

## ANDHRA PRADESH HIGH COURT

R. Satyanarayana

Vs.

Saidayya

Election Petn. No.15 of 1967 and Applns. Nos.180, 122, 210, 212 and 211 of 1967

(Basi Reddy, J.)

08.03.1968

### ORDER

#### **Basi Reddy, J.**

1. Before dealing with all these connected applications arising out of Election Petition No. 15 of 1967, it is necessary to state the relevant facts in chronological order. At the last general election held in February 1967, five persons filed their nomination papers with a view to contest the election from the Gajwel reserved constituency for a seat in the Andhra Pradesh Legislative Assembly. They were; (1) Gajwelli Saidjah, (2) J. H. Krishnamurthi, (3) A. L. Sailoo, (4) Mannay Balaiah and (5) Perka Narayana. After scrutiny of their nominations on 21-1-1967, the returning officer rejected the nomination paper of Perka Narayana and accepted the nominations of the remaining four candidates as they were found to be in order. On 23-1-1967 Mannay Balaiah gave a notice in writing signed by him to the returning officer, withdrawing his candidature. Thereafter a list of the names of the three contesting candidates was published by the returning officer. Polling took place on 21-2-1967, and Gajwelli Saidiah, who has stood on the Congress ticket, was declared to have been duly elected.

2. On 11-4-1967 one R. Satyanarayana, a voter of Gajwel reserved constituency, presented the present election petition (Election Petition No. 15 of 1967). To this election petition, he impleaded Saidiah, Krishnamurthi and Sailoo as the first, second and third respondents respectively. The election of the 1st respondent (Saidiah) was called in question on the main ground that he had committed various corrupt practices. The reliefs sought in the election petition were:

- "1. To declare the election of the 1st respondent herein, viz. Saidiah, to the Andhra Pradesh Legislative Assembly from the Gajwel constituency as void;
2. To render a finding that the 1st respondent herein, his election agent, polling agents and

other workers mentioned in Schedule-I, have committed the corrupt practices enumerated in Section 123 of the Act;

3. Costs of this Election Petition be awarded; and

4. pass such further and other order or orders as may be found expedient under the circumstances of the case or as this Hon'ble Court deems fit".

3. It is not necessary for the present purpose to enumerate the numerous corrupt practices alleged in the election petition. It will be sufficient to refer to paragraphs 5 and 8 of the election petition. Paragraph 5 is as follows:

"In addition to the three respondents herein, two other persons by name, Perka Narayana, resident of Konapuram, hamlet of Akkavaram village, Gajwel taluq, and Balaiah of Toopran village also filed their nomination papers. The said Balaiah has been made to withdraw by the 1st respondent herein on payment of illegal gratification of a sum of Rs. 3,000".

Paragraph 8 reads:

"The first respondent herein has committed the corrupt practice of inducing another candidate, Balaiah, to withdraw from the contest by making the gift of Rs. 3000 (Rupees three thousand) by way of illegal gratification. The result of the election has also been materially affected by the same." On 19-4-1967 this Court found the election petition to be in order and notices were ordered to be issued to the respondents to appear and answer the claim made against them in the election petition. The petition was posted to 16-7-1967. On 30-6-1967 Sri Sivarama Sastry, the learned advocate for the petitioner, sought for time to file an amendment petition. Time was granted and an amendment petition was filed in due course. One of the amendments sought by this petition was:

"I pray that paragraph 5(a) may be permitted to be added in the following terms:

"The candidate Balaiah was made a payment of Rs. 3000 (Rupees three thousand) by Saidiah (1st respondent) in the presence of M. Ranga Reddy, J. Narsiah and S. Mallaiah and two others at Toopran on 22-1-1967. The said amount was paid by M. Ranga Reddy to Saidiah who in turn paid to the said Balaiah. The said amount was paid by the 1st respondent calling upon the said Balaiah to withdraw his nomination".

This amendment petition was filed on 12-7-1967.

4. By an order dated 21-7-1967 I allowed this amendment as well as the other amendments sought by the petitioner as they were merely an amplification of the corrupt practices already alleged in the main election petition. As regards the insertion of para 5 (a), I said:

"Admittedly para 5 (a) gives further particulars by way of amplification in respect of the corrupt practice already alleged in para 5 of the Election Petition, namely, that Balaiah

who had filed his nomination had been bribed and made to withdraw from the contest."

5. Then on 11-8-1967 the 1st respondent Saidiah filed Application No. 180 of 1967 under Section 86(1) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") praying that the High Court may be pleased to dismiss Election Petition No. 15 of 1967 for non-compliance with the provisions of Section 82 of Act. In the affidavit filed in support of that application it was stated inter alia:

"I submit that the aforesaid allegations (paragraphs 5, 5 (a) and 8 of the election petition) are allegations of corrupt practice against the said Balaiah, a candidate, under Section 123(1) (b) (a) of the Representation of the People Act, 1951. The Election Petitioner ought to have joined the said Balaiah, the candidate, as respondent to the Election Petition under Section 82 (b) of the Representation of the People Act, 1951. The failure to implead the said candidate is fatal to the maintainability of the Election Petition.

I submit that Section 86(1) of the Representation of the People Act provides that the Election Petition which does not comply with the provisions of Section 81 or 82 or 117 of the Act, shall be dismissed by the High Court. As Sri Balaiah, the candidate against whom allegations of corrupt practice have been made, has not been joined as respondent to the Election Petition, the Election Petition does not comply with the provisions of Section 82 and is liable to be dismissed under Section 86(1) of the Representation of the People Act, 1951. I, therefore, pray that this Hon'ble Court may be pleased to dismiss the Election Petition No. 15/67 with costs under Section 86(1) of the Representation of the People Act."

6. A counter was filed to this application by the election petitioner on 24-8-1967 stating that there was no allegation of corrupt practice as such against Balaiah, within the meaning of Section 123(1)(b)(a) of the Representation of the People Act, and further that Section 86(1) of the Act is not mandatory and non-compliance with its provisions, is curable.

7. Subsequently on 24-8-1967 the election petitioner filed two applications, Applications Nos. 122 and 210 of 1967. By the first application he prayed that Balaiah may be impleaded as a party-respondent to the election petition. By Application No. 210 of 1967, which was filed under Section 5 of the Limitation Act, he prayed that the Court may be pleased to condone the delay in seeking to implead Balaiah as a party-respondent to Election Petition No. 15 of 1967 on the ground that he had been under a *bona fide* impression that Balaiah was not a necessary party to the election petition as no allegation of corrupt practice had been made against the said Balaiah specifically, and the failure to implead Balaiah was due to a misapprehension on his part.

8. Balaiah himself filed two applications - Applications Nos. 212 and 211 of 1967. Application No. 212 was filed under Section 86(4) of the Representation of the People Act praying that he may be impleaded as a party-respondent to the election petition; and by Application No. 211 filed under Section 5 of the Limitation Act, he prayed that the Court may be pleased to condone

the delay in filing that application.

9. I shall deal with application No. 180 of 1967 first, then with Applications Nos. 122 and 210 of 1967, and then with Applications Nos. 212 and 211 of 1967 in that order.

Application No. 180 of 1967.

10. As noticed above, this is an application filed by the returned candidate Saidiah, who is the 1st respondent to the election petition. It is filed under Section 86(1) of the Act with a prayer that the election petition be dismissed under Section 86(1) of the Act for non-compliance with the provisions of Section 82 of that. Act. Now, Section 86(1) of the Act is in the following terms:

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

Section 81 of the Act provides inter alia that an election petition may be presented by any candidate at such election or elector within forty-five days of the date of the declaration of the result of the election. Section 117 of the Act lays down that at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

11. Section 82 of the Act, with which we are concerned, reads thus:

"Parties to the petition.-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".

12. It is to be noted that under clause (b) of Section 82 of the Act, "any other candidate", which expression as defined by Section 79 (b) of the Act means a person who has been duly nominated as a candidate for the election, shall be impleaded as a respondent to the election petition, if allegations of corrupt practice are made against him.

13. It is now well settled that a candidate whose nomination has been accepted but who withdraws from the election and does not contest the election, is a candidate within the meaning of Section 79 (b) of the Act, and under Section 82 (b) it is incumbent on the election petitioner to join him as a respondent, if a corrupt practice is alleged against him. In the present case, Balaiah was one of the persons whose nomination was accepted by the Returning Officer on 21-1-1967. On 23-1-1967 he withdrew his candidature. It was alleged in the election petition that Balaiah

had been paid Rs. 3,000 by Saidiah in the presence of three named persons on 22-1-1967 and that the said amount was paid by the 1st respondent calling upon the said Balaiah to withdraw his nomination, and thereby the 1st respondent had committed the corrupt practice of inducing another candidate Balaiah to withdraw from the contest by making him a gift of Rs. 3,000 by way of illegal gratification. It was further alleged that by this act of bribery, Balaiah had been made to withdraw from the contest by the 1st respondent.

14. Thus there was an allegation that Saidiah had paid a bribe, that Balaiah had received the bribe, and that the bribe had been paid and received as a motive or reward for Balaiah withdrawing from being a candidate. Section 123 of the Act lays down what acts amount to corrupt practices. Sub-section (1)(B) (a) of that section provides:

"'Bribery', that is to say.-

(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".

Since an allegation of corrupt practice was made against a candidate whose nomination had been accepted but who had withdrawn his candidature, he would be a necessary party by virtue of Section 82(b) of the Act. Nevertheless Balaiah was not impleaded as a party-respondent to the election petition. In such a situation. Section 86(1) of the Act comes into play and it enjoins in express and explicit terms that the High Court shall dismiss an election petition which does not comply with the provisions of Section 82. This being a mandatory provision, the High Court has no other alternative in a situation like that but to dismiss the election petition.

15. It was, however, contended by Sri Sivarama Sastry on behalf of the election petitioner that the provisions of Section 86(1) are only directory and not mandatory, and non-compliance with them does not entail the dismissal of the election petition. This contention is obviously untenable. It is perfectly plain that the sub-section is imperative and peremptory and not merely facultative and permissive, for it says that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. It leaves no discretion to the High Court; there is no option but to dismiss the election petition.

16. Sri Sivarama Sastry, while not contesting the position that though Balaiah had withdrawn from the contest, he is a candidate within the meaning of Section 82(b) of the Act, submitted that neither in the election petition nor in the amendment which was carried out by the insertion of paragraph 5(a), is there a specific allegation of corrupt practice against Balaiah. It was urged that the allegation made in the election petition was only against the 1st respondent (Saidiah) to the effect that he had given a bribe of Rs. 3,000 and made Balaiah withdraw from the contest. Since there was no allegation of bribery against Balaiah specifically, the learned advocate contended

that Balaiah is not a necessary party to the election petition. This contention is unacceptable for the simple reason that the averments made in the election petition and amplified by the amendment, make it abundantly clear that what was alleged was that the 1st respondent had given a bribe of Rs. 3,000 and induced Balaiah to withdraw from the contest, and that Balaiah had received the money and had in fact withdrawn from the contest. Both the giver and the taker would therefore be guilty of the corrupt practice of bribery, as envisaged by Section 123 of the Act.

17. That being the true effect of the allegations made in the election petition, the failure to implead Balaiah as a party-respondent to the election petition is, in my opinion, fatal to its maintainability, and on that score the election petition is liable to be dismissed and must be dismissed.

Applications Nos. 122 and 210 of 1967.

18. As noticed already, the first of these applications is to implead Balaiah as a party-respondent and the second one is to condone the delay in seeking to implead him. In the first place, if as I have held, Section 86(1) of the Act is mandatory and leaves no option to the Court but to dismiss the election petition if a necessary party, as envisaged by Section 82 of the Act, is not impleaded, and the election petition is consequently dismissed, no question of impleading a party or excusing the delay in impleading a party would arise because in such a case there would be no election petition pending before the Court. In my judgment, neither Order I, Rule 10 of the Code of Civil Procedure nor Section 5 of the Limitation Act can be called in aid in a situation like that, where the statutory provision commands the Court to dismiss an election petition in limine if certain requirements are not satisfied. A provision of this nature cannot be circumvented by having recourse to the provisions of other enactments. Therefore in a case like this, the question of impleading a party or condoning the delay in impleading a party does not arise at all.

19. However, even if it be conceded for the sake of argument that Section 5 of the Limitation Act can be invoked, I am not satisfied that there is sufficient cause in the instant case to condone the delay in making Balaiah a party-respondent. The protestation of the election petitioner that he was under a genuine misapprehension that he had not made any allegation of bribery against Balaiah is, in my opinion, rather naive and wholly unconvincing. He had made an allegation of corrupt practice against the 1st respondent and Balaiah in the clearest possible terms. He had given particulars of the amount of bribe, the date on which and the place at which it was paid, and the witnesses before whom it was paid. He had also mentioned that as a result of being bribed, Balaiah had withdrawn from the contest. Having made all these allegations, he did not implead Balaiah as a party-respondent. There is no sufficient cause for excusing the delay in impleading Balaiah. Therefore, in any view of the matter, these two applications must be dismissed. Applications Nos. 212 and 211 of 1967.

20. Application No. 212 to implead Balaiah has been filed under Section 86(4) of the Act Section 86(4) is in these terms.

"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".

21. In this case the trial commenced on 16-6-1967 and since this application was filed long after fourteen days there from. Application No. 211 has been filed under Section 5 of the Limitation Act to condone the delay.

22. Now, if under sub-section (1) of Section 86 of the Act, the High Court dismisses an election petition, as indeed it is bound to do for non-compliance with the provisions of Section 82, there is no election petition pending in which a candidate can seek to be added as a respondent. Sub-section (4) of Section 86 permits a candidate not already a respondent to come on record, but in my opinion subsection (4) would come into play only in cases where sub-section (1) of Section 86 does not operate. That is the necessary result of a harmonious reading of sub-section (1) and sub-section (4) of Section 86.

23. Moreover, I am fully satisfied that there are no *bona fides* in these applications. It is difficult to understand why Balaiah wants to be joined as a party-respondent, if the election petition is liable to be dismissed on the ground that he has not been impleaded as a party. It looks as though he is inviting the Court to give a finding of corrupt practice against him. There can be little doubt that he has been induced to file these applications at the instance of the election petitioner. These applications are therefore dismissed.

24. The net result is that Application No. 180 of 1967 is allowed and Election Petition No. 15 of 1967 is dismissed. In the circumstances of the case, there will be no order as to costs.

Order accordingly.