

PATNA HIGH COURT

Sheo Mahadeo Prasad

Vs

Deva Sharan Sinha

(Ramaswam, C.J. Choudhary, J.)

30.04.1954

JUDGMENT

Choudhary, J.

1. By this application under Articles 226 and 227, Constitution of India the petitioner seeks to have a writ in the nature of 'certiorari' issued for quashing the order of the Election Tribunal, whereby an amendment to the election petition filed by opposite party No. 1 was allowed.

2. The petitioner and opposite party Nos. 1 to 8 were candidates at the by-election of the Bihar State Assembly from the Fatwa Constituency, Opposite party Nos. 3 to 8 withdrew their candidature, and the petitioner and opposite party Nos. 1 and 2 contested the said election. The polling station with which we are concerned in the present proceeding was at Saidanpur, where there were two polling booths, namely, booth No. 1 and booth No. 2. The polling was held in the entire Fatwa Constituency including the two booths of Saidanpur on 7-6-1953. It is alleged that the ballot boxes of polling booth No. 2 of Saidanpur polling station were attempted to be tampered with by one Kamleshwar Prasad Yadava, polling agent of the petitioner, Sheo Mahadeo Prasad. Since the attempt to tamper with the ballot boxes failed as the alleged culprit was caught red-handed, the polling continued with the consent of the agents of all that candidates concerned. Some of the ballot boxes of polling booth No. 1 were found to have been tampered with, and therefore, there was repolling in that booth on 11-6-1953. The counting having been done on 12-6-1953, at Barh, the result was announced on the same day by the returning officer of the Fatwa Constituency, and the petitioner was declared to have been duly elected. The election of the petitioner was declared by notification published in the India Gazette, Extra-ordinary, dated 16-6-1953. Thereafter, opposite party No. 1, Deva Sharan Singh, filed an election petition under Section 81, Representation of the People Act of 1951 (hereinafter to be called the Act) to the Election Commission on 8-8-1953, on the allegations that the nomination papers of opposite party No. 2 had been wrongly accepted by the returning officer and that some corrupt practices

had been committed by the men of the petitioner at the time of the election. This election petition was sent to the Election Tribunal, Patna, for trial and was published in the Bihar Gazette by the Chairman of the said Tribunal. The petitioner filed written statement on 10-11-1953, and issue was also settled on the same day. In the meantime, a criminal case was started against the aforesaid Kamleshwari Prasad Yadava, polling agent of the petitioner, for his attempt to tamper with the ballot boxes in Saidnapur booth No, 2 and that case was proceeding before the Munsif-Magistrate at Barh. During the trial of that case it transpired that the ballot boxes of booth No. 2 were not at all counted, but the tampered ballot boxes as well as ballot boxes containing repolled ballot papers of booth No. 1 of Saidanpur polling station were counted. It is alleged on behalf of opposite party No. 1 that he got this information on 18-12-1953. Thereafter, he filed on 21-12-1953, an application before the Election Tribunal for amendment of the election petition by adding an additional ground that the ballot boxes of polling booth No. 2 of Saidanpur polling station were not at all included in the counting and they were not counted and Instead the ballot papers polled on 7-6-1953, at polling booth No. 1 at Saidanpur polling station, the boxes of which had been tampered with, were included in the counting and the election was materially and prejudicially affected. By the amendment opposite party No. 1 also sought to add a new prayer for declaration that the election of the Fatwa Constituency was vitiated, and the election of the returned candidate is void by reason of the fact that the ballot papers polled at polling booth No. 2 of Saidanpur polling station were not included in counting and the ballot papers of the polling booth No. 1 of Saidanpur polling station polled on 7-6-1953, were included in the counting which should have been excluded. The petitioner objected to the amendment being made, but the Election Tribunal relying in the provisions of Section 90(2) of the Act read with Order 6, Rule 17, Civil P. C., allowed the amendment. The petitioner has, therefore, come to this Court for getting that order quashed.

3. The only question that requires consideration in this case is whether the Election Tribunal had any jurisdiction to allow the amendment of the election petition. Mr. Navadwip Chandra Ghosh, appearing for the petitioner, has contended that there is no provision in the Act for allowing the amendment of the election petition by adding either a new ground of attack or a new prayer. On the other had, Mr. Jadu Nandan Prasad, appearing for opposite party No. 1, has contended that Section 90(2) of the Act read with Order 6, Rule 17, Civil P. C., gives ample jurisdiction to the Election Tribunal to allow such amendment.

4. Section 90(2) of the Act provides that, subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Civil P. C., 1908 (Act V of 190S), to the trial of suits. Section 92 of the Act states as follows:

"The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters:

- (a) Discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit and
- (g) issuing commissions for the examination of witnesses, and may summon and examine 'suo motu', any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898)".

5. Mr. Ghosh has contended that, though under Sub-section (2) of Section 90 general provision has been made for the application of the Civil P. C., to the trial of an election petition Section 92 has restricted the application of the Code to the matters enumerated in that section; in other words, his argument is that the provisions of Civil P. C., only with respect to the matters contained in Section 92 can be applicable to the trial of an election petition. In my opinion, the argument is not valid. Section 92 of the Act deals with the powers of the Tribunal, and the Election Tribunal is entitled under that section to exercise all the powers which are vested in a court under the Code of Civil Procedure with respect to the items enumerated in Clauses (a) to (g) of that section. The exercise of the powers with respect to those items is not controlled by any provision of the Act; in other words, the Election Tribunal has got the uncontrolled powers with respect to those items which are vested in a court under the Civil P. C. Apart from those items, there are other matters in respect of which also the procedure adopted in the Civil P. C., may have to be applied in trying an election petition. But the application of those provisions is made subject to any provision made in the Act or in the rules made thereunder. This is clear from Section 90(2) of the Act. Reading the two sections together, therefore the position seems to be clear that, whereas an Election Tribunal can exercise the powers which are vested in court under the Civil P. C., with respect to the items enumerated in Section 92 of the Act without any restriction, the provisions of the Code in other respects may also be applicable to the trial of an election petition subject to the restrictions made by the Act or the rules framed under the

Act. This view of the two sections gains support from a Bench decision of the Bombay High Court in -- '*Sitaram Hirachand v. Yograjsingh*'', wherein Chagla, C. J. accepted the contention raised on behalf of the opponents that, whereas Sub-section (2) of Section 90 is made subject to not only the provisions of the Act but of any rules, made thereunder, Section 92 is not made subject to any rules and the scheme of the Act is that the powers conferred upon the Tribunal under Section 92 are minimum powers which cannot be taken away by any rules framed under the Act, whereas the general power of procedure given to the Tribunal under Section 90(2) is a power which is subject to the rules and the rules may modify, limit or restrict the power that a Tribunal may exercise similar to the power exercised by a Court under the Civil P. C. The contention of Mr. Ghosh is, therefore, rejected.

6. Order 6, Rule 17, Civil P. C., empowers the court at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and as may be necessary for the purpose of determining the real question in controversy between the parties. Ordinarily, if not otherwise restricted, this provision of the Code will be applicable to the trial of an election petition and the Election Tribunal shall have the power under this provision to allow amendment of an election petition. But the question is whether the Act or the rules made thereunder have in any way, restricted or limited the exercise of that power. Section 90(2) itself speaks that the application of the provisions of the Civil P. C. shall be subject to the provisions of this Act and of any rules made thereunder. We have, therefore, to examine the various sections of the Act and the rules made thereunder to find out as to what was the scheme of the Act and how far the power of amendment of election petitions has been restricted or limited by the Act or the rules.

7. Section 64 of the Act read with Rule 46 made thereunder provides for the supervision of the counting of votes by candidates' election agents and counting agents who are entitled to inspect the ballot boxes and their seals for satisfying themselves that they are in order. Section 81 deals with the presentation of an election petition on such ground or grounds as are specified in Sections 100 and 101 of the Act and specifically lays down that such an application has to be presented within such time as may be prescribed. Rule 119 prescribes time within which an election petition has to be presented. According to this rule, in the case where such petition is against a returned candidate, it has to be presented at any time after the date of publication of the name of such candidate under Section 67, but not later than fourteen days from the date of publication of the notice in the Official Gazette under Rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer; and in the case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole, it has to be presented at

any time after the date of publication of the names of all the returned candidates under Section 67 but not later than sixty days from the expiration of the time specified in Sub-rule (1) of Rule 112 for the lodging of the returns of election expenses of those candidates with the Returning officer. Subsections (1) and (2) of Section 83 make provisions for the contents of an election petition and for the particulars that may support the allegations. Section 117 requires a deposit of security to be made by the petitioner in an election petition. Section 85 runs as follows:

"If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition: Provided that, if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may, in its discretion, condone such failure".

If the petition is not dismissed under Section 85, the Election Commission is to appoint an Election Tribunal for the trial of the petition under Section 86. Section 90(4) lays down that notwithstanding anything contained in Section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of Section 81, Section 83 or Section 117. Sub-section (1) of Section 90, requires the Tribunal to cause a copy of the petition together with a copy of the list of particulars referred to in Sub-section (2) of 83 to be served on each respondent to be published in the official Gazette, and provides that at any time within fourteen days after such publication, any other candidate may be entitled to be joined as a respondent if he gives such security for costs as the Tribunal may direct.

A perusal of the various sections and the rules referred to above gives a clear indication that the scheme of the Act is that sufficient opportunity should be given to the candidates to know what they may have to allege in their election petitions if they choose to file such petitions and that before the prescribed period it should be ascertained once for all what the petition is and what charges are to be met by the respondents. This rules out the possibility of permitting an amendment to be made in the election petition by raising new charges after the prescribed period. It seems to me that if the Election Tribunal is called upon to deal with any charge not laid before the authority within the prescribed period, it would be acting beyond its jurisdiction. In my opinion, therefore, when once an election petition is filed, there should be no amendment unless it is specifically provided in the Act.

8. In, practically, a similar state of law it was held in -- 'Maude v. Lowley', (1874) 9 C.P. 165 (B), that a petition against the election of a town-councillor cannot, after the expiration of the period for its presentation, be amended by the introduction of a substantially new charge. Lord Coleridge, C. J., in the course of his judgment, observed as follows:

"Sub-section 5 of Section 21, which deals with the jurisdiction of the Court, is as follows: 'The Superior Court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if the petition were an ordinary cause within its jurisdiction'. It may be taken, therefore, that, if not limited and restrained by the Act, this Court would have power to amend the petition. But I am of opinion that the words "subject to the provisions of this Act" do limit and restrain the power of the Court, and prevent the exercise of the jurisdiction sought to be exercised in this case. The 2nd Sub-section of Section 13 of the Act, which prescribes the time within which a petition shall be presented, enacts that a petition shall be presented within twenty-one days after the day on which the election was held, unless it complains of the election on the ground of corrupt practices, and specifically alleges a payment of money or other reward to have been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, in which case it may be presented at any time within twenty eight days after the date of the alleged payment or promise, whether or not any other petition against such person has been previously presented on tried.

The enactment is distinct, that the petition must be presented within twenty-one days, except in the one specified case of an offence not discovered since the election, but which has taken place since the election; and in such case the petition may be presented at any time within twenty-eight days, not after the discovery of the offence, but from the taking place of that which constitutes the offence. That is extremely strong to show the intention of the legislature that, except in the specifically excepted case, the petition must be presented within twenty-one days after the day of the election.

Then, does the introduction of the additional allegation make this in effect a new petition ? It is said that it is merely expanding and making more plain that which is already expressed. But that is not, in my opinion, a well-founded contention, because the petition as originally framed charges only one of the offences pointed out by Section 7, and as amended it charges both. To allow such amendment, therefore, would far exceed the jurisdiction given us by Section 21, Sub-section 5. The respondent has a right to know once for all within the twenty-one days what are the precise charges which he has to meet, and may then destroy any documents and vouchers he may possess that might have reference to any other charges. Mr. Tennant has also pointed out that, after the expiration of the twenty-one days, it would be too late for any one else to present a fresh petition; and that to allow a petitioner to amend so as substantially to make the amended petition a

fresh one, would be conferring upon him a privilege which no other person could possess".

9. Keating, J. in his concurrent judgment observed as follows:

"It was clearly the intention of the legislature that the persons elected should know within a limited time whether or not their election was to be questioned, and also the grounds upon which it was to be questioned. And for that purpose Sub-section 2 of Section 13 requires that the petition shall be presented within twenty-one days save in the excepted case of bribery since the election. Anything which materially adds to the charge, especially if it introduces an additional charge, would constitute not an amendment but a fresh petition".

10. This case seems to be on all fours with the present case and for the reasons given by their Lordships in that case, I would hold that the Election Tribunal had no jurisdiction to allow the amendment by adding a new charge. It may be noted here that it is undisputed in the present case that the amendment sought to be made is beyond the prescribed period both under Clauses (a) and (b) of Rule 119.

11. Reliance has been placed by Mr. Jadunandan Prasad appearing for the respondents on the case of --*Dickering v. Startin*², In that case a petition against a municipal election was filed on the grounds of treating, bribery, and intimidation; the petitioner found, on inspection that the returning officer had neglected to insert in the counterfoils of twenty-nine of the voting papers used at the election the number of the voters appearing on the burgess roll and that certain "tendered" ballot papers were used as ballot papers and were put into the ballot box and afterwards counted in favour of the respondent. The petitioner thereupon sought amendment of his petition by adding the above facts. It was held in that case that the questions intended to be raised by the amendment were of importance and might seriously affect the election, and therefore, the amendments should be allowed. In that case the County Court Judge in accordance with the practice, refused inspection of the votes until the petition was filed. The order of inspection was made subsequent to the filing of the petition, and, therefore, obviously the grounds that were sought to be put in by amendments could not have been taken at the time of the filing of the petition. That case is, therefore, no authority for the proposition that an amendment by way of putting in new charges to an election petition should be allowed after the prescribed period. Our attention has also been drawn to the following observation in --'*Aldridge v. Hurst*³, made by Grove, J.:

"We by no means decide that this court has no power to make amendments in petitions,

provided it sees that no injurious or unjust result or that a beneficial result will follow".

In that case an amendment was sought to be made in an election petition by striking out a part of the prayer, viz., that which claims the seat for Major Aldridge the petitioner, and certain other allegations applying to a scrutiny which would be dependent on this claim. In that case also reliance was placed on the provisions which invested that court subject to the provisions of the Act with the same powers, Jurisdiction and authority with reference to an election petition and the proceedings thereon as it would have if such petition were an ordinary cause within its jurisdiction. It was held in that case that the powers there given were subject to the provisions of the Act; the jurisdiction conferred by the Act could not in all respects be the same as that of the court in ordinary causes. The prayer of the petitioner was rejected and in rejecting that prayer the following observation was made:

"It appears to us that it would be an infringement of this right, if, a petition having been presented by one person (in this case a candidate) claiming the seat, the claim to the seat could be withdrawn by the mere motion of the person presenting it, after the twenty-one days, when no other petition could be presented, and thus the voters be prevented from claiming the seat for one who may be the duly elected representative".

Towards the end of the judgment, however, Grove, J. made the observation which has been quoted in the beginning and on which reliance has been placed on behalf of the opposite party, namely, that "we by no means decide that this court has no power to make amendment in petitions, provided it sees that no injurious or unjust result or that a beneficial result will follow". His Lordship, however, just after the observation referred to the case of (1873) 28 L. T. (N. S.) 111 (C), where the prayer for amendment was allowed, and to the case of (1874) 9 C. P. 165 (B), where the amendment was refused. I have already dealt with these two cases. It is, therefore, clear that the observation was made, not as a rule of general application, but only as being applicable to special cases. In my opinion, this case, instead of supporting the opposite party, lends support to the contention raised by the petitioner that no amendment should have been allowed after the period prescribed for the presenting of an election petition.

12. Before dealing with other cases cited before us it will be better to consider another ground according to which also the Election Tribunal will have no jurisdiction to allow such an amendment to be made in the election petition. Section 83 (1) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Civil P. C., 1908 (Act V of 1908) for the verification of pleadings. Sub-section (2) of that section enacts that the petition shall be accompanied by a list signed and verified in like manner setting forth full

particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. Then comes Sub-section (3), which has a very important bearing on the question under consideration. That sub-section is as follows:

"The Tribunal may, upon such term 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 provision made under this sub-section is parallel to that given in Order 6, Rule 17, Civil P. C. Mr. Ghosh has contended that, though under Section 90 (2), the procedure laid down in the Civil P. C., has been made applicable to the trial of an election petition, the Act itself by enacting Sub-section (3) to Section 83, has made provision for the amendment of particulars referred to in Sub-section (2) of that section, and therefore, the Act contemplates that the provisions of amendment of pleadings as laid down in the Civil P. C., have not to be applied in considering the amendment of an election petition. There seems to be much substance in this contention. If the legislature wanted that the election petition could be amended on all possible points at the discretion of the Election Tribunal, the provision made in Sub-section (2) of Section 90, was enough to give that power to the Election Tribunal, and there was no necessity to enact Sub-section (3) of Section 83. The very fact that the legislature has made provision for the amendment of the election petition in the Act itself goes to show that the general provision of amendment of pleadings as laid down in Order 6, Rule 17, Civil P. C., was not contemplated to be applicable for the amendment of the election petition. I am, therefore, of the opinion that the contents of an election petition could be amended only under the provisions of Section 83 (3) of the Act, and Order 6, Rule 17, Civil P. C. is not applicable for making amendments thereof.

13. Under Sub-section (1) of Section 83, a concise statement of the material facts on which the petitioner relies, has to be given in the election petition, and Sub-section (2) further requires that a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, has to be accompanied along with the election petition. Sub-section (3), however, empowers the Tribunal to permit amendments only with regard to the particulars included in the said list as required by Sub-section (2) of that section, and no provision has been made for the amendment of the statement of the material facts which has to be given under Sub-section (1) of Section 83. The position, therefore, is this that, whereas the legislature has definitely made provision for the amendment of the particulars, it deliberately omitted to make any such provision for the statement of the material facts to be given in the election petition. It thus appears that the

intention of the legislature was not to allow any amendment to be made with regard to the statement of the material facts on which the petitioner relies for challenging an election. When the legislature definitely made provision for the amendment of the particulars, but omitted to make any provision for the amendment of the charges or the statement of the material facts as required to be given under Sub-section (1) of Section 83, it was clearly the intention of the legislature that the charges in an election petition being of a very serious nature should be formulated in definite terms and this should not be brought by the petitioner after the expiry of the statutory period. If, therefore, the amendment of the charges is allowed, the intention of the Act that they should be formulated within a definite period would be entirely frustrated. A statute cannot be extended to meet a case for which provision has been clearly and deliberately omitted. It is, therefore, clear that under the provision of the Act itself the Election Tribunal had no Jurisdiction to allow the amendment in question.

14. Counsel for the opposite party has drawn our attention to the Pull Bench decision of the Madras High Court in --'Appaswami Padayachi v. Ethirajulu Naidu', AIR 1926 Mad 1043 (E), where under the provisions parallel to those in Section 90(2) of the Act amendment of an election petition was allowed. That case related to the election under the Madras District Municipalities Act. The report does not show as to what was the law under that Act, but from the statement of the case in -- 'R.S. Naidu v. J. Ramier', AIR 1926 Mad 947 (P), the law appears to have been that the election petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall be inquired into by a judge as nearly as may be in accordance with the procedure applicable under the Civil P. C. Under that state of law the Full Bench in the 'Appaswami's case (E)' held that it is quite clear that the intention was that the tribunal should be guided, wherever possible, in its procedure by the provisions of the Civil P. C. and it is obvious that it would be a great hampering to the course of justice if, in a proper case with proper safeguards, the learned Judge were not allowed to entertain an amendment in accordance with the evidence. It is, however, not clear whether the application of the Civil P. C. was subject to any restriction as made in the present Act or whether there was any special provision for amendment as laid down in Sub-section (3) of Section 33 of the present Act. It is, therefore, not possible to apply the principle enunciated in the Full Bench decision to the facts of the present case. Reliance has also been placed on behalf of the opposite party on the case of --'*Phani Bhusan Sen v. Sanat Kumar Maitra*'⁴, That was a case under the Bengal Municipal Act of 1932, which made the procedure of the Civil P. C. applicable to trials of election petitions by the District Judge under the Act. The point raised in that case was whether the District Judge could entertain an application for review of the order or the judgment after the publication of the result of the election in the gazette as provided by Section 50 of the Act. It was held that, since the Civil P. C. including the provisions for review thereunder was applicable to trials of election petitions, the

District Judge could entertain a review application. This was not a case of an amendment of an election petition. From the report it does not appear that the application of the provision for review as laid down in the Civil P. C. was made applicable to trials of election petitions subject to any restriction. This case also, therefore, has no application to the facts of the present case.

15. Reliance has also been placed on behalf of the opposite party on cases which have held that election petitions could be amended by adding new parties or by allowing varifications to be made. In -- '*Jagan Nath v. Jaswant Singh*'⁵, R an election petition was filed on the date which was the last date under the law for presentation of such petition. Along with other candidates who were made parties in that election petition there was one candidate named Baijnath whose nomination had been accepted, but who had withdrawn his candidature subsequently. He was not made a party. A preliminary objection was raised that the omission to implead Baijnath was fatal to the maintainability of the election petition. It was contended on behalf of the petitioner that Baijnath was neither a necessary nor a proper party, and, in the alternative, it was claimed that permission might be given to the petitioner to implead him. The Election Tribunal held that Baijnath was a proper party, but not a necessary party, and his non-joinder in the election petition was not fatal to the petition. The Tribunal, however, directed that he be added as a respondent in the petition and notice of the petition be served on him. Against that order, an application under Articles 226 and 227, Constitution of India was made to the Punjab High Court for quashing that order which was summarily rejected. The matter was taken up to the Supreme Court. Their Lordships examined the provisions of Sections 85 and 90(4) of the Act and observed that, whereas the non-compliance with the provisions of Sections 81, 83 and 117 entailed the dismissal of the application, the legislature did not state the consequences of non-compliance of Section 82 of the Act which required that all the candidates who were duly nominated at the election shall be joined as respondents. Their Lordships also took the view that the provisions of Section 82 of the Act are in terms similar to the provisions under Order 34, Rule 1, Civil P. C., which provided that all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage and as there is ample authority for the view that this is merely a directory provision and non-joinder of any party is not a fatal defect unless the party omitted is a necessary party in the sense that in his absence no relief could be given at all even as regards the party actually on record, the non-joinder of Baijnath in the election petition is not fatal. Their Lordships, therefore, upheld the order at amendment. Their Lordships, however, made it perfectly clear that in that case it was not necessary to express any final opinion on matters specifically covered by Sections 81, 83 and 117 and dealt with by Section 85 of the Act. An observation made in the course of the judgment in this connection is very important:

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but it 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." In AIR 1953 Bom 293 (A), the election petition and the list that was accompanied with the petition were not verified as required by Section 83(1) and Section 83(2), and one of the candidates who was duly nominated for the election but had withdrawn his candidature before the valid nominations were published, was not made a party. The Election Tribunal gave permission to remove both the defects by amendment. The High Court of Bombay refused to quash the order of amendment: The amendment of the petition by permitting to give the proper verification is, more or less, of a formal nature, and there is ample authority for the proposition that the omission or defect in verification is not fatal to the pleadings of the parties. The real question that was mooted out before their Lordships in that case was about the omission of the said candidate from being arrayed as a party as appears from the report which is to the following effect:

"The more substantial opposition that has been presented to the order made by the Tribunal is that the Tribunal has added a party to the petition when it had no jurisdiction to do so."

Their Lordships took the view that the omitted candidate was not a necessary party. In those circumstances their Lordships dismissed the application. The effect of the omission of a party who is not a necessary party has already been dealt with by the Supreme Court in the case referred to above. In -- *'A.S. Subbaraj v. M. Muthiah'*⁶, which was a case of defective verification of the election petition, it was held that the amendment was of a formal nature. In -- *'Mahadeo Murlidhar v. Jwalaprasad Mishra'*⁷, one of the declarations which was sought, was barred by time under Rule 119 (b) and the amendment was sought to be made by withdrawing that declaration. The declarations are required to be made under Section 84 of the Act, the non-compliance of which stands on the same footing as that of Section 82. That case, therefore, cannot be of any help for the decision of the present case. The only other case that was cited is a Bench decision of this Court in -- *'Shah Mohammad Umair v. Ram Charan Singh'*⁸, which also is a case of the nonjoinder of a duly nominated candidate who had withdrawn his candidature. It was held in that case that the nonjoinder was not fatal to the petition. In my opinion, the cases referred to above which dealt with the effect of the non-compliance of Section 82 or Section 84 of the Act or with the amendment of verification which is a matter of formal nature, have no bearing on the question under consideration.

16. I have already dealt with the cases and the provisions of the Act which are relevant on the question at issue and hold that the Election Tribunal had no jurisdiction to allow the amendment by adding a new charge or an independent new prayer.

17. The result, therefore, is that this application succeeds. Let a writ in the nature of 'certiorari' be issued against the opposite party quashing the order of amendment dated 30-1-1954, passed by the Election Tribunal. The petitioner is entitled to his costs which will be payable by opposite party No. 1. Hearing fee is assessed at Rs. 50.

Ramaswami, J.

18. I agree.

Cases Referred.

- 1AIR 1953 Bom 293 (A)
- 2(1873) 28 L. T. (N. Section) 111 (C)
- 3(1876) 1 C. P. D. 410 (D)
- 4AIR 1935 Cal 773 (G)
- 51954 SC 210 (H)
- 6AIR 1954 Mad 336 (I)
- 7AIR 1954 Nag 26 (J)
- 8AIR 1954 Pat 225 (K)