

Before Prem Chand Jain J.

SHIV CHAND,—*Petitioner.*

versus

UJAGAR SINGH,—*Respondent.*

Election Petition No. 12 of 1977.

C.M. No. 14-E and 15-E of 1977.

October 12, 1977.

Representation of the People Act (43 of 1951)—Sections 79(b), 82(b) and 86(1) and (4)—Allegations of corrupt practices made against a candidate—Such candidate not impleaded as a respondent—Application by such candidate for being impleaded under section 86(4)—Election petition—Whether has to be dismissed under section 86(1)—Clauses (1) and (4) of section 86—Whether independent of each other.

Held, that in case the petition does not comply with the provisions of Section 82 of the Representation of the People Act 1951 then the same has to be dismissed. It is also equally clear that the petitioner cannot be permitted to implead a necessary party as envisaged under section 82(b) of the Act by invoking the provisions of Order 1 Rule 10 or by seeking the amendment of the election petition. A petition which suffers from such an infirmity has to be dismissed as the Act enjoins the penalty of dismissal of the petition on non joinder of a necessary party.

(Para 10).

Held, that the provisions of sub-section (1) of section 86 of the Act are not to be read subject to the provisions of sub-section (4). Under sub-section (1) of section 86, the High Court is bound to dismiss an election petition for non-compliance with the provisions of section 82. Under section 82 of the Act, a petitioner is required to join as a respondent any other candidate against whom allegations of any corrupt practices are made in the petition. The Legislature has enacted the provisions of sub-section (4) of section 86 with a view to meet an eventuality where a candidate is not made a party by the petitioner as he is not required to be made a party under section 82 of the Act, but still that candidate may be interested in the result of the petition and in that event he, by invoking the provisions of sub-section (4) of section 86 could within the prescribed period of limitation approach the court and get himself impleaded as a respondent. In other words section 86(4) would come into play only in cases where section 86(1) does not operate. The provisions of section 86(1) are mandatory and of drastic nature and cannot be circumvented and

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rendered nugatory by having recourse to the provisions of sub-section (4) of section 86. This was never the intention of the Legislature while enacting sub-section (4). Thus, section 86(1) is independent of sub-section (4) of section 86 of the Act and an election petition which suffers from any infirmity as envisaged under section 82 of the Act has straightaway to be dismissed and the defect cannot be cured by invoking the provisions of sub-section (4) of section 86 which would come into play only in cases which are not covered by the provisions of section 86(1) of the Act.

(Paras 11 and 12).

Election petition under section 81 read with section 100 of the Representation of the People Act, 1951 praying that the following reliefs be granted :—

- (i) *that the election of respondent Shri Ujagar Singh to the Punjab Legislative Assembly from Baluana (Reserve Assembly Constituency) be declared void;*
- (ii) *the respondent Shri Ujagar Singh be disqualified for a period of 6 years under section 8-A of the Act, and*
- (iii) *the cost of this petition be allowed to the petitioner ;*

Civil Misc. No. 14E/77.

Application on behalf of the petitioner under Order 1, Rule 10(2) read with Order 6, Rule 17 and Section 151 Civil Procedure Code praying :

- (i) *that Shri Mal Singh son of Shri Gulu Singh, resident of village Bahadur Khera, Tehsil Fazilka, District Ferozepore be ordered to be impleaded as respondent No. 2 in the Election Petition;*
- (ii) *that in the alternative para 22 of the Election Petition be ordered to be deleted.*

Civil Misc. 15E/77.

Application under section 86(4) of the Representation of the People Act, 1951 praying that the applicant Mal Singh son of Shri Gulu Singh, resident of Bahadur Khera, Tehsil Fazilka, District Ferozepore be ordered to be impleaded as respondent in the Election Petition and he be permitted to file the written statement in the Election Petition.

Kuldip Singh Bar-at Law and Ashok Bhan,—*Advocates for the petitioner.*

Harbhagwan Singh Senior Advocate with Ram Lal Sharma, N. S. Mangat, S. K. Ahluwalia and Amarjit Chaudhary *Advocates, for the respondent.*

JUDGMENT

Prem Chand Jain, J.—

(1) It is necessary to state the relevant facts in chronological order to decide the preliminary issues.

(2) In the recent General Elections held in June, 1977, the petitioner, the respondent, seven persons mentioned in Para 3 of the election petition and one Mal Singh filed their nomination papers with a view to contest the election from the Baluana constituency of the Punjab Legislative Assembly. All of these, except Mal Singh, seem to have contested for the seat. Shri Mal Singh who was also a duly nominated candidate, did not choose to contest. He withdrew his candidature within the prescribed period. Eventually as a result of poll, the respondent was returned from the constituency. His election has now been called in question by the petitioner by means of election petition. The grounds on which it is challenged are many. Commission of various corrupt practices by himself, through his agents and other persons have been alleged in the petition. I need not refer to all of them for at this stage, I am concerned only with the allegation contained in the petition in relation to Shri Mal Singh who is not a party to this proceeding. At page 12 of the petition, the petitioner in this behalf has stated thus:—

“22. That Shri Mal Singh, son of Guhla Singh, Majhabi Sikh of village Bahadur Khera was also a candidate from this Constituency. He had earlier applied for Akali Ticket but the Akali High Command allotted the ticket to the petitioner. In revolt against the decision of the Akali High Command, Shri Mal Singh decided to contest as an independent candidate against the petitioner. Since he is a Majhabi Sikh, he would have affected the votes of respondent Ujagar Singh who is also a Majhabi Sikh. The respondent alongwith Shri Ram Lal, his election-agent, Gurcharan Singh of village Bahadur Khera and Baldev Singh of village Kala Tiba, went to the house of Mal Singh at village Bahadur Khera on 20th May, 1977 at or about 8.00 P.M. A meeting took place at the residence of Mal Singh and he was asked by the respondent to withdraw from the contest in his favour. The respondent

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appealed to Mal Singh that both of them belong to the same community i.e. Majhabi Sikh and the Akali Dal had been very unfair to Shri Mal Singh by denying the ticket to him. The respondent thus tried to make a common cause with Mal Singh on the basis of caste and community and asked him to withdraw in the name of caste and community. Shri Mal Singh replied that he was a poor man and had spent a few thousand rupees in running about for getting the Akali ticket. On this Ujagar Singh respondent took out Rs. 10,000 and handed over the same to Shri Mal Singh and said that this amount was a compensation for his withdrawal from the contest in his favour i.e. Ujagar Singh. In pursuance of the appeal made by the respondent in the name of caste and community and the bribe of Rs. 10,000 Shri Mal Singh withdrew from the contest the next day on 21st May, 1977 in favour of Ujagar Singh, respondent”.

(3) In pursuance of the notice issued, the respondent has filed a written statement in which two preliminary objections have been raised. The allegations made in the petition on merits have been controverted. On the basis of the preliminary objections raised in the written statement, the following preliminary issues were framed on September 7, 1977 :

1. Are the contents of paras 4 to 22 of the election petition vague and lacking in particulars ? If so, is the petition liable to be dismissed on that ground ? OPR
2. Is the election petition liable to be dismissed as Mal Singh against whom the allegations of corrupt practices of bribery have been made, has not been made a party ? OPR

The learned counsel for the parties stated that no evidence was to be led on the preliminary issues. Accordingly, the case was adjourned to September 15, 1977 for arguments on preliminary issues.

(4) On the 8th of September, 1977, Civil Misc. Application No. 14-E of 1977 under Order 1, Rule 10(2) read with Order 6, Rule 17 and Section 151, Civil Procedure Code, was filed on behalf of the petitioner praying that Shri Mal Singh son of Shri Gulu Singh, resident of village Bahadur Khera, Tehsil Fazilka, District Ferozepur be ordered to be impleaded as respondent No. 2 in the election

petition, or in the alternative, Para 22 of the election petition be ordered to be deleted. On September 9, 1977, I gave notice of this application to the counsel opposite for 15th of September, 1977. Another application Civil Misc. No. 15-E of 1977 was filed on 8th September, 1977 under Section 86(4) of the Representation of the People Act, 1951 (hereinafter referred to as the Act) on behalf of Shri Mal Singh in which a prayer has been made that the applicant be ordered to be impleaded as respondent in the election petition. This application came up for hearing before me on September 13, 1977 in which notice to the learned counsel opposite was issued for September 15, 1977.

(5) I have heard arguments on the preliminary issues as well as on the two applications referred to above.

(6) So far as preliminary issue No. 1 is concerned, the same was not pressed and is accordingly decided against the respondent.

(7) The main arguments on issue No. 2 which were advanced on either side by the learned counsel for the parties, proceeded on more or less admitted facts i.e., that Mal Singh was a candidate as defined in Section 79(b) of the Act, that allegations of corrupt practices have been made against him in para 22 of the election petition, that under Section 82(b) he was required to be joined as respondent in the petition and that under Section 86(1) the election petition which does not comply with the provisions of Section 82 is liable to be dismissed.

(8) In the instant case, Mal Singh was a candidate at the election and he having not been made a party in the election petition, the same is liable to be dismissed as allegations of corrupt practices have been made against him. Shri Kuldip Singh, learned counsel for the petitioner, very fairly conceded that the petition is liable to be dismissed under Section 86(1) of the Act as Mal Singh who is a necessary party, has not been impleaded as a respondent. But his main reliance is on the application which has been filed by Mal Singh under Section 86(4) of the Act, which reads as under :

“86(4). 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

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may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purpose of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.”

What was sought to be argued by Shri Kuldip Singh, learned counsel for the petitioner, was that Mal Singh has made an application for being impleaded as respondent, within the prescribed period, that this application of his straightaway deserves to be allowed as it fully complies with the provisions of Section 86(4), that the moment the application of Mal Singh is allowed, he would become respondent in the election petition and that Mal Singh having become respondent in the election petition, the same cannot be dismissed under the provisions of Section 86(1) of the Act.

(9) On the other hand, it was submitted by the learned counsel for the respondent that Section 86(1) is an independent provision and the same cannot be circumvented by the provisions of Section 86(4) of the Act, that Section 86(4) of the Act is not applicable to cases where the allegations of corrupt practices have been made against a candidate and he has not been made a party by the petitioner, that where an election petition is filed which does not comply with the provisions of Section 82 of the Act, then there is no triable petition before the Court and the same has straightaway to be dismissed, that under Section 86(4) a candidate other than the one referred to in Section 82(b) can apply for being impleaded as a respondent and that the provisions of Section 86(4) cannot be invoked for remedying the defect from which the petition suffers for non-compliance with the provisions of Section 82(b) of the Act and which under Section 86(1) of the Act has straightaway to be dismissed.

(10) After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of the learned counsel for the respondent. As I have observed earlier and it was rightly conceded by the learned counsel for the petitioner that in case the petition does not comply with the provisions of Section 82 of the Act then the same has to be dismissed. It

is also equally clear that the petitioner cannot be permitted to implead a necessary party as envisaged under Section 82(b) of the Act by invoking the provisions of Order 1 Rule 10 or by seeking the amendment of the election petition under Order 6 Rule 17. A petition which suffers from such an infirmity, has to be dismissed as the Act enjoins the penalty of dismissal, of the petition for non-joinder of a necessary party. This view finds full support from the observations of their Lordships of the Supreme Court in *Mohan Rai v. Surendra Kumar Taparia and others* (1), wherein it has been observed thus :

“It is argued that the Civil Procedure Code applies and O.6 R. 17 and O. 1 R. 10 enable the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of references to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the Court and O.1 R. 10 enables the Court to strike out parties but the Court cannot use O.6 R. 17 or O.1 R. 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see S. 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.”

(11) The question that still remains for consideration is as to what is the effect of sub-section (4) of section 86 on sub-section (1) of section 86 ? In other words, can it be said that the provisions of sub-section (1) have to be read subject to provisions of sub-section (4) of section 86 ? In my view, the answer has to be in the negative. Under sub-section (1) of section 86, the High Court is bound to dis-

(1) AIR 1969 S.C. 677.

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miss an election petition for non-compliance with the provisions of section 82. Under Section 82 of the Act, a petitioner is required to join as respondent any other candidate against whom allegations of any corrupt practices are made in the petition. The legislature has enacted the provisions of sub-section (4) of section 86 with a view to meet an eventuality where a candidate is not made a party by the petitioner as he is not required to be made a party under Section 82 of the Act, but still that candidate may be interested in the result of the petition and in that event he, by invoking the provisions of sub-section (4) of section 86 could within the prescribed period of limitation, approach the Court and get himself impleaded as a respondent. In other words, section 86(4) would come into play only in cases where section 86(1) does not operate. The provisions of section 86(1) are mandatory and of drastic nature and cannot be circumvented and rendered nugatory by having recourse to the provisions of sub-section (4) of section 86. In my view, this was never the intention of the legislature while enacting this provision, i.e. sub-section (4). Had it been so, then the legislature would have certainly used specific words to that effect either as a proviso to sub-section (1) or in the content of sub-section (4) itself.

(12) Thus, I am constrained to hold that section 86(1) is independent of sub-section (4) of section 86 and that an election petition which suffers from any infirmity as envisaged under section 82 of the Act has straightaway to be dismissed and the defect cannot be cured by invoking the provisions of sub-section (4) of section 86 which would come into play only in cases which are not covered by the provisions of section 86(1) of the Act. In the instant case, as Mal Singh, who admittedly was a candidate and against whom allegations of corrupt practices of bribery have been made, has not been made a party, the election petition is liable to be dismissed straightaway. Accordingly, preliminary issue No. 2 is decided in favour of the respondent and against the petitioner.

(13) In view of my finding on preliminary issue No. 2, the election petition fails and is dismissed with costs.

(14) As a consequence of the dismissal of the election petition, Civil Misc. Nos. 14-E of 1977 and 15-E of 1977 are also dismissed.

K. T. S.