MADHYA PRADESH H IGH COURT

Babulal Sharma

Vs.

Brijnarain Brajesh

Misc. Petn. No. 249 of 1957, Decided on 22.1.1958 against Order of Election Tribunal, Gwalior, 24.9.1957
(M. Hidayatullah, C.J., B.K. Choudhuri and H.R. Krishnan, JJ.)

22.01.1958

ORDER

M. Hidayatullah, C.J.

1. This petition under Articles 226 and 227 of the Constitution is directed against an order passed toy the Election Tribunal, Gwalior in election petition No. 287 of 1957 on 24th September 1957.

2. The petitioner Babulal Sharma is a voter and he had by the election petition challenged the election of the first respondent Brijnarain Brijesh. In the election petition he had alleged in paragraph 6 as follows :

> "That Sri Brijesh, respondent No. 1, and his supporters made systematic appeal to the voters to vote on the ground of caste and creed. Personally the respondent No. 1 had been appealing systematically for Brahmins' support, he being a Brahmin. For non-Brahmins, he would ask whether they were out to murder (meaning thereby to defeat) a Brahmin as against a cow-killer (meaning a member of Congress, a party which is not banning cow-slaughter in the teeth of opposition). His begging votes as a Brahmin in the above fashion told upon the simple villagers and materially furthered his prospects.". Subsequently, Babulal Sharma applied for an amendment of the petition setting out particulars in relation to the allegations made in a general way in that paragraph. We need not quote the application for amendment in extenso but we set down here one or two out of the numerous paragraphs, which Babulal Sharma sought to be incorporated in the petition as illustrating the nature of the amendments:

"During his election tours the respondent No. 1 between 18th and 25th February 1957 made the above systematic appeal to the voters in general in the following villages." After the quotation, names of village follow.

"And in particular Sri Brijesh respondent No. 1 appealed to the following persons among others to vote for him because he was a Brahmin, because the Congress were cow-slaughterers and because the Hindu religion was in danger at the hands of Congressmen." Here names again follow.

'Respondent No. 1 Sri Brijesh at the date and place mentioned below held public meetings during his election campaign and appealed to the voters on the ground of caste and creed.

(a) On 17-1-57 in village Maghera, Pargana Pichhore he said that merely by putting on a white cap dishonest people became congressmen and began to call themselves Parashar (Brahmin).

That the Congressmen were devils who get cows slaughtered in their presence and that is why in Madras Pandit J. L. Nehru was made to wear garland of shoes.'

(b) On 6-2-1957 at Narwar he addressed a public meeting in which he said that the Congressmen putting on white caps were not Hindus as they were getting cows slaughtered, that the Congress people wanted to snatch Hindu religion from them (voters) that the cow was their mother and the Congressmen were butchers. Nehru Government carries on business and commerce by slaughtering cows."

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3. The Tribunal, after examining the case for amendment, both under law and in fact, rejected the application of Babulal Sharma, and hence this petition.

4. The case for the petitioner was argued by Sri Shivdayal, and the case for Brijnarain Brijesh was submitted by Sri P. L. Dubey. We may say that the case on both sides was argued very well and fully.

5. The short contention of the petitioner is that the learned Tribunal committed an obvious error of law in thinking that such amendments could not be allowed and that the 5th sub-section of section 90 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) as amended did not permit such amendments. The

learned Tribunal, after giving this opinion, considered the question of amendment on merits, albeit very perfunctorily, and gave its opinion that the amendments could not also be allowed on merits.
We are concerned in this order first with the statement of the law, and after expressing our opinion on that part of the case we shall advert to the proposed amendments and the circumstances under which amendments should be allowed.

6. Sub-section (5) of section 90 of the Act recasts the old third sub-section of section 83 which has been deleted by the amending Act of 1956. These two subjections have to be read together to notice the changes which have been introduced, because the earlier sub-section was interpreted by their Lordships of the Supreme Court. It is necessary to see whether by reason of the amendment of the Act the reasoning in the Supreme Court case is inapplicable or not. We quote the two sub-sections in parallel columns:

Section 83 (3) of the old Act Section 90 (5) of the amended Act.

> 'The Tribunal may. upon such terms as to costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.' 'The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.'
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> It will be noticed that under the old sub-section there were two matters provided for. The first was an enabling power given to the Tribunal to allow amendments in a petition, and the second was a power to order further and better particulars. In the present sub-section the second power has been deleted. The first power has been retained, though the language used is slightly different.
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> The deletion of the power to order further and better particulars was the subject-matter of a case in this Court and it was held then that the deletion was deliberate. *Sree Hari Vishnu Kamath v. Election Tribunal, Jabalpur,* [1] We are,

therefore, now concerned with only one power which is the power to allow amendment in a suitable case. The learned counsel for the respondent states that as a result of the amendment and the deletion of some portions of the third sub-section of section 83 of the Act, the ruling of the Supreme Court does not apply now. The learned counsel for the petitioner contends the opposite, and it becomes necessary therefore to see what the decision of their Lordships of the Supreme Court was.

7. The case to which we have referred is *Harish Chandra v. Triloki Singh,* [2] In that case the petition mentioned certain corrupt practices in the shape of taking assistance from Government servants. We need not refer to the extract from the petition which has been given in the ruling, because it can be found there. Instances, however, of assistance from Government servants and other officials were not given in the list which under the old law had to be appended to the election petition. By an amendment it was then sought to be pleaded that the returned candidate had enlisted the support of four mukhias of villages, who had later become his polling agents. The question then arose whether the amendment, which was allowed by the election Tribunal was proper or not. Their Lordships, after examining the scheme of the Act, laid down that the Act provided for three matters : (a) the grounds on which the petition is based, (b) statement of facts end (c) list of particulars in relation to any corrupt practice alleged in the petition. Their Lordships then considered whether an amendment of the list by addition of new instance was permissible, and in what circumstances. Their Lordships, after considering the arguments advanced pro and contra, came to the conclusion that it was permissible to allow new instances of a corrupt practice to be pleaded, provided the corrupt practice had been alleged in the petition. In paragraphs 12 and 13, and again in paragraph 23, their Lordships laid down that not only could the particulars already furnished in the list be amended but also new instances could be given. Their Lordships also said that even if no instances had been given to start with, instances could be furnished and allowed by an amendment of the petition. We now quote one or two passages from their Lordships' decision. In paragraph 12 their Lordships observed as follows :

"Section, 83 (3) provides, it should also be noted, for the list of particulars being amended or enlarged. It is not, however, to be inferred from this that when the particulars are mentioned in the body of the petition, they could not be

amended. The reference to the list in section 83 (3) must be taken along with the provision in section 83 (2) that particulars are to be set out in a list attached to the petition.

The substance of the matter, therefore, is that under section 83 (3) particulars can be amended and supplemented, and the reason of it requires that the power could be exercised even when the particulars are contained in the body of the petition. and even when there is no list filed, as in the present case, it would be competent to the Tribunal . to allow an amendment giving far the first time instances of corrupt practice, provided such corrupt practice has been made a ground of attack in the petition." In paragraph 13, after examining the difference between the phraseology utilized for the two powers conferred under sub-section (3) of section 83, their Lordships still adhered to the conclusion to which they had reached in the last paragraph cited above. Their Lordships observed in conclusion as follows:

"In this view, the order of amendment in question is not open to attack on the ground that it has permitted new instances to be raised. What has to be seen is whether those instances are, in fact, particulars in respect of a ground put forward in the petition, or whether they are, in substance, new grounds of attack." their Lordships, after examining further the facts of the case, summarised their conclusions in paragraph 23 and observed as follows :

"The result of the foregoing discussion may thus be summed up:

(1) under section 83 (3) the Tribunal has power to allow particulars in respect of illegal and corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and this power extends to permitting new instances to be given.

(2) The Tribunal has power under Order 6, rule 17 to order amendment of a petition, but that power cannot 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 will then be barred."

8. Prom these quotations it is quite manifest that under the old law new instances of corrupt practice already alleged in the petition could be furnished even where no list had been appended at all. It is also to be noticed that their Lordships were not adverting in their decision to the power to order further and better particulars which portion of the third subsection of section 83 they referred to in passing merely to repel an argument that amendment could only be of the particulars already in the list. It would thus appear that their Lordships laid it down categorically that particulars not at

all included in the list appended to the petition could not only be supplemented, extended or added to, but instances of a corrupt practice could be furnished without their being a list in existence at all.

9. It now remains for us to consider whether the amendment of the law makes these observations inappropriate in the interpretation of the present 5th sub-section of section 90. We have set out above the two sub-sections in parallel columns. It will be noticed that in many instances the language has been altered. In the previous subsection the words were: 'as it may direct at any time', whereas in the present subsection the words are: 'as it may deem fit.'
Then, again, the reference to the list is deleted and the reference is to the petition, because the scheme of the petition has since been altered, and there is to be no list but particulars have to be stated in the petition itself. Again, there is a change of the word 'effectual' for the word 'effective', which, leaving out any pun was more effective. Then, there is the change on which Sri Dubey constructed his entire argument before the Tribunal and here, and that is the omission of the words: 'or order such further and better particulars in regard to any matter referred to therein to be furnished'. These words according to Sri Dube, made such a vital departure from the old law as to render the decision of the Supreme Court inapplicable to the interpretation of the present subsection. We may also advert to one corollary which has been added now but did not figure in the old sub-section, and that is in the following words:

> ".....but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

10. These then are the changes which have been introduced. In our opinion, these changes, which are made in the law accord with the observations of their Lordships in paragraphs 12, 13 and 23 of the Supreme Court decision. Indeed, we feel - and we need not give elaborate reasons, because their Lordships' language is quite clear - that sub-section (5) of section 90 could not have been interpreted otherwise than what their Lordships have already stated in those paragraphs, had there been that sub-section before them. It will be noticed from paragraph 12 that their Lordships qualify the exercise of the power to order amendment and limit to those cases in which the corrupt practice had been made a ground of attack in the petition. This we say is the intent and purpose of the corollary which we have quoted above. Their Lordships also stated that

even when there was no list filed, as was in that case, the Tribunal was competent to allow an amendment giving for the first time instances of a corrupt practice already pleaded. Here also, though instances as such are not mentioned, the particulars of a corrupt practice which has been alleged can be furnished by an amendment. The gist of the matter is really whether the proviso at the end of sub-section (5) of section 90, can apply to a case where no particulars had at all been furnished. This would be possible only if we were to read the adjectival clause at the end of the fifth sub-section as qualifying 'particulars' and not 'practice'. Of course, as their Lordships of the Privy Council observed in *Irrawaddy Flotilla Co. Ltd. v. Bugwandass,*[3] it is not necessary to try sections upon rules of grammar. But if a section has to be tried upon a rule of grammar then the obvious thing to do is to require that the application of qualifying words should be confined to the subject which immediately precedes them. That is not only the rule of grammar but also of common speech except where bad diction is involved.

11. We have reason to think that the intention was that the amendment should be confined only to those instances which had already been alleged in the petition but without adequate details. Their Lordships of the Supreme Court in the decision referred to above quite clearly stated that so long as a corrupt practice was alleged new instances could be furnished. Here also we think that in the prohibitory portion of sub-section (5) the same effect is sought to be produced. No person, who has not alleged a corrupt practice, is entitled to give particulars or instances; but if he has alleged a corrupt practice, he is entitled, on showing good cause and in accordance with the law of procedure, to give instances of that corrupt practice. Indeed, the phrase 'particulars of a corrupt practice alleged in the petition' is repeated twice in the 5th sub-section. The only difference is that on the second occasion the word 'previously' is added. If we were to read the meaning which Sri Dubey wants us to give to the last two clauses of sub-section (5), we would not be able to give a consistent meaning to the whole sub-section (5), particularly in relation to the use of the same phrase in the earlier portion. We are, therefore, satisfied that there is no difference in the language of sub-section (5) of section 90 which militates against the application of the decision of the their Lordships of the Supreme Court. The deletion of the power to order further and better particulars has no effect upon the provisions with regard to amendment. Indeed, their Lordships' decision itself was not based on the exercise of the power to order further and better particulars and the Tribunal in that case had not invoked those powers at all. In these circumstances we think that the reasoning of their Lordships is fully

applicable to the interpretation of the 5th sub-section of section 90 of the Act.

12. Following that decision and applying it to the present case we are satisfied that the order of the Tribunal that it did not possess the power to allow amendment was erroneous. There is thus an error of law apparent on the face of the record and the order is a speaking order which we have power to correct under the exercise of the powers given by articles 226 and 277 of the Constitution. We accordingly set aside that portion of the order in which the learned Tribunal has expressed its opinion on the interpretation of the 5th sub-section of section 90 of the Act.

13. This takes us over to the consideration of the question whether we should quash the order as a whole. Sri Dubey contended that there is a considered opinion given as to why the amendment should not be allowed. He referred to certain portions of the order of the Tribunal in which reasons are given of rejecting the amendment. No doubt, there is a reference to the negligence of the petitioner in not furnishing the particulars of the corrupt practice to start with, tout the learned Tribunal did not examine whether the amendment, or any portion of it, could be allowed or not, because it was charged with its opinion that such amendments were out of place. The only thing which the learned Tribunal adverted to was the mandatory provision of section 83 under which the particulars of a corrupt practice with as much details as possible must toe included in the petition. Having come to the conclusion that there was a duty upon the petitioner to furnish these particulars to start with, the Tribunal was of the opinion that being negligent in furnishing the particulars no locus penitential was open to him either under law or in fact. If the learned Tribunal had reached the conclusion that it possessed the power to allow amendment by inclusion of new instance or new particulars of a corrupt practice already alleged and had then examined the question of amendment on its merits, we would have had nothing to say. Having wrongly instructed itself about the law and having left out of consideration the Supreme Court ruling, which applied fully, the learned Tribunal went about the matter of amendment, as we have already said, in a very perfunctory way. Indeed, the entire reasoning is contained in a few sentences and it appears to be in the shape of a second summary conclusion; should the reasoning on the first Part of the case be found defective. We think that we should not only set aside the first part of the order in which the learned Tribunal has misdirected itself as to the law but we should set aside the entire order. When we do so we do not express any opinion as to the advisability of allowing the amendments to come in; nor should we be understood as having

expressed any opinion the other way. The matter must be left to the Tribunal to be judged in the light of the power which the Tribunal exercises and on the merits of the claim for amendment. Of course, the best guide, here again, is the Supreme Court case, because in the second subparagraph of para 23 of the decision of their Lordships (sic) on which amendments should be considered, and allowed or rejected, in the body of the same decision, their Lordships have discussed the circumstances in which they should be rejected. The law on the subject is also to be found in the Code of Civil Procedure which in the trial of election petitions has been made applicable as far as may be by section 90 of the Act. The learned Tribunal in exercising the power to order amendment will have before it the rules regarding amendment of pleadings as envisaged by their Lordships of the Supreme Court in the ruling to which we have referred and also laid down by Courts under the Code of Civil Procedure and then decide whether the amendments should toe allowed or not.

14. We are not concerned with what has since happened. The Tribunal will be able to put the case in order, in the light of the observations made above from the stage existing on 24th September 1957.

15. With those observations the petition is allowed. The order of the Tribunal dated 24th September 1957 is quashed. The writ of certiorari nisi is made absolute.

16. As a result of our decision the consequential orders arising directly under the Tribunal's decision of 24th September 1957 and successfully impugned before us, shall also stand nullified.

Petition allowed.

Cases Referred.

1. Misc. No. 155 of 1957, D/-9-9-1957: AIR 1958 Mad Pra168
2. AIR 1957 SC 444
3. 18 Ind App 121 at p. 127