the word "candidate" was intended to cover every person who has at any time been duly nominated as candidate at any election.

11. There is then the question how far the view we have expressed above is borne out by the purpose which is sought to be served by this provision contained in Clause (b)

[4]1958 All LT 5: AIR 1958 All 323

of Section 82 of the Act. We have already indicated earlier our inference that a person who is impleaded under Clause (b) of Section 82 of the Act is not made a party to an election petition for the purpose of enabling him to contest the main relief claimed in the election petition, viz., a declaration of a returned candidate as void, and in some cases the further declaration that the petitioner or any other candidate has been duly elected. It cannot be accepted that a candidate against whom there are allegations of corrupt practice, in the election petition is in any way more necessary party than a candidate against whom there are no such allegations of corrupt practice for the purpose of contesting or of having an opportunity of being heard in respect of the relief or reliefs mentioned above. The persons who were considered necessary parties to an election petition for the purpose of being heard in respect of the main relief or reliefs have to be impleaded as parties under Clause (a) of Section 82 of the Act. In a case where the declaration is confined to the invalidity of the election of a returned candidate the Legislature laid down that all the returned candidates should be impleaded as parties, whereas in a case where a further declaration is sought that the petitioner himself or any other candidate has been duly elected the necessary parties are all the contesting candidates. The purpose of impleading persons as parties under Clause (b) of Section 82 of the Act has to be inferred from the qualifying expression "against whom allegations of corrupt practice are made in the petition." It seems that the object of the impleading those candidates against whom allegations of corrupt practice are made in the petition can be twofold. One object can be that the Legislature considered it desirable that such candidate should have a right of hearing and of participating in the proceedings before the election tribunal at all the stages. The other object can be that the Legislature attached special importance to the conduct of candidates as compared with mere voters and consequently made a special provision for their being, impleaded as parties to the petition at the initial stage.

An election tribunal after trying an election petition has, of course, to decide the question whether the election of all or any of the returned candidates should or should not be declared to

be void and the further question whether the petitioner of any other contesting candidate should be declared duly elected. But, in addition, the tribunal has to discharge another function of recording a finding whether any corrupt practice has or had not been proved to have been committed and to name the persons who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. Importance is attached to this finding of the tribunal by imposing penalties against persons so named by the tribunal under Sections 140 and 141 of the Act. Section 99 of the Act, however, contains a provision that a person who is not a party to the petition shall not be named by the tribunal in its order unless he has been given notice to appear before the tribunal and to show cause why he should not be so named and if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

This provision is applicable to every person whether he be a candidate or merely a voter. In spite of this provision contained in Section 99 of the Act, the Legislature proceeded to make the further provision in Section 82 (b) of the Act laying down that any candidate against whom allegations of corrupt practice are made in the petition must necessarily be impleaded as a party to the petition. It seems to us that this special provision in Section 82 (b) of the Act, in spite of the existence of the provisions of Section 99 mentioned above, has been made because the Legislature attached special importance to commission of corrupt practice by candidates as distinguished from voters. In the case of a candidate against whom there are allegations of corrupt practice in the petition, the Legislature did not leave it to the option of the Tribunal to give him a notice under Section 99 of the Act but laid down a mandatory provision requiring that such a person must be impleaded as a party to the petition by the petitioner himself so that from the very initial stage the attention of the tribunal will be focussed on those allegations of corrupt practice and, in the course of the trial of the petition, an enquiry into those allegations would be made by the tribunal in the presence of the person against whom the allegations have been made.

In the case of voters who were not candidates, there is a possibility that the tribunal may omit to give the required notice under Section 99 of the Act, particularly in those cases where the corrupt practice may be of a minor nature. In the case of a candidate, however, the tribunal is bound to enquire into the allegations of corrupt practice made against him when he is a party to the petition itself and the tribunal can name him under Section 99 of the Act without being required to give a notice and without having to duplicate the proceedings by giving him an opportunity of cross-examining the witnesses at that late stage, of calling evidence in his defence and of being heard.

The imposition of the penalty of disqualification from voting or from membership of Parliament or of the Legislature of a State has greater importance in the case of a person who puts forward his candidature as compared with one who merely exercises his right of vote but does not intend to seek election to the Parliament or the State Legislature. For such a purpose, it seems to us that there can be no distinction between a candidate who had withdrawn after being duly nominated and a candidate who either subsequently retired or continued to be a candidate at the poll. All of them, by seeking nomination, expressed their intention of becoming members of the Parliament

or the State Legislature; and, if there is to be a disqualification for such membership because of proof of commission of corrupt practice by them, the liability of the disqualification is of as great importance in the case of candidates who had withdrawn as in the case of other candidates who either later retired or continued as candidates at the poll. As has already been stated, the provision in clause (b) of Section 82 of the Act, for impleading certain persons as parties, is in addition to the provision contained in clause (a) of Section 82 of the Act, under which in the two classes of petitions contesting candidates or returned candidates have in any case to be impleaded as parties. In cases where all contesting candidates are already parties to the petition under clause (a) of Section 82 of the Act, clause (b) of Section 82 of the Act can only cover those candidates who were not contesting candidates, so that under clause (b) of Section 82 of the Act no occasion can ever arise of impleading those candidates who continued at the poll. So far as those contesting candidates who continued as such at the poll are concerned, they would already be parties under clause (a) of Section 82 of the Act and no occasion could arise of impleading them under clause (b) of Section 82 of the Act. In such cases, persons to be impleaded under clause (b) of Section 82 of the Act would be only those who are not covered by the expression "contesting candidates" used in clause (a) of Section 82 of the Act.

It is not necessary at this stage to go into the question as to whether candidates who retired from the contest under section 55-A of the Act are or are not included within the expression "contesting candidates" used in clause (a) of Section 82 of the Act. Even if it be held, as has been contended before us, that the expression "contesting candidates" used in clause (a) of Section 82 of the Act does not include retired candidates, it seems to us that under clause (b) of Section 82 of the Act, it would be necessary to implead as parties candidates who may have withdrawn their candidature under Section 37 of the Act or candidates who may have retired from the contest under Section 55-A of the Act in cases where allegations of corrupt, practice are made in the petitions against those candidates. Candidates who withdraw their candidature and candidates who retire from the contest, are all persons who initially expressed their desire of being elected as members of the Parliament or the State Legislature but later on decided not to seek election for such membership. The importance that is to be attached to allegations of corrupt practice would be the same whether the candidate expresses his intention of not contesting the election at an earlier stage by withdrawing his candidature under Section 37 of the Act or at a later stage by retirement under Section 55-A of the Act. If we were to hold that the expression if "any other candidate" in clause (b) of Section 82 of the Act does not include candidates who withdraw their candidature, it would mean that the Legislature made a distinction between candidates who withdraw their candidature and candidates who retire from the contest even for the purpose of enquiring into allegations of corrupt practice made in the petition. Such a distinction would amount to unreasonable discrimination and we do not think that it would be correct to accept an interpretation which would lead to an inference that the Legislature had made unjustified discrimination without any reasonable classification having a nexus with the purpose to be achieved by the particular provision of law. The principles of interpretation require that that interpretation should be accepted which does not make a law void or unreasonable provided that the interpretation is permissible by the language used and is in line with the purpose for which

the provision of law has been enacted. In the present case, the interpretation that the expression "any other candidate" in clause (b) of Section 82 of the Act includes all candidates covered by the definition given in section 79 (b) of the Act irrespective of their having withdrawn their candidature subsequently under Section 37 of the Act avoids bringing in any such discrimination. Even for the purpose of granting the privilege of a hearing from the initial stage of a petition, there should be no discrimination between candidates who withdraw their candidature and other candidates who do not do so. Consequently, even if the purpose of this provision of law is taken into account, the interpretation accepted by us that the expression "any other candidate" in clause (b) of section 82 of the Act includes candidates who withdraw their candidature is correct.

12. Another line of argument that was put forward on behalf of the respondents to support the interpretation which we have accepted above was that, in case candidates who have withdrawn their candidature are held not to be necessary parties under clause (b) of Section 82 of the Act, the purpose of this clause would be defeated at least in those classes of cases where petitioner seeks the further declaration that he himself or any other candidate has been duly elected. In the case of such a petition, all the contesting candidates other than the petitioner are impleaded as respondents under clause (a) of Section 82 of the Act and the argument was that, if candidates who have withdrawn their candidature are excluded, no one can be impleaded as a party under clause (b) of Section 82 of the Act This argument proceeded on the basis that the expression "contesting candidates" in clause (a) of Section 82 of the Act includes all persons who remained after withdrawal of candidature, i.e., persons who either subsequently retired from the contest or continued as candidates at the poll. If they are already impleaded as parties under clause (a) of Section 82 of the Act, persons who can be impleaded as parties under clause (b) of Section 82 of the Act can only be candidates who withdraw their candidature. On behalf of the petitioners it was, however, urged that the expression "contesting candidates" used in clause (a) of section 82 of the Act does not include candidates who retire from the contest under section 55-A of the Act and consequently those would be the persons to be impleaded under clause (b) of section 82 of the Act in those petitions where the further declaration mentioned above is also sought. It appears to us to be unnecessary to go into the controversial point whether the expression "contesting candidates" in clause (a) of Section 82 of the Act does or does not include the candidates who retire from the contest under Section 55-A of the Act. For the purpose of interpreting clause (b) of Section 82 of the Act, we need not, in our opinion, rely on any interpretation of clause (a) of Section 82 of the Act which interpretation itself is open to argument.
As we have said earlier, whether the expression "contesting candidates" used in clause (a) of Section 82 of the Act does or does not include candidates who retire from the contest under Section 55-A of the Act, it appears that, so far as clause (b) of Section 82 of the Act is concerned, it must be so interpreted as to include candidates who withdraw their candidature.

13. One other point that was urged on behalf of the petitioners was that clause (b) of Section 82 of the Act should, in any case, be interpreted as requiring a petitioner to join as respondents only those candidates against whom allegations of corrupt practice are made in the petition in their

capacity as candidates, implying that they are necessary parties only if corrupt practices are alleged to have been committed by them while they were candidates and in their capacity as such. We do not think that the language of clause (b) of Section 82 of the Act justifies such an interpretation. Had it been the intention that only those candidates were necessary parties against whom allegations were of commission of corrupt practice in their capacity as such, it could have been made manifest by introducing appropriate words to convey this intention. Further, as we have held earlier, the definition of the word "candidate" in clause (b) of Section 79 of the Act includes a person who claims to have been duly nominated as a candidate at any election. Such a person does not actually participate in the election as a candidate. His candidature is confined to the time of nomination and the rejection of his nomination. He cannot possibly commit any acts of corrupt practice at that time and yet by including such a person in the definition of the word "candidate" in clause (b) of Section 79 of the Act, the Legislature has laid down that he must be impleaded as a party under clause (b) of Section 82 of the Act if there are allegations of corrupt practice against him. In these circumstances, clause (b) of Section 82 of the Act must be interpreted as covering cases where a candidate is alleged to have committed a corrupt practice at any time even though he may have ceased to participate in the contest by withdrawing his candidature or by retiring from the contest or may have been incapable of participating in the election because his nomination was rejected but he claims to have been duly nominated. The main point urged by learned counsel for the petitioners in these two writ petitions that a candidate, who had withdrawn his candidature, was not a necessary party under Clause (b) of Section 82 of the Act must, therefore, be decided against them.

14. The orders of the Election Tribunals in these two petitions were also challenged by learned counsel for the petitioners on the ground that, even if the election petitions did not comply with the requirements of Clause (b) of Section 82 of the Act, the Tribunals should have either allowed amendment of the petitions by permitting the impleading of the necessary parties who had been omitted or by striking off the pleadings on account of which it was necessary to implead those parties. It is first to be noticed that in neither of the two cases before the Election Tribunals was any prayer put forward by the election petitioner that he should be permitted to add as a party the candidate who had withdrawn his candidature and against whom allegations of commission of corrupt practice had been made in the petition. It was urged by learned counsel, that, even if no such applications were presented, the Election Tribunals should themselves have given an opportunity to the petitioners to move applications for impleading the necessary parties. We do not consider that any such duty lay on the Tribunals to give the election petitioners an unsought opportunity of amendment of the petitions for the purpose of impleading the necessary parties.

15. Further, we are of the opinion that, in any case, the Tribunals would not have been justified in permitting the impleading of necessary parties by subsequent amendment applications at a time when the election petitions filed against those parties, who had been omitted, would have been time-barred. For the purpose of showing that the Election Tribunals had the power to permit addition of necessary parties, learned Counsel for the petitioners relied on the provisions of

Section 90 (1) of the Act, under which the Code of Civil Procedure has been made applicable to the trial of election petitions. In the Act itself, the only provision for amendment being permitted by an Election Tribunal is contained in Clause (5) of Section 90. That provision deals with the amendment of particulars of corrupt practices alleged in the petition or their amplification. In the present case, any application for amendment for impleading a party would clearly not be covered by this provision of law. The power of amendment which, according to learned counsel for the petitioners, could have been invoked, was the power granted by the Code of Civil Procedure which has been made applicable under Section 90 (1) of the Act. Reliance was placed by learned counsel on the provisions contained in Order 1, Rule 10 and Order 6, Rule 17. of the Code of Civil Procedure. So far as Order 6, Rule 17 of the Code of Civil Procedure is concerned, it is no doubt applicable to the trial of election petitions by the Election Tribunals, but that provision only deals with alteration or amendment of pleadings and not with addition of parties or striking off the names of parties. For that purpose, provision is made in the Code of Civil Procedure in Order 1, Rule 10, mentioned above, and the question is how far the provision of this rule can be acted upon by an Election Tribunal. It is to be noticed that under Section 90 (1) of the Act, the provisions of the Code of Civil Procedure are to be followed by an Election Tribunal for the trial of an election petition "subject to the provisions of the Act and of any rules made thereunder." It appears to us that the provisions of the Act are such as lead to the inference that Order 1, Rule 10 of the Code of Civil Procedure cannot be acted upon by an Election Tribunal trying an election petition. The effect of the words "subject to the provisions of the Act and of any rules made thereunder" in Section 90 (1) clearly is that the provisions of the Code of Civil Procedure become applicable to the trial of an election petition subject to two limitations so far as the question of permitting amendments is concerned.

One limitation is that the power of amendment under the Code of Civil Procedure cannot be exercised so as to permit new grounds of charges to be raised or to so alter the character of the petition as to make it in substance a new petition, if a fresh, petition on those allegations will then be barred. The second limitation is that the power of amendment under the Code of Civil Procedure cannot be exercised so as to defeat the mandatory provisions of the Representation of the People Act itself.

It is not necessary for us to enter into a discussion of these two principles as they have been clearly laid down by the Supreme Court in *Harish Chandra Bajpai v. Triloki Singh*[5], The Supreme Court considered in detail the scope of the power of an Election Tribunal to permit amendment of an election petition and, in that connection, held that the Tribunal's power under Order 6, Rule 17 of the Code of Civil Procedure to order amendment of a petition could not be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition, on those allegations would then be barred. This principle was laid down by the Supreme Court when interpreting sub-section (2) of Section 90 of the. Representation of the People Act, 1951, as it was before the amendment of 1956, but, even after the amendment in the year 1956, the language of the corresponding provision of law in the Act is identical with that which existed before the amendment. The interpretation of sub-section (2) of Section 90 of the unamended Representation of the People Act by the Supreme

Court is, therefore, fully applicable to sub-section (1) of Section 90 of the Act. The second principle, which we have mentioned above, was laid down by the Supreme Court in *Jagan Nath v. Jas-want Singh*[6], The Supreme Court held :

> "The general rule is well settled that the statutory requirements of election law must be strictlyobserved and that an election contest is not an action at law or a suit in enquiry but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power.

It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of noncompliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected." By this decision, the Supreme Court thus held that, if a special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure, the Tribunal is authorised to rely on all the provisions contained in the law laying down that procedure but only if the special law does not prescribe the

[5] AIR 1957 SC 444
[6] AIR 1954 SC 210

consequences of non-compliance with certain procedural requirements laid down by
the special law itself. The view expressed in this manner clearly implies that, if the consequences of non-compliance with any procedure or direction contained in the special law itself are laid down in that law, the Tribunal would not be justified in ignoring the provisions laying down the consequences and permitting avoidance of consequences by adopting a procedure which would bring about such a result. In the later part of the quotation from the judgment of the Supreme Court given above, it was more clearly laid down that in cases where the election law does not prescribe the consequences or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected. In that case before the Supreme Court, the question, that had arisen, was with regard to noncompliance with the provisions of Section 82 of the unamended Representation of the People Act which laid down who were necessary parties to an election petition. In the present case also, the question that has arisen, is similar.

16. In the unamended Representation of the People Act, consequences were provided for failure to comply with the requirements of Section 81, Section 83 or Section 117 of the Act in sub-section (4) of Section 90 of that Act which laid down that the Tribunal may dismiss an election petition which does not comply with the provisions of Section 81, Section 83 or Section 117. The point to be noticed is that the law, as now contained in Section 90 (3) of the present Act prescribing penalty for non-compliance with certain procedural requirements laid down by the Act itself differs in two very material respects from the law as it was in the unamended Act. Firstly, the word "may" used in Section 90 (4) of the unamended Act has now been replaced by the word "shall' in Section 90 (3) of the Act. Under the unamended Act, therefore, there was only a power conferred on a Tribunal to dismiss an election petition which did not comply with the provisions of Section 81, Section 83 or Section 117 of that Act. In the present Act, the use of the word "shall" shows that the provision is now mandatory and directs the Tribunal to dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 of the Act The enabling section contained in the unamended Act has been changed into a mandatory section by the amendment made in 1956. Secondly, in the unamended Act, Section 82, laying down who were to be necessary parties to an election petition, was not mentioned is sub-section (4) of Section 90 of that Act. Instead, penalty was provided for non-compliance with the provisions of Section 83 of the unamended Act which dealt with the contents of an election petition. In the present Act, Section 83, which deals with the contents of an election petition, is no longer mentioned in Section 90 (3) of the Act which lays down the penalty for non-compliance with certain provisions of the Act and instead, Section 82 is specifically mentioned. The result is that, whereas in the unamended. Act there was no provision even granting power to a Tribunal to dismiss an election petition for noncompliance with the provisions of Section 82 of the unamended Act, the state of law at present is that Section 90 (3) contains a mandatory direction under which a Tribunal must dismiss a petition for noncompliance with the provisions of Section 82 of the Act.

- Since in the present Act, there is a mandatory provision laying down the consequences for noncompliance with the requirements of Section 82 of the Act, if the power of permitting amendment of a petition by addition of a party under Order 1, Rule 1ft of the Code of Civil Procedure is exercised by an Election Tribunal, the result would be that the mandatory provision contained in Section 90 (3) of the Act would be defeated. It is worthy of note that Rule 10 of Order 1 of the Code of Civil Procedure follows R. 9 of the same Order and the latter has specifically laid down that "no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it." In case of non-joinder of parties, the Code of Civil Procedure thus first makes a provision enabling the court to deal with the matter in controversy confining itself to the rights and interests of the parties actually before it. In the alternative, Rule 10 of Order 1 of the Code of Civil Procedure grants power to the court to implead necessary parties omitted so that the court may effectually and completely adjudicate upon and settle all the questions involved in the suit. These powers granted to the court follow the direction contained in Rule 9 of Order 1 of the Code of Civil Procedure that no suit is to be

defeated by reason of misjoinder or non-joinder of parties. The power granted to the court to proceed with a suit in the absence of necessary parties or to implead parties, whom the court may consider necessary for proper decision of the suit, is clearly consequential to the principle that no suit is to be dismissed for misjoinder or non-joinder of parties. That principle laid down in the Code of Civil Procedure is clearly contrary to the principle laid down by the Legislature in Section 90 (3) of the Act which provides for a penalty for non-compliance with the provisions of Section 82 of the Act. The provision contained in the Act itself lays down that an election petition must be dismissed by an Election Tribunal if a party, who must necessarily be impleaded under Section 82 of the Act, has not been impleaded. Since the Code of Civil Procedure applies to the trial of an election petition subject to the provisions of the Act, it means that the provision contained in Rule 9 of Order 1 of the Code of Civil Procedure laying down that no suit is to be dismissed for misjoinder or non-joinder of parties cannot be applied to an election petition and as a consequence, it must also be held that the other provisions contained in Rules 9, 10 of O. 1 of the Code of Civil Procedure, which flow as a consequence from the principle that no petition can be dismissed for mis-joinder or non-joinder of parties, can also not be applied to the trial of an election petition. All those provisions come in conflict with the mandatory provision contained in Section 90 (3) of the Act. The provision contained in Section 90 (3) of the Act is on the same subject as is dealt with by Rules 9 and 10 of O. 1 of the Code of Civil Procedure and when such a conflict exists, these rules must be held to be inapplicable to the trial of an election petition. The Supreme Court, in the case of AIR 1957 Supreme Court 444, held :

> "The true scope of the limitation enacted in Section 90 (2) on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate, when the subject-matter of the two provisions is not the same." This principle laid down by the Supreme Court also leads to the conclusion that the provisions contained in Rules 9 and 10 of O. 1 of the Code of Civil Procedure cannot be applied to the trial of an election petition. Further, it is to be noticed that, if the Election Tribunals in these cases were to permit amendment of the petitions by addition as parties of all those candidates who had withdrawn their candidature and against whom there were allegations of commission of corrupt practice such an order would have been passed long after the period of limitation prescribed for presentation of election petitions under Section 81 of the Act had already expired.

The result of allowing the amendment would have been that, so far as the newly added parties were concerned, there would have come into existence election petitions against them with those persons functioning as parties to the election petitions and such election petitions would have come into existence long after the period of limitation for presentation of the election petitions had expired. Such an amendment could not, therefore, be permitted on the principle laid down by the Supreme Court that the provisions of the Code of Civil Procedure are to be applied subject to

the limitation that the effect should not be such as to bring into existence a new petition if a fresh petition will be time-barred. Of course, the process, by which a new petition could come into existence, which was considered by the Supreme Court, was that of permitting an amendment under Order 6, Rule 17 of the Code of Civil Procedure but the principle which governs the exercise of that power by a Tribunal would equally apply to the exercise of the power by a Tribunal under Order 1, Rule 9 or 10 of the Code of Civil Procedure.

17. The alternative course for removing the defect suggested by learned counsel is that Tribunal should have struck off the pleadings on account of which it was necessary to implead those persons as parties who had been omitted. In the election petition, out of which Writ Petition No. 3216 of 1957 arises, no application was put forward by the election petitioner for striking off the pleading in which allegations of commission of corrupt practice had been made against the candidate who had withdrawn his candidature and who was not impleaded in the petition. Our attention was drawn to the plea of the respondent in the written statement that that pleading was liable to be struck off on the ground of vagueness. The Tribunal did not accept this contention of the respondent. It does not lie in the mouth of the election petitioner to make a grievance that his pleading should have been struck off without any prayer from him and for the purpose of curing a legal defect, simply because the respondent had applied for striking off the pleading on the ground of vagueness.

18. In the election petition, out of which the other Writ Petition No. 3140 of 1957 arises, an application was no doubt made for striking off the pleading in which allegation of commission of corrupt practice had been made against the candidate who had withdrawn his candidature. Such an application would also be governed by the provisions of the Code of Civil Procedure, the appropriate provision applicable being Order 6, Rule 16. The applicability of the rules contained in the Code of Civil Procedure, as has been held by us above, to the trial of election petitions is subject to certain limitations owing to the fact that the Act makes the Code of Civil Procedure applicable to the trial of election petitions subject to the provisions of the Act and the rules made thereunder.
These principles, when applied to an application for striking off such a pleading, necessarily lead to the result that the prayer for striking off could not have been allowed. If the prayer for striking off the pleading had been allowed, the mandatory provisions contained in Section 90 (3) of the Act would have been defeated. Under Section 90 (3) of the Act, the petition had to be dismissed on the ground that a candidate, against whom there were allegations of commission of corrupt practice, had not been impleaded as a party and this mandatory provision had to be carried out by the Election Tribunal ignoring the powers granted by the Code of Civil Procedure for striking off pleadings. The result is that even this ground taken in the two petitions fails.

19. Both the petitions are, consequently, dismissed with costs which we fix at Rs. 250/- in each case.

Petitions dismissed.