Before Swatanter Kumar, J.

GURMESH BISHNOI—*Petitioner*

versus

BHAJAN LAL—*Respondent*

E.P. No. 11 of 1996

C.M. No. 58-E of 2000

2nd August, 1997 & 23rd April, 2002

Representation of People Act, 1951—Ss. 80, 83, 86, 87, 100 & 123—Code of Civil Procedure, 1908—O.6 Rl. 16—Election to Haryana Legislative Assembly—Allegations of corrupt practices & booth capturing—Plea vague & lacking material facts in some paragraphs of petition—Preliminary issue—Whether petition liable to be rejected—Held, no—Only paragraphs found to be vague & lacking material facts liable to be struck off from the pleadings—Paragraphs which are only introductory & explanatory and their details are provided for in the subsequent paras cannot be struck off—Deletion of some paragraphs have no effect on the maintainability of the petition.

Held, that pleadings must be specific and they must indicate the specific case which the other side is called upon to meet, but evidence in detail need not be spelled out in the petition though evidence must be led within the scope of the pleadings. The allegations made in the petition are to be supported by proper evidence while the parties are called upon to lead evidence during trial. These are some of the settled canons of law relating to construction of pleadings which have been reiterated by all Courts from time to time. The pleadings must be construed in the proper manner and in consonance with the settled principles. The Court, of course, will examine if they satisfy the statutory requirements prescribed under the Representation of People Act. The paragraphs which may appear to be vague but when read in conjunction with other paragraphs of the petition may not remain to be vague or may not be said to be lacking of the material particulars and facts. In view of the provisions of Section 123 read with Section 100 and other procedural sections of the Representation of People Act and Order 6 Rule 16 a pleading can be stuck off the record only if it is unnecessary, scandalous, frivolous, vexatious or

intends to prejudice, embarras or delay the fair trial or amounts to abuse of process of the Court and does not satisfy the statutory requirements as spelled out in the provisions of the Act.

(Para 8)

Further held, that a paragraph read in isolation may be somewhat vegue, but while read in conjunction with other paragraphs of the petition, it may convey its proper and definite meaning to the facts averred, as such may not cause any prejudice to the respondent. In that circumstances, the paragraphs cannot be struck off the record. If a paragraph is introductory and its details with specifications and material facts are provided for in the subsequent paragraphs, the said paragraphs cannot be struck off the record on the ground that the same lacks material facts.

(Para 8)

Further held, that the petition was not liable to be rejected even if some paragraphs were deleted. That means the other paragraphs of the petition are the material paragraphs and they do furnish material facts and are in adherence to the statutory provisions of the Act. There can be no doubt then, that the paragraphs are merely introductory or explanatory paragraphs, which must be seen in the background of the facts and allegations made in the entire petition to determine the present question.

(Para 14)

Representation of People Act, 1951—Ss. 81(1), 82, 86(4), 108 to 112—Code of Civil Procedure, 1908—0.1 Rl. 10, 0.23 Rl. 1—Election to Haryana Legislative Assembly—Respondent declared elected—Challenge thereto—Cotinuous non-appearance of petitioner at the time of final arguments despite court notice—Whether High Court has jurisdiction to dismiss an election petition for non-prosecution or default—Held, yes—However, when intentions of petitioner are not bonafide & are intended to frustrate the process of law it is neither mandatory nor obligatory to dismiss the petition in default—Allegation of an unfair settlement between petitioner & respondent—Whether an elector can be substituted/impleaded in place of original petitioner—Held, yes—An election petition is a petition on behalf of the entire constituency and every elector has a legal right subject to limitations provided under the Act.

Held, that an election petition can be dismissed for default or for non-prosecution, as the case may be, if the order is otherwise called for. The Court can hardly compel an unwilling party to prosecute its litigation even if such inaction may spring from negligence, indifference or even incapacity or inability. The power to dismissal of election petition is inherent power which every Tribunal possesses.

(Para 25)

Further held, that the concept of proper or necessary parties, as known under the Civil Code, is not *per se* applicable to an election petition. Paramount considerations for impleadment of a party to an election petition are statutory status, satisfying other conditions postulated under the provisions of the Act and is entitlement in election law to claim such relief. In that event alone an elector or a candidate could be impleaded as a petitioner in election petition.

(Para 27)

Further held, that the application of the provisions of the Code is not entirely excluded and it has definite, though, limited application to an election petition. An election petition is also not a contest between the two parties but is a petition on behalf of the entire constituency in which every elector has a legal right subject to the limitations provided under the Act.

(Para 31)

Further held, that the Court is not bound to dismiss the petition for default particularly when such inaction on the part of the petitioner is malicious or intending to frustrate the due process of law. In the present case, non-prosecution by the petitioner is for ulterior motive and is result of an unfair settlement between the petitioner and the respondent. In those circumstances, it would neither be mandatory nor obligatory on the part of the Court that it must dismiss the petition for default particularly when the matter is fixed only for final arguments on the petition. Such limitation can neither be placed on the powers of the Court nor law admits such limitations. Even under the procedural law it is not mandatory for the Court that in all events the Court must dismiss the suit or proceedings in default or for non-prosecution. It can always pass other appropriate orders in the facts and circumstances of the case.

(Para 39)

S.C. Kapoor, Sr. Advocate with

Ashish Kapoor, Advocate, *for the petitioner.*

J.K. Sibal, Sr. Advocate with

Kumar Sethi, Advocate, *for the respondent.*

In CM No. 58-E-of 2000

H. S. Hooda, Sr. Advocate with Partap Singh, Advocate *for the applicant.*

H. L. Sibal, Sr. Advocate with Kumar Sethi, Advocate *for the respondent.*

JUDGMENT

Swatanter Kumar, J.

(1) On the pleadings of the parties, the Court,—*vide* its order dated 8th November, 1996 framed as many as seven issues and directed the case to be listed for arguments on preliminary issue, though it was not indicated in the order which of the issue was to be treated as preliminary issue. However, with the consent of the parties and as was evident from the record, issue No. 1 was agreed to be treated as preliminary issue by the Court,—*vide* its order dated 13th March, 1997. Issue No. 1 read as under :—

1. Whether the allegations contained in paras Nos. 5, 6, 8(b), 9(a), 11, 14(a) and 14(f) lack in material facts and are vague, if so, its effect, OPR.

(2) In order to substantiate the rival contentions both the learned counsel appearing for respective party have relied upon the same judgment in the case of ***Dhartipakar Madan Lal Agarwal*** *versus* ***Shri Rajiv Gandhi*** **(1).**

(3) In that case there were two applications before the Court ; one under Order 6 rule 16 of the Code of Civil Procedure for striking out the pleadings and another application under Order 7 rule 11 of the Code of Civil Procedure for rejection of the petition. At the very outset it needs to be noticed that no issue with regard to rejection of petition was framed nor there is a prayer before this Court now

(1) AIR 1987 S.C. 1577

that the petition would be liable to be rejected as it discloses no cause of action within the scope and meaning of the relevant provisions of the Representation of People Act. Thus the obvious result is that even if the preliminary issue is partly or wholly decided in favour of the respondent, it will have no other effect on the petition except to direct the deletion of some paragraphs. On the contrary Mr. Sibal, learned counsel for the respondent submitted that he does not even contend that the petition of the petitioner is liable to be rejected even if issue No. 1 is wholly decided in favour of the respondent.

(4) It is in this background that the Court has to consider preliminary issue No. 1. The contention of the learned counsel for the petitioner is that paragraphs stated in the preliminary issue No. 1 are not specific and are vague as they do not give even minimum basic information and pre-requisites which are postulated under the provisions of the Representation of People Act 1950-51, hereinafter called as 'the Act'. It is further contended that the charges/allegations of corrupt practices as explained under Section 123 of the Act which could be a ground for declaring the election of a candidate to be void under Section 100 of the Act, are to be tried like a criminal trial and thus they have to be very specific, definite and must be spelt in the petition strictly in consonance with the provisions of Sections 80 to 83, 86 and 87 of the Act. It is also contended that paragraphs 14(a) and 14(f) are totally vague and in fact amount to calling upon the Court to hold fishing enquiry which is not permissible in law. The respondent cannot fairly meet such allegations and would not be aware of what case the respondent is to meet even during the course of evidence. In support of the above contentions raised on behalf of the respondent the learned counsel has relied upon the cases of ***Samant N. Balakrishna etc.*** versus ***George Fernandez and others (2) Hardwari Lal*** versus ***Kanwal Singh (3) Azhar Hussain*** versus ***Rajiv Gandhi (4) and Gajanan Krishnaji Bapat and another*** versus ***Dettaji Raghabji Meghe and others (5).***

(5) On the other hand, the contention of the learned counsel for the petitioner is that the paragraphs stated in the preliminary objections are not liable to be struck off the pleadings under the

(2) AIR 1969 S.C. 1201
(3) AIR 1972 S.C. 515
(4) AIR 1986 S.C. 1253
(5) JT 1995(5) S.C. 410

provisions of Order 6 Rule 16 of the Code of Civil Procedure as they are merely introductory to the main petition or by themselves constitute sufficient cause of action within the provisions of the Act. It is further contended that the paragraphs read together are neither vague nor vexatious and they satisfy the pre-requisites specified under the relevant provisions of law. The contention further is that no prejudice is likely to be caused to the respondent as no fishing enquiry is to be conducted by the Court in any of the allegations of the corrupt practices stated in the petition for the reason that the pleadings are definite and in any case the annexures attached to the petition fully elaborate facts and leaves no ambiguity in the petition. In order to support his afore-stated arguments the learned counsel for the petitioner has relied upon the cases of ***Udhav Singh*** *versus* ***Madhav Rao Scindia, (6)*** ***Roop Lal Sathi*** *versus* ***Nachhattar Singh (7)*** and ***Shri Suryakant Venkatraon Mahadik*** *versus* ***Smt. Saroj Sandesh Naik (Bhosale) (8).***

(6) As already noticed the limited question that falls for consideration is whether the paragraphs stated in the preliminary objections afore-stated are liable to be struck off the record or not, within the meaning and perview of Order 6 Rule 16 of the Code. The other contention of rejection of the petition does not fall for consideration in view of the definite stand taken before the Court by the learned counsel for the respondent.

(7) It is settled principle of construction of pleadings that pleadings ought to be appreciated while read in their entirety. Some paragraphs which are introductory or give an outline of the petition must necessarily be read in conjunction with the preceding paragraphs before determining whether they are so vague or lack material facts so as to result in striking out of such paragraphs from the pleadings.

(8) Equally true is the principle that pleadings must be specific and they must indicate the specific case which the other side is called upon to meet, but evidence in detail need not be spelled out in the petition though evidence must be led within the scope of the pleadings. The allegations made in the petition are to be supported by proper

(6) AIR 1976 S.C. 744
(7) AIR 1982 S.C. 1559
(8) J.T. 1995(8) S.C. 686

evidence while the parties are called upon to lead evidence during trial. These are some of the settled cannons of law relating to construction of pleadings which have been reiterated by all Courts from time to time. The pleadings must be construed in the proper manner and in consonance with the settled principles. The Court, of course, will examine if they satisfy the statutory requirements prescribed under the Representation of People Act. The paragraphs which may appear to be vague but when read in conjunction with the other paragraphs of the petition may not remain to be vague or may not be said to be lacking on the material particulars and facts. In view of the provisions of Section 123 read with Section 100 and other procedural sections of the Representation of People Act and Order 6 Rule 16 CPC a pleading can be struck off the record only if it is unnecessary, scandalous, frivolous, vexatious or intends to prejudice, embarrass or delay the fair trial or amounts to abuse of process of the Court and does not satisfy the statutory requirements as spelled out in the provisions of the Act. The respondent has opted to pray for striking off the afore stated paragraphs on the limited grounds that it lacks material facts and are vague. In order to establish this, the respondent must show that the paragraphs even if read in conjunction with the other paragraphs of the pleadings still would suffer from the infirmity pointed above. A paragraph read in isolation may be somewhat vague, but while read in conjunction with other paragraphs of the petition, it may convey its proper and definite meaning to the facts averred, as such may not cause any prejudice to the respondent. In that circumstance the paragraphs cannot be struck off the record. If a paragraph is introductory and its details with specifications and material facts are provided for in the subsequent paragraphs, the said paragraphs cannot be struck off the record on the ground that the same lacks material facts.

(9) In view of these settled principles of law the Court has to discuss the paragraphs pointed out in the preliminary objections. Paragraph 5 has been stated to be vague, lacking material particulars and is stated to have no relation to the statutory provisions of the Representation of People Act. It appears to be an introductory paragraph which by itself does not constitute an offence of corrupt practice, but indicates what corrupt practices have been adopted by the respondent, the details of which have been furnished in paragraphs Nos. 7, 11 and 14 of the petition. The respondent, thus has been

informed what case the respondent is to meet. The allegation that complaints were made to the Chief Election Commissioner and the returning officer with regard to the corrupt practices including the booth capturing cannot be said to be vague because the details of the complaints, name of the persons who made the complaints and the dates of the complaints have been specified by the petitioner in accordance with law in Annexure form 'BB' wherein the telegrams and their details etc. have been given. For this reason I am of the view that paragraph No. 5 of the petition is not liable to be struck off the pleadings.

(10) Similar is the position with regard to paragraphs Nos. 6 and 7. The same are introductory paragraphs and the role attributable to the persons named therein and how they offended the provisions of the Act has been specifically stated in the subsequent paragraphs. This paragraph only gives the background as to how the persons named therein were close to the respondent and in what way they contributed with the alleged consent of the respondent to commit electoral offences, has been clearly spelled out in the subsequent paragraphs of the petition. Though there was no specific objection taken in the written statement as well as no issue was framed in regard to paragraph No. 7, but the counsel for the petitioner had no serious objection in regard to hearing of this paragraph also in this regard.

(11) Paragraph 8(b) relates to certain allegations of appointment of Shri R.C. Sharma as returning Officer and his participation in requiring the people to vote for the respondent. Paragraph 8(b) again must be read in conjunction with paragraph No. 11 wherein it is specifically averred that these officers were acting at the instance and consent of the respondent. The argument collectively based in regard to paragraphs 8(b) and 11 as a whole by the respondent is, that offence (s) should be committed by the candidate **himself or with his consent.** Learned counsel for the petitioner contended that under sub-section (8) of Section 123, consent is not a material fact as far as booth capturing is concerned and for corrupt practices also the pleadings sufficiently indicate the consent of the respondent. Paragraphs 8(b), 9(a) and 11 have to be read together and they cannot be construed or interpretted in isolation to each other. In paragraph 10 and in the opening words of paragraph 11 it has been specifically stated that the

corrupt practices were done by the respondent or with his consent by other persons or his election agents as per the details given. In these paragraphs the details of corrupt practices and booth capturing both have been given and they must be read together to know the real substance of the petition. Cause of action has to be determined on the basis of complete bundles of facts which is stated in the petition.

(12) Where date, time and place of the act amounting to corrupt practice was pleaded and averment of the consent was made, in that circumstances the allegations could not be held to be vague, disentitling the petitioner from taking advantage of such pleadings **(Shri Suryakant Venkatrao Mahadik's case** supra). The onus of proving the corrupt practices averred is heavily on the petitioner, but such onus has to be discharged during trial by adducing proper evidence. At this stage the Court is primarily concerned with the allegations in the petition. The political parties are expected to maintain true and correct accounts of the expenditure incurred or authorised to be incurred in regard to the election. The Supreme Court in the case of **Gajanan Krishnaji Bapat and another** (supra) indicated the above observations. But the Court has to prevent a probing or a fishing enquiry on the basis of vague and bald statement in the interest of justice and to avoid prejudice to the respondent.

(13) Paragraph of a petition by itself cannot be a criterian for determining whether the petition discloses cause of action or not. Similarly whether the paragraphs are vague and lack material facts has to be construed and under stood in the light of the petition being read as a whole and not on the basis of a certain introductory or explanatory paragraphs of the petition departed from the main pleadings. A paragraph by itself may or may not be very specific, but in the facts and circumstances of a given case read in conjunction with the subsequent and explanatory paragraph the apparent vagueness of that paragraph may not subsist. That is the vagueness apparent at the initial juncture of a para, may not be the correct interpretation of the petition while read in entirety.

(14) What has been conceded by the learned counsel for the respondent itself indicates that the petition was not liable to be rejected even if the above paragraphs were deleted. That means the other paragraphs of the petition are the material paragraphs and they do furnish material facts and are in adherence to the statutory provisions

of the Act. There can be no doubt then, that the above paragraphs are merely introductory or explanatory paragraphs, which must be seen in the background of the facts and allegations made in the entire petition to determine the present question.

(15) As a result of my discussion afore-stated, it is directed that paragraph No. 14(a), 14(b) and 14(e) shall be struck off the petition and would not be treated as part of the record. The mere fact that written statement has been filed would be of no advantage to the petitioner in the facts and circumstances of the present case. Preliminary objection is accordingly disposed of.

(16) It is further directed that petitioner shall file his list of witnesses within two weeks from today with advance copy to the respondent. The respondent, within one week thereafter, shall file his list of witnesses in the Registry. The petitioner shall summon his witnesses for 26th September, 1997 and 29th September, 1997. Process-fee and diet money to be filed along with the list by the petitioner. The petitioner shall ensure presence of all the witnesses on the afore-stated two dates. The case to be listed before the Court for scrutiny on 22nd September, 1997.

ORDER DATED 23 APRIL, 2002 IN C.M. NO. 58-E OF 2000

(17) Shri Gurmesh Bishnoi presented this election petition challenging the election of Shri Bhajan Lal to the Haryana Vidhan Sabha from Adampur Assembly constituency and prayed that his election be declared void and he be disqualified from seeking election for a period of six years in accordance with law on the grounds of corrupt practices of booth capturing etc.The election petition was seriously contested by the parties to the petition.

(18) *Vide* order dated 18th November, 1996 the Court framed as many as seven issues and directed Issue No. 1 to be treated as preliminary issue. The preliminary issue was answered by the Court *vide* order dated 22nd August 1997 and parties were directed to file the list of witnesses and summon the witnesses for the date fixed. As

many as 20 witnesses were examined by the petitioner in addition to production of voluminous record while the respondents examined 12 witnesses. The case was then fixed for arguments.

(19) On 24th July, 2000, learned counsel for the petitioner in the presence of the petitioner stated that he wishes to withdraw from the case and prayed for an adjournment. As the petitioner had no objection, the counsel was permitted to withdraw from the petition and adjournment prayed for was granted. The case was fixed by the registry on 12th September, 2000 on which date the petitioner was not present nor any counsel appeared on his behalf. In the interest of justice, the Court directed the registry to inform the petitioner of the next date hearing. On 28th November, 2000 none appeared on behalf of the petitioner despite the fact that the case was called out twice. However, an application was filed by one Shri Kurda Ram on 25th November, 2000, which was also listed before the Court on that date. In this application Shri Kurda Ram prayed for his impleadment/ substitution as "petitioner" in the present petition.

(20) Notice of this application was issued to the non-applicant/ respondent and the registry was also directed to send registered notice to Shri Gurmesh Bishnoi—the petitioner. No reply to this application has been filed despite the fact that notice issued by the Court had been served upon Mr. Bishnoi, the petitioner. The matter was adjourned for directions and to consider the effect of continuous non-appearance of the petitoner despite notice.

(21) The learned counsel appearing for the non-applicant/ respondent did not file any reply to the application but prayed that the matter to be listed for arguments on the application for impleadment/ substitution.

(22) The applicant Mr. Kurda Ram has stated that he is resident of village Balsamand and is a registered voter/elector in that village at Serial No. 372, Part 103 of the Voters List, Village Balsamand is part of Adampur Assembly Constituency. Paragraph No. 3 of the application reads as under :—

> "That according to the reliable information of the applicant, the election-petitioner Shri Gurmesh Bishnoi has joined hands with the returned candidate-Shri Bhajan Lal

respondent in the above mentioned election petition and, as such, is no more interested in pursuing the above mentioned election petition which pertains to 79—Adampur Assembly Constituency of Haryana Vidhan Sabha."

According to the applicant he is entitled to be substituted as a petitioner for the afore-stated reasons. According to the petitioner, under the Representation of People Act, 1951 and the Rules framed thereunder, hereinafter referred to as the Act and the Rules respectively, the petition cannot be dismissed for non-prosecution or default and the applicant ought to be substituted as the election petition is a petition on bahalf of the whole constituency.

(23) As already noticed, the facts averred in the application have not been disputed by filing any reply. However, learned counsel for the non-applicant contended that there is no provision in the Act or the Rules for impleadment of a third party. The concept of necessary and/or proper party, as known to Civil law, is not applicable to an election petition. In fact the application under Order 1 Rule 10 of Civil Procedure Code, 1908, hereinafter referred to as the Code, is not maintainable.

(24) On the basis of the arguments raised on behalf of the parties, two basic questions arise for consideration :—

(i) Whether the Court has jurisdiction to dismiss an election petition on the ground of non-prosecution or default of appearance by election petitioner ?

(ii) Whether in the facts and circumstances of this case, the Court can direct impleadment of an elector in place of the original petitioner ?

(25) So far as the first question is concerned, it need not detain this Court any further as this question is no more *res-integra*. It stands completely answered without any ambiguity by a Full Bench of this Court in the case of ***Jugal Kishore*** versus ***Dr. Baldev Parkash, (9)*** which was approved by the Hon'ble Apex Court in the case of ***Dr. P. Nalla Thampy There*** versus ***B.L. Shanker and others, (10).*** Consequently, I have no hesitation in coming to the conclusion that

(9) AIR 1968 Pb. & Hy. 152
(10) AIR 1984 S.C. 135

an election petition can be dismissed for default or for non-prosecution, as the case may be, if the order is otherwise called for. The Court can hardly compel an unwilling party to prosecute its litigation even if such inaction may spring from negligence, indifference or even incapacity or inability. The power to dismissal of election petition is inherent power which every Tribunal possesses. Thus, this contention of the applicant is rejected.

(26) Coming to the second question that arises for determination before this Court, reference to the conduct of the main petitioner can be made with some advantage. The petitioner instituted this petition and contested the same till the case was fixed for arguments with great seriousness and vigour. Every stage of the petition was hotly contested between the parties. When the matter was fixed for arguments, suddenly the attitude of the petitioner changed. Firstly, he made his counsel withdraw from the case and then he stopped appearing before the Court even himself. This sudden change of the attitude in prosecuting the case is a matter of some concern for the Court. The unrefuted averments made by the applicant in paragraph No. 3 of the application, referred above, cannot be totally ignored. They would have to be referred for arriving at a reasonable conclusion for disposal of this application. What prompted the petitioner in a hotly contested election petition to withdraw himself from prosecuting the petition effectively, is a matter which has a serious question mark to it.

(27) There is no doubt to the proposition of law that the concept of proper or necessary parties, as known under the Civil Code, is not per se applicable to an election petition. Paramount considerations for impleadment of a party to an election petition are statutory status, satisfying other conditions postulated under the provisions of the Act and is entitlement in election law to claim such relief. In that event alone an elector or a candidate could be impleaded as a petitioner in election petition.

(28) The concept of proper party is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those persons may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents. Provisions of Civil Procedure Code have, thus, been made applicable to the trial of an election petition to the

limited extent as would appear from the expression "subject to the provisions of the said Act." The concept of proper party is unknown to election petition ***(B. Sundaramami Redy versus Election Commission of India and others) (11).***

(29) Learned counsel for the respondent placed reliance upon this judgment to contend that as provisions of Order 23 Rule 1 of the Code do not apply to the election petition, the provisions of Order 1 Rule 10 of the Code are also not applicable to an election petition and the applicant cannot be added or substituted as petitioner.

(30) Section 82 of the Act specifies the parties to the petition. The petitioner is obliged to join as respondent in his petition all or any of the returned candidate depending upon the nature of his prayer, all contesting candidates other than the petitioner or any other candidate against whom corrupt practices are pleaded. Who can be the petitioner is provided under Section 81 of the Act. Any candidate at such election or any elector can alone be the petitioner. The explanation to sub-section (i) of Section 81 explains the word elector which means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not ? As already noticed, the status essential for a party to be petitioner is that he has to be a contesting candidate in such election or he has to be an elector to the questioned election. This statutory status by necessary implication excludes the application of the general principles controlling the provisions of Order 1 Rule 10 of the Code, as applicable to a civil suit. A party may appear to be proper or even necessary, but essentially may lack the statutory status to an election petition and, therefore, cannot be added. Where the law itself defines a legal character and satisfaction of certain prescribed conditions for impleadment, in that event both these ingredients have to be satisfied.

(31) It is a settled principle of law that the Act is a self-contained code though provisions of Civil Procedure Code are applicable to it for its conduct and conclusion and subject to the condition that they are in conformity with the provisions of the Act. In other words, the application of the provisions of the code is not entirely excluded and it has definite, though, limited application to an election petition. An election petition is also not a contest between the two parties but is a petition on behalf of the entire constituency in which every elector

(11) 1991 Supp. (2) S.C.C. 624

has a legal right subject to the limitations provided under the Act. At this stage, reference can be made to the case of ***Inamati Mallappa Basappa*** versus ***Desai Basavaraj Ayyappa and others(12)*** while discussing the powers of Election Tribunal and scope of Election Commission held as under :—

> "The above provisions go to show that an election petition once filed does not mean a contest only between the parties thereto but creates a situation which the whole constituency is entitled to avail itself of. Any person who might himself have been a petitioner is entitled to be substituted, on the fulfilment of the requisite conditions and upon such terms as the Tribunal may think fit, in place of the party withdrawing and even the death of the sole petitioner or of the survivor of several petitioners does not put an end to the proceedings, but they can be continued by any person who might himself have been a petitioner. Even if the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondent dies or gives such notice and there is no other respondent who is opposing the petition, a similar situation arises and the opposition to the petition can be continued by any person who might have been a petitioner, of course on the fulfilment of the conditions prescribed in S. 116. These provisions therefore show that the election petition once presented continues for the benefit of the whole constituency and cannot come to an end merely by the withdrawal thereof by the petitioner or even by his death or by the death or withdrawal of opposition by the respondent but is liable to be continued by any person who might have been a petitioner."

(32) Their Lordships of the Supreme Court in the case of *Dr. P. Nalla Thampy Thera* Versus *B.L. Shanker and others. (supra)* commented upon the applicability of the provisions of Civil Procedure Code to an election petition and its extent. Their Lordships, while

(12) AIR 1958 S.C. 698

approving the Full Bench decision of this Court, in the case of *Jugal Kishore* Versus *Dr. Baldev Parkash,*(supra), held as under :—

> "There is no support in the statute for the contention of the appellant that an election petition cannot be dismissed for default. The appeallant contended that default of appearance or non-prosecution of the election petition must be treated as on par with withdrawal or abatement and, therefore, though there is no clear provision in the Act, the same principle should be governed and the obligation to notify as provided in Ss. 110 or 116 of the Act should be made applicable. We see no justification to accept such a contention. Non-prosecution or abandonment is certainly not withdrawal. Withdrawal is a positive and voluntary act while non-prosecution or abandonment may not necessarily be an act of violation. It may spring from negligence, indifference, inaction or even incapacity or inability to prosecute. In the case of withdrawal steps are envisaged to be taken before the Court in accordance with the prescribed procedure. In the case of non-prosecution or abandonment, the election petitioner does not appear before the Court and obtain any orders. We have already indicated that the Act is a self-contained statute strictly lying down its own procedure and nothing can be read in it which is not there nor can its provisions be enlarged or extended by analogy. In fact, the terms of Section 87 of the Act clearly prescribe that if there be no provision in the Act to the contrary, the provisions of the Code would apply and that would include Order 9 Rule 8 of the Code, under which an election petition would be liable to be dismissed if the election petitioner does not appear to prosecute the election petition."

> "It is relevant to note the observations of Hidayatullah, C.J. In Sunder Lal Mannalal v. Nandramdas Dwarkadas (AIR 1958 Madhya Pradesh 260), where he indicated (para 5)"

"Now the Act does not give any power of dismissal. But it is axiomatic that no Court or Tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every Tribunal possesses . . . . ."

(33) Further while holding that an election petition which was dismissed in default for non-appearance could not be restored on an application of the respondent.

"The appellant was not the election petitioner. Order IX, Rule 9 of the Code (and not Rule 13 relied upon by the appellant) would be the relevant provision for restoration of an election petition. That can be invoked in an appropriate case by the election petitioner only and not by a respondent. But its own language, rule 9 provides that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit but he may apply for an order to set the dismissal aside. Under this Rule, therefore, an application for restoration can be made only by the petitioner. since it is a provision for restoration, it is logical that the provision should be applicable only when the party on account of whose default in appearance the petition was dismissed, makes an application to revive the petition to its former stage prior to dismissal."

"These provsions cannot be extended to an application under O.IX,R.9 of the Code and at the instance of a respondent or any other elector a dismissed election petition cannot be restored."

(34) In the case of ***Chandra Kishore Jha*** versus ***Mahavir Prasad and others (13)*** while their Lordships referred to the well settled solitary principle i.e. if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and

(13) (1999)8 S.C.C. 266

in no other manner, (referred : ***Rao Shiv Bahadu Singh*** **versus** ***State of U.P. (14) and State of U.P.*** versus ***Singhaara Singh (15)*** and clearly stated that complying this principle, a party is not expected to do the impossible. The petition which was strictly not presented in accordance with the rules of Patna High Court, relating to election petition, their Lordships held that the rule should be literally construed and in the fact of the case, presentation of the petition to the Bench Clerk or to the Registrar was not proper and subsequently presented in the open Court was considered proper presentation of the petition.

(35) The applicant in the persent case is an elector and had actuallly voted in the election, subject matter of the persent election petition. In the application he had stated that he satisfies the legal requirements of the Act and, thus, should be impleaded/substituted as a petitioner. The applicant could be a petitioner with the aid of Section 81 of the Act, but he had to present the petition in his own right within 45 days, but not earlier than the date of election of the returned candidate. That situation did not arise in the present case because a defeated candidate Shri Gurmesh Bishnoi was the petitioner who had filed the petition and prosecuted the same vigourously for number of dates. He disassociated himself and neglected to pursue the petition despite notice of the court. No order dismissing the petition was passed by the court either for default of appearance or for non-prosecution. On the day the application was filed by the applicant for being impleaded/substituted as a petitioner. The petition was fixed for arguments and all that the applicant prays that he be impleaded as a party on the basis of the same evidence and submits that the petition be decided on merits. Such a request has to be viewed in a reasonable and fair manner as sudden dis-interest and non-prosecution by the petitioner Mr. Gurmesh Bishnoi, at least *prime facie* does not appear to be *bona fide* and apparently is for ulterior motive.

(36) The legislative mandate under Sections 108 to 110 of the Act places an obligation upon the Court to decline even an application for withdrawal of an election petition if such application is induced by any bargain or consideration which ought not to be allowed. Though there is no application for withdrawal of the petition in writing but the Court is ever duty bound to protect the process of law, keeping in view the legislative intent and avoid frustration of law by

(14) AIR 1954 S.C. 322
(15) AIR 1964 S.C. 358

an unscrupulous litigant. The Legislature in its wisdom under section 190(1) of the Act has referred to withdrawal of an election petition. It is stated that an election petition may be withdrawn only by the leave of the High Court. Leave by the High Court pre-supposes proper application of mind by the Court and for valid ground. The net effect of inactioin on the part of the petitioner would practically be synonymous to that of withdrawal. The demeanour on the part of the petitioner in prosecuting the petition is void of *bona fide* and bases entirely on unexplained conduction record. If this action of the petitioner is indicative of intention of the petitioner to withdraw this petition for ulterior motive, then the Court is obliged not to permit such action. The expression "withdrawal" is of wide conotation and must be liberally construed in its true sense. Withdrawal can be an act by writing or by conduct. The significant parameter would be an action of the party and not the language *per se* would be a concluding factor in such determination. Webster's Encyclopedic Unabridged Dictionary defines the word withdrawal as "to retract or recall : to withdraw a remark : to withdraw an untrue charge, while The Chambers Dictionary defines withdrawal as "to draw back or away: to take back or away: to cause (troops) to retire: to take (money, savings etc.) from deposit or investment: to remove (with from): to cancel or discontinue (a service, offer, etc.): the deflect, turn aside (rare) to recall, retract, unsay.

(37) The above meaning of the expression sufficiently indicates that intention coupled with the conduct would be the criteria for determining and deciding the action of a party. When an application is moved under sub section (2) of Section 109, Section 110 comes into play. In absence of such a written application, the court is duty bound to pass appropriate orders as it is not only the option available with the Court but to dismiss the petition for default or otherwise. The Court may be well justified to decide the matter on merits as the case is fixed for final arguments.

(38) Even if for the sake of arguments it is assumed that such conduct on the part of the petitioner in face of the averments made by the applicant does not amount to an act of withdrawal, even then the Court is not compelled to dismiss the petition for default of appearance and can pass appropriate orders in exercise of its inherent powers to achieve the ends of justice and to further the object of the statute and provision of the Act to which provisions of the code are admittedly applicable.

(39) The scheme of the legislative provisions of this Act read in light of the afore-referred judgments of the Apex Court clearly mandates that individual or self interest should not be permitted to prevail over larger public interest. Attainment of the object of the Act in light of the principles above enunciated is essence of any free and fair democratic system. Thus, a caution is casted upon the Court and wide discretion is also vested in it to prevent abuse of this special process regulating election law. Such petition cannot be treated like an ordinary suit or action in common law. To ensure purity of election process and its result the legislature has provided different checks and balances in the Act itself at various stages. One of such checks is that a person for improper bargain and self interest should not be permitted to frustrate or defeat an election petition which, in fact, is a petition on behalf of the constituency itself. These protections are implicit and have to be read into various provisions of the Act. I have already noticed that the Court is not bound to dismiss the petition for default particularly when such inaction on the part of the petitioner is malicious or intending to frustrate the due process of law. In the present case, there were averments and it has been vehemently argued that the non-prosecution by the petitioner is for ulterior motive and is result of an unfair settlement between the petitioner and the respondents. In those circumstances it would neither be mandatory nor obligatory on the part of the Court that it must dismiss the petition for default particularly when the matter is fixed only for final arguments on the petition. Such limitation can neither be placed on the powers of the Court nor law admits such limitations. Even under the procedural law it is not mandatory for the Court that in all events the Court must dismiss the suit or proceedings in default or for non-prosecution. It can always pass other appropriate orders in the facts and circumstances of the case.

(40) The Act does not contain any provision under which a petition can be dismissed in default. However, the Hon'ble Apex court in the case of Dr.P. Nalla Thampy Thera *(supra)* has held that a Court while exercising its inherent powers can dismiss an election petition for default or non-prosecution. This view has been taken by the Hon'ble Apex Court despite the fact that there is no such statutory provision in the Act pertaining to this aspect. In this very case it was also held that it is exomatic that no Court or Tribunal is supposed to continue the proceedings before it in which the party is not interested

and dismissal was held to be an inherent power, which every Tribunal or Court possesses. These observations are obviously in addition to the powers vested in a Court under section 151 of the Code. Subject to the limitations of the Act the provisions of the Code are applicable to the proceedings under the Act under Section 87 of the Act. At this stage, it may be appropriate to refer to the decision of the Apex Court in Dr. P. Nalla Thampy Thera's case *(supra)* where their Lordships held as under :—

> "Those decisions were not concerned with the question as to whether an election petition can be dismissed for default. The concensus of judicial opinion in this Court has always been that the law in regard to decisions has to be strictly applied and to the extent provision has not been made, the code would be applicable. About eight years back this Court had occasion to point out that if the intention of the legislature was that a case of this type should also be covered by special provision, this intention was not carried out and there was a lacuna in the Act."

(41) The cumulative effect of the above discussion is that the High Court while trying an election petition under the provsions of the Act is required to apply the provisions of the Code, subject to the limitations of the Act. In other words, inherent powers are vested in the Court and will be used for abridging the gaps which may appear as a result of there being no specific provisions in the Act. But, of course, exercise of such power has to be in consonance with the settled canons of law and must be intended to achieve the object of the Act. The Act is a self-contained Code and certainly does not admit scope for application of principles of common law or even the ordinary law of the land.

(42) Now it is pertinent for this Court to discuss the provisions of Sections 108 to 112 of the Act relating to withdrawal of petition, abatement or substitution. The intention appears to be that an election petition does not come to an end on either of these events and the Court is to issue a notice in the newspaper and publish the same in the official gazette and any person who himself might have been a petitioner in an election petition within 14 days of such publication

could apply for substitution. In other words, a candidate or an elector alone can apply for being substituted. The present application for substitution at best is a pre-mature act to the limited extent that there is no written application for withdrawal of the petition before the Court but intentions of the petitioner are certainly not *bona fide* and are intended to frustrate the process of law and compel the Court to dismiss the petition for default. Court need not come to such malicious pressure as malice of men is to be averted and substantial justice must be done to the parties before the Court.

(43) An election petition is a petition under a special law, which is given priority over ordinary actions. A party after having concluded the evidence in large number of hearing and when the matter is fixed for final hearing cannot be permitted to frustrate the purpose of the Act as an election petition is a petition on behalf of the Constituency itself. Such petitioner cannot be permitted to play a fraud on the statute or on the Court. At this stage, reference can usefully be made to the observations of the Hon'ble Apex Court in the case of ***Jagan Nath*** versus ***Jaswant Singh and others,*** **(16)** where it was held as under :—

> "Various provisions of the Act referred to above show that the election petition does not necessarily abate or fail by reason of the death of the petitioner or any of the respondents or by their ceasing to take any interest in the trial of the petition once that petition has been referred to the Tribunal. On the other hand, any person who could be a petitioner can continue the petition in spite of the death of either the petitioner or the respodents to the petition and on the original parties failing to prosecute it. These provisions have been made to ensure that the election process on which the democratic system of Government is based is not abused or misused by any candidate and that inquiry is not shut out by collusion between persons made parties to the petition or by their respective deaths." (emphasis applied by this Court)

(44) The learned counsel for the applicant while relying upon the case of ***Inamati Mallappa Bsappa (supra)*** contended that provisions of the code like Order 23 are not applicable to the Act, as such provisions of Order 1 Rule 10 of the Code can also not apply.

(16) AIR 1954 S.C. 210

This contention is misconceived. In this case there was an apparent conflict between the provisions of Order 23 Rule 1 of the Code and the statutory provisions of the Act relating to withdrawal (Sections 108 to 110). Thus, their Lordships held that in the face of the specific provisions under the Act, an applicant could not rely on the provisions of Order 23 Rule 1 of the Code for the purposes of withdrawing or abandon a claim or part thereof once an election petition is presented to the competent forum. In the case of Dr. P. Nalla Thampy Thera *(supra)* the Apex Court held that where a petition was dismissed in default, which the Court was competent to do, an application by a third party for restoration of the petition could not lie under Order 9 Rule 13 of the Code, inasmuch as such an application can be presented only by a person who is a party to the petition and none else. But their Lordships specifically held in this case that provisions of the Code subject to the limitations of the Act were applicable to prosecution of election petition before the Court. Their lordships in fact upheld the power of the Court to dismiss in default a petition under its inherent powers, though there is no specific provisions in the Act itself in that regard. Thus, the reliance placed on these two cases by the learned counsel for the respondent/non-applicant is hardly of any avail to him.

(45) For the reasons recorded above, I am of the considered view that this Court has the power to dismiss election petition for default of appearance or for non-prosecution, but keeping in view the peculiar facts and circumstances of this case and particularly when the election petition is fixed for final arguments, no prejudice of any kind would be caused to either of the parties if the applicant is permitted to continue the petition on the basis of the same record. At best it would be only assistance rendered to the Court for finally concluding the election petition on merits. It is neither mandatory nor obligatory for this Court to dismiss this petition in default especially when the absence of the petitioner is stated to be for ulterior motives and on the face of it lacks *bona fides*. I allow this application limited to the extent that the applicant is given liberty to address the Court on merits of the petition at the final arguments.

(46) List the election petition for final hearing on 17th May, 2002.

R.N.R.

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