

material which may show that Bagicha Singh was a polling agent of respondent No. 1. As has been previously observed, Bagicha Singh was summoned as a witness and although he was present in Court, he was given up and not examined. It is not possible to find on the statement of Fauja Singh, that a corrupt practice of the nature alleged was committed by respondent No. 1.

It may be mentioned that with regard to all the instances of corrupt practices which have been discussed above, Bagicha Singh has not been proved by any cogent evidence or material to have acted as an agent in connection with the election with the consent of the candidate within the meaning of Explanation appearing in the end of section 123 of the Act, nor was any such contention advanced.

No other point was pressed on behalf of the petitioner. As both the issues have been found against the petition and in favour of respondent No. 1, the petition is dismissed with costs, which are assessed at Rs. 1,399/65 (inclusive of Counsel's fees fixed at Rs. 1,000) payable to respondent No. (1) only.

K.S.K.

ELECTION PETITION

*Before A. N. Grover, J.*

KESHO RAM,—*Petitioner*

*versus*

HARBHAGWAN SINGH AND ANOTHER,—*Respondents*

Election Petition No. 20 of 1967

August 10, 1967

*Representation of the People Act (XLIII of 1951)—S. 100(1)(d)(i)—Election petition on the ground of improper acceptance of a nomination paper—Whether must contain allegations relating thereto—Mere allegation that the improper acceptance of a nomination paper affected the result of election concerning the petitioner—Whether sufficient.*

Kesho Ram *v.* Harbhagwan Singh, etc. (Grover, J.)

*Held*, that allegations contained in an election petition relating to the improper acceptance of a nomination paper and its effect on the result of election fall under sub-clause (i) of clause (d) of sub-section (1) of section 100 of the Representation of the People Act. This provision is to the effect that the result of the election in so far as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. The petitioner, therefore, has to allege (a) that there has been improper acceptance of any nomination; and (b) that the result of the election in so far as it concerns a returned candidate has been materially affected.

*Held* that if an election petition which is presented does not contain any ground specified in sub-section (1) of section 100 of the Act, it cannot be called a petition which is in conformity with the requirements of section 81 of the Act. Such an election petition is not maintainable if it states facts with a view to making out a case that the improper acceptance of a nomination paper has affected the result of the election so far as the petitioner is concerned. The requirement of the statute and the real test is, that such improper acceptance should materially affect the result of the election in so far as a returned candidate is concerned. Where it is not possible to spell out from the allegations in the petition any averment that the result of the election has been materially affected in so far as it concerned the returned candidate, or even the necessary facts for the purpose of developing a case that the result of the election has been materially affected have not been stated, does not satisfy the test laid down above. The mere allegation that if respondent's nomination had not been accepted, the petitioner would have been accepted by Congress Party is not enough.

*Petition under sections 80 and 81 of the Representation of the People Act, 1951, praying that this petition be accepted, the Election of respondent No. 1 from Kotkapura Constituency to Punjab Vidhan Sabha be declared as void.*

C. L. LAKHANPAL, AND I. S. VIMAL, ADVOCATES, for the Petitioner.

B. S. DHILLON, ADVOCATE, for the Respondents.

#### JUDGMENT

GROVER, J.—This petition under sections 80 and 81 of the Representation of the People Act, 1951 (hereinafter to be called the Act) has been filed by Shri Kesho Ram challenging the election of Shri Harbhagwan Singh, respondent, No. 1. Respondent No. 1 was elected from the Kot Kapura Assembly Constituency during the elections held in February, 1967, defeating the petitioner as also Shri Mehar Singh, who has been impleaded as respondent No. 2.

In the written statement of respondent No. 1 a preliminary objection was raised that the petition was liable to be dismissed on the short ground that the petitioner had not alleged in the petition that the result of the election so far as the returned candidate was concerned had been materially affected by the alleged improper acceptance of the nomination papers of respondent No. 2. The petition was, therefore, liable to be dismissed as it did not disclose any cause of action. It may be mentioned that respondent No. 2 was served by registered post, but he did not appear and *ex-parte* proceedings were ordered to be taken against him on 19th May, 1967. When a preliminary issue was framed embodying the preliminary objection raised in the written statement of respondent No. 1, counsel for the petitioner took a few adjournments by saying that the petitioner wanted to withdraw the petition and that a formal application would be filed. That was not done in spite of ample opportunity having been given. The arguments on the preliminary issue have been heard and there can be no manner of doubt that the petition merits dismissal. It does not disclose any cause of action on which a triable issue can be raised.

The following are the material allegations in the petition:—

- “1. That the petitioner was a candidate from Kotkapura Assembly Constituency of Punjab Legislative Assembly in the last General Elections held in January—February, 1967.
- (2) That the Returning Officer declared respondent No. 1 as duly elected from the said Constituency on 21st of February, 1967.
- (3) That the Returning Officer improperly accepted the Nomination Papers of Shri Mehar Singh, respondent No. 2. This improper acceptance has materially affected the result of the Election as far as the petitioner is concerned. The Congress party had made an alternative choice for sponsoring a candidate from this Constituency. The alternative choices were respondent No. 2 and the petitioner. So if the nomination papers of respondent No. 2 had not been improperly accepted, the petitioner would have been sponsored as a Congress candidate.
- (4) That the Returning Officer improperly accepted the nomination papers of respondent No. 2 because respondent No. 2 was not enrolled as a voter in Kotkapura Constituency.

Kesho Ram *v.* Harbhagwan Singh, etc. (Grover, J.)

According to the mandatory provisions of law, he was bound to file a copy of the Electoral Rolls of the Constituency in which his name was en-rolled or a certified copy of the relevant entry in that Electoral Roll. Respondent No. 2 had not done either of the two. He could have produced either of these two things at the time of scrutiny of nomination papers also. Even this he had not done. The Returning Officer, therefore, was bound to reject his nomination papers. The acceptance of his nomination papers was legally improper.

- (5) That as a result of this improper acceptance, the Congress party was forced to accept respondent No. 2 as contesting candidate. Respondent No. 2 was bound to lose the election as against respondent No. 1 because he was not so popular in the Constituency. He was taking a leading part in the factional politics of the Punjab Congress and as such a substantial section of Congress-men bitterly opposed him during the elections. The petitioner was a non-controversial man; if he had contested the election on the Congress ticket, that section of Congress-men would not have opposed him.
- (6) That even otherwise, the petitioner is a Municipal Commissioner of Faridkot. He is very popular amongst the people of Kotkapura Constituency also. Most of the Hindu votes in any event would have been polled in favour of the petitioner, but respondent No. 2 could not get the same. This has also materially affected the result of the election."

Now, the allegations contained in the petition are based on or relate to improper acceptance of the nomination papers of respondent No. 2 and its effect on the result of the election. This could fall under sub-clause (i) of clause(d) of sub-section (1) of section 100 of the Act which contains the grounds for declaring election to be void. That provision is to the effect that the result of the election in so far as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. The petitioner, therefore, has to allege (a) that there has been improper acceptance of any nomination; and (b) that the result of the election in so far as it concerns a returned candidate has been materially affected.

In the present petition it has been stated in paragraph 3 which has been reproduced *in extenso*, that the improper acceptance of the nomination papers of respondent No. 2 "has materially affected the result of the election as far as the petitioner is concerned." In all the subsequent paragraphs the petitioner has stated facts which substantially relate to the disadvantage or the loss which resulted to the petitioner owing to the nomination papers of respondent No. 2 having been improperly accepted. For instance, paragraphs 5 and 6, when read with paragraph 3, contain averments founded on the position that the Congress party would have sponsored the petitioner as the Congress candidate if the nomination of respondent No. 2 had not been accepted. The petitioner had a better chance of winning the election because respondent No. 2 was not popular enough and he had a good deal of opposition in the Congress circles itself. The petitioner was a non-controversial candidate and enjoyed popularity among the people of Kotkapura Constituency apart from being a Municipal Commissioner of Faridkot. Most of the Hindu votes would, therefore, have been polled in favour of the petitioner.

It is apparent that all the facts have been stated with a view to making out a case that the improper acceptance of the nomination of respondent No. 2 had materially affected the result of the election so far as the petitioner was concerned. The requirement of the statute, however, is that such improper acceptance should materially affect the result of the election in so far as a returned candidate is concerned. This essential requirement remains completely unsatisfied in the present case as it is not possible to spell out from the allegations in the petition any averment that the result of the election has been materially affected in so far as it concerned the returned candidate. Apart from all this, even the necessary facts for the purpose of developing a case that the result of the election has been materially affected have not been stated. The true import and meaning of these words have been discussed by their Lordships in *Vashist Narain Sharma v. Dev Chand* (1). According to section 100(1)(c), as it stood at that time, the Tribunal had to find that "the result of the election has been materially affected." It was pointed out that the result could not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate, but by proof of

(1) 10 E.L.R. 30.

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the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. Section 100 of the Act was amended by the Representation of the People (Second Amendment) Act, 1956 and the present sub-clause in the terms in which it appears was inserted. It is obvious that the words "in so far as it concerns a returned candidate" were not to be found in clause (c) of sub-section (1) of section 100 as it stood before the amendment. The observations made in *Ana Yatullah Khan v. Diwan Chand and Mahajan* (2), which were made after the 1956 amendment, are noteworthy and may be reproduced :

"What the party, who wishes to get an election declared void has to establish is that the result of the poll had in fact been materially affected by the improper acceptance of a nomination paper. To do this, it has to be demonstrated that the votes would have been divided in such a way that the returned candidate would have been unsuccessful."

In the present case there is total absence of material facts and date on which a foundation could be laid for demonstrating that the votes would have been divided in such a way that the returned candidate would have been unsuccessful. It is significant that the petitioner has not even given the difference of the number of votes secured by the returned candidate and himself nor has he stated how many votes were polled by respondent No. 2. He has not further given any facts showing gain in the number of votes of the returned candidate as a result of the improper acceptance of the nomination papers of respondent No. 2. The mere allegation that if respondent No. 2's nomination had not been accepted, the petitioner would have been sponsored by the Congress party as a candidate, cannot be said to relate to the test laid down by the Madhya Pradesh Court in *Inayatullah Khan's case*, which has already been mentioned, or to any advantage or gain which the returned candidate might have derived or made in the number of votes which he actually polled.

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(2) 15 E.L.R. 219 at page 235.

I am quite alive to the true legal position that pleadings should not be construed very strictly and that the question of evidence or proof should be kept apart from facts which have to be stated in the election petition, but it must be remembered that even a plaint is bound to be rejected where it does not disclose a cause of action [Order VII, rule 11(a) of the Code of Civil Procedure]. As stated in Mulla's Code of Civil Procedure, Volume I, (13th Edition), at page 144, "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It is not limited to the actual infringement of the right sued on, but includes all the material facts on which it is founded. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to a decree. It is, in other words, a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit and it refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Under the Act section 86 enjoins the High Court to dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117. Sub-section (1) of Section 81 provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court. It is apparent that if an election petition, which is presented, does not contain any ground specified in sub-section (1) of section 100, it cannot be called a petition which is in conformity with the requirements of section 81. In the present case I am satisfied that the facts which have been stated in the petition and which can be called the media upon which the petitioner asks the Court to set aside the election do not fall within any of the grounds of sub-section (1) of section 100 which alone is relevant. It appears that the petitioner had sub-clause (i) of clause (d) of that provision in mind, but the allegations, which have been made, do not satisfy the requirements of that ground.

It may be mentioned that the petitioner never asked for amendment of the petition, but even if he had asked for an amendment which would have had the effect of altering the character of the petition as originally framed radically or of introducing a ground for setting aside the election which was not to be found in the original petition, that amendment could not have been allowed. It has been

Kesho Ram v. Harbhagwan Singh, etc. (Grover, J.)

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held by their Lordships in *Harish Chandra Bajpai v. Triloki Singh* (3), that the Tribunal had the power under Order VI, rule 17 of the Code of Civil Procedure to order amendment of a petition, but that power could not be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations would then be time-barred. In *Ram Abhilakh Tewari v. Election Tribunal, Gonda* (4), it was observed at page 385 :—

“There being no allegation that the result was materially affected, these allegations against those persons, therefore, remain in the form of mere allegations of fact without constituting a ground for setting aside the election under section 100(1) (d)(ii) of the Representation of the People Act.”

In the present case it can well be said that the allegations which have been made remain mere allegations of fact without constituting a ground for setting aside the election under section 100(1)(d)(i) of the Act. In Halsbury's Laws of England, Third Edition, Volume 14, it is stated in paragraph 510 at page 286 that an application may be made to the High Court to take off the file a petition that is bad on the face of it. In the foot-note reference is made to *Cox and others v. Davies* (5) where the ground was that the petition did not disclose a valid ground of objection.

For the reasons given above, the present petition as presented can hardly be regarded as based on one or more of the grounds specified in sub-section (1) of section 100 and section 101 on which alone it can be instituted under section 81 of the Act. It is thus dismissed, but in the circumstances there will be no order as to costs.

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(3) 12 E.L.R. 461.

(4) 14 E.L.R. 375.

(5) (1898) 2 Q.B. 202.