DAULAT RAM CHAUHAN

v.

ANAND SHARMA

January 16, 1984

[S. MURTAZA FAZAL ALI AND RANGANATH MISRA, JJ.]

Representation of the People Act 1951 (43 *of* 1951) *Sections* 82(*b*), 86 *and* 123(2). *Election Petition—allegations of corrupt practices against two candidates—Candidates not impleaded as parties to election petition—Election petition whether liable to be dismissed.*

Corrupt Practices—Allegations of—To be proved like a criminal charge without admitting of any doubt.

Practice & Procedure :

Pleadings in Election Petitions—Allegations of corrupt practice—Necessity to be clear and specific.

The respondent filed an Election Petition challenging the election of the appellant who was declared elected to the State Assembly on the ground that the appellant, his election agent and other persons along with two other candidates made libelous slogans at a rally and displayed pamphlets to alienate the voters from the respondent and this constituted a corrupt practice within the meaning of section 123 of the Representation of the People Act, 1951. Upholding the respondent's contention the High Court set aside the election.

In the appeal to this Court, a preliminary objection was raised on behalf of the appellant that since the two candidates who were alleged to have commited corrupt practices had not been made parties to the Election Petition, the petition should have been dismissed *in limine* for non compliance with the requirements of section 82(b) read with section 86 of the Act.

Over-ruling the preliminary objection :

HELD : 1. The combined effect of section 82(b) and section 86 of the Act is that once allegations of corrupt practice are made against a candidate it is incumbent on the Election petitioner to join him as a party and failure to do so would lead to the dismissal of the Election Petition under section 86. But before section 82(b) or section 86 could come into play it must be proved that the allegations of corrupt practice made against the candidate amounted to corrupt practices as contemplated by the provisions of section 123. [423 F-G]

2. Section 82(b) contains the salutary provision of *audi alteram partem* and requires that an allegation must be proved to the hilt in the presence of the person

A affected, failing which the election petition will stand dismissed. [426 E-F]

3. In order that an act of the candidate may amount to a corrupt practice, it must be committed either by the candidate himself, his agent or by any other person *with the consent of the candidate or his election agent.* An allegation of corrupt practice must be proved like a criminal charge without admitting of any doubt. [424 C]

B

4. The Election Petition must contain the following pleadings : (1) Direct and detailed nature of corrupt practices as defined in the Act, (2) details of every important particularly ex. the time, place, names of persons, use of words and expressions, etc. (3) that the corrupt practices were indulged in by the candidate himself, or his authorised agent or any other person with his express or implied consent. [428 E-F]

C

5. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. The allegation must be

D clear and specific that the inference of corrupt practice will admit of no doubt or qualm. [428 G-H]

In the instant case, it was shown that the two candidates who participated in the rally might have shouted libelous slogans. But there is nothing to show that they were election agents or workers of the appellant or that they participated or shouted slogan with the express and implied consent of the appellant. Whenever,

E there is a rally, crowd or a gathering a number of persons participate. That by itself would not give rise to an inference that their participation or presence was at the instance of the person in whose favour the crows gathered or the rally was organised. [429 C-D]

Udhav Singh v. *Madhav Rao Scindia,* [1976] 2 S. C. R. 246 ; *Haji C. H. Mohammad Koya* v. *T.K.S.M.A. Muthukoya,* [1979] 1 S.C.R. 664 and *Samant N. Balakrishna etc.* v. *George Fernandez & Ors.,* [1969] 3 S.C.R. 603; referred to.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 453 of 1983,

From the Judgment and Order dated the 28th December, 198f of the Himachal Pradesh High Court in Election Petition No. 112o 1982.

G

Shanti Bhushan, N. M. Ghatate and *S. V. Deshpande* for the Appellant.

H

M.C. Bhandare, T. Sridharan, Ms. S. Bhandare and *Ms. CK Sucharita* for the Respondents.

The Judgment of the Court was delivered by

FAZAL ALI, J. This election appeal is directed against a judgment dated December 28, 1982 of the Single Judge of the Himachal Pradesh High Court, who was assigned as an election Judge under the provisions of the Representation of the People Act (hereinafter referred to as the 'Act'). The appeal arises out of an election to the Himachal Pradesh Legislative Assembly from the Simla constituency. The poll was held on May 19, 1982 and the result was declared on May 21, 1982 whereby the appellant was declared elected by a margin of 2745 votes. The respondent, Anand Sharma, filed an election petition in the High Court challenging the election of the appellant on the ground that he (appellant) was guilty of indulging in several corrupt practices as envisaged by the provisions of the Act. The High Court, after going through the entire evidence of the parties and considering the documents, came to the conclusion that the allegations of corrupt practices against the appellant were fully proved and accordingly set aside his election, hence this appeal to this Court by the elected candidate, Daulat Ram Chauhan. We may also mention here that two other candidates, besides others, K.D. Batish and Pooran Chand Sood (hereinafter referred to as 'Batish' and 'Sood' respectively) were also in the field but they had withdrawn.

Mr. Shanti Bhushan, appearing for the appellant, raised a preliminary objection which, according to him, if accepted, was sufficient to dismiss the election petition of the respondent *in limine*. We had decided to go into the validity of the preliminary objection because if it was accepted then the election petition would have to be dismissed and it would not be necessary to hear the appeal on merits but if the preliminary objection was overruled then the appeal would have to be heard on merits.

The only important point raised by the counsel for the appellant before us is that as the election petitioner (respondent) had alleged that Batish and Sood, committed corrupt practices with the consent of the appellant and yet they were not made parties to the election petition, the High Court should have dismissed the election petition *in limine* under the provisions of s.82(b) read with s.86 of the Act. It is not disputed before us that Batish and Sood were candidates for election to the Simla constituency and that they were not made parties to the election petition filed by the respondent in the High Court. Section 82(b) runs thus :

A "82. *Parties to the petition*

A petitioner shall join as respondents to his petition.

(b) any other candidate against whom allegations of corrupt practice are made in the petition."

B

Section 86 provides that where there is a violation of s. 82, the High Court shall dismiss the petition.

The dominant question for consideration is as to whether or not the respondent had alleged that Batish and Sood indulged in corrupt practice as defined in s.123 of the Act. Mr. Bhandare, appearing for the respondent, however submitted that the allegations made against the aforesaid persons did not amount to corrupt practice as contemplated by s.123 because from the avertments made by the respondent there is nothing to show that these two persons had indulged in corrupt practice either at the instance or with the consent of the appellant, or his election agent.

In view of the arguments of the parties the matter lies within a very narrow compass because Mr. Shanti Bhushan with his usual ingenuity and brevity has invited us to consider the effect of the allegations made in para 16 of the election pertition read with para 4, which according to him, is a sort of an index to para 16. It appears that an additional issue regarding the allegation contained in para 16 was raised in the High Court in the following terms :

"Whether any allegations of corrupt practices have been made in the petition against Sarva Shri Kali Das Batish and Puran Chand Sood who were admittedly candidates at the election. If so, to what effect ?"

However, this additional issue was later on not pressed on behalf of the respondent and it was conceded that the court may take it as established that no allegations of corrupt practices were made against Batish and Sood. In this view of the matter, the High Court without going into the issue decided it against the appellant. The counsel for the appellant submitted that once an issue was raised it was not open to the parties to make any concession as, according to law, the issue had to be tried whether pressed or not. In support of his contention, the learned counsel relied on a, decision of this Court

in *Udhav Singh* v. *Madhav Rao Scindia*[1] where the Court made the following observations while interpreting section 82 of the Act :—

> "Behind this provision is a fundamental principle of natural justice viz., that nobody should be condemned unheard. A charge of corrupt practice against a candidate, if established, entails serious penal consequences. It has the effect of debarring him from being a candidate at an election for a considerably long period. That is why, s.82(b) in clear, peremptory terms, obligates an election-petitioner to join as respondent to his petition, a candidate against whom allegations of any corrupt practice are made in the petition. Disobedience of this mandate, inexorably attracts s.86 which commands the High Court, in equally imperative language, to—
>
> > "dismiss an election petition which does not comply with the provisions of section 82."
>
> The respondent cannot by consent, express or tacit, waive these provisions or condone a non-compliance with the imperative of s.82(b). Even inaction, latches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of the statutory obligation cast on it by s.86. As soon as the non-compliance with s.82(b) comes or is brought to the notice of the court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of s. 86."

This Court further held that once allegations of corrupt practice were made against a candidate it was incumbent on the election petitioner to join him as a party and failure to do so would automatically lead to the dismissal of his petition under s. 86. There can be no doubt that this is the combined effect of s.82(b) and s.86 of the Act. But before s.82(b) or s.86 could come into play in the instant case, it must be proved whether or not the allegation of corrupt practices made against Batish and Sood amounted to corrupt practice as contemplated by the provisions of s.123 of the Act. It was thus argued that the allegations made in para 16 come within s.123(2) which may be extracted thus :—

(1) [1976] 2 S.C.R. 246.

A

"123. *Corrupt practices*—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right :"

B

It is manifest that in order that an act of the candidate concerned may amount to an allegation of corrupt practice, it must be committed either by the candidate himself, his agent or by any other person *with the consent of the candidate or his election agent.* In order to determine whether the ingredients of s. 123 have been fulfilled in the present case, it may be necessary to wade through the contents of para 6, the relevant portions of which may be extracted thus :

C

D

"16. That after the conclusion of the meeting, a rally was organised by the respondent, which passed through the main bazar of Simla town. In the rally also, the following persons of the Bhartiya Janata Party participated :

.. .. ..

E

6. Shri Kali Dass Batish

.. .. ..

16. Shri Puran Chand Sood

F

The persons in the rally including the respondent raised the following slogans :—

'INDIRA KAISI HAI PHULAN DEVI JAISI HAI'
'DESH KA NETA KAISA HO ATTAL BIHARI JAISA HO'
'JITEGA BHAI JITEGA DAULAT RAM CHAUHAN JITEGA'

G

The aforesaid libelous slogans and displaying of pamphlets were made to alienate the voters from the petitioner."

H

An analysis of the aforesaid extracts shows that there is no clear and specific allegation that Batish and Sood took active part in raising libelous slogan and displaying the pamphlets *with the express*

or implied consent of the appellant or of his election agent. It is common knowledge that whenever there is a rally or a crowd or a gathering, a number of persons attend or participate in the same but that by itself would not give rise to an irresistible inference that their participation or presence was at the instance of the person in whose favour the crowd gathered or the rally was organised. Mr. Shanti Bhushan however stressed the fact that the words "persons in the rally including the respondent raised the libelous slogan" would lead to an inevitable conclusion that the persons who participated in the rally raised the slogan with the express or implied consent of the appellant. We, are, however, unable to draw this inference because it is well settled that an allegation of corrupt practice must be proved like a criminal charge without admitting of any doubt.

In *Haji C.H. Mohammad Koya* v. *T.K.S.M.A. Muthukoya*[1] this Court made the following observations :

> "It is well settled by long course of decisions of this Court that such practices must be clearly alleged with all the necessary particulars and proved not by the standard of preponderance of probabilites but beyond reasonable doubt."

In these circumstances, therefore, before s.82 could apply it was incumbent on the part of respondent to allege that the appellant had given his consent to Sood or Batish for raising the slogan. There is also no allegation in the passage, extracted above, that Batish or Sood had obtained the consent of the appellant or his election agent.

Realising the futility and the frailty of his arguments Mr. Shanti Bhushan tried to call into aid the averments made in para 4 of the election petition, the relevant portion of which may be extracted thus :

> "That the respondent, his election agent and other persons with the consent of the respondent or his election agent have committed several corrupt practices with the full knowledge and consent of the respondent and his election agent, which have prejudiciously affected the election of the petitioner. . . . The catalogue of corrupt practices committed by the respondent, his election agent and other persons with the consent of the respondent and his election agent

(1) [1979] 1 S.C.R. 664.

A is detailed hereinafter."

Even if this allegation is taken at its face value, there is no mention at all about Sood or Batish having taken the consent of the appellant for indulging in corrupt practices. Strong reliance was placed on the second part of the recitals which disclose that there was a catalogue of corrupt practices committed by the appellant, his election agent and other persons as detailed in the petition. The learned counsel for the appellant wants us to read para 4 in conjunction with para 16 and then to arrive at the conclusion that libelous slogans were shouted by Sood and Batish with the consent of the appellant. We are however not in a position to accept this somewhat complex process of reasoning. In our opinion, such a disjointed scheme of averring particulars so that one has to read one part of the allegation with another and then by joining the two produce a particular result to infer an allegation of corrupt practice is not contemplated by s. 123 of the Act and is in fact foreign to the principle of giving all necessary particulars and statement of facts, viz., time, place, manner, mode and the consent of the candidate or his election agent. Such an approach would naturally suffer from the vice of vagueness. It is even against the well settled rules of pleadings to interpret or read such a serious allegation as that of fraud by joining one portion of the allegation with another and then connect the head of one with the tail of the other in order to present a composite picture. The danger of making such an approach would really amount to basing the decision of the court on pure conjectures or speculation and is against the very spirit and tenor of s.82(b) of the Act. This section contains a salutary provision which is that nobody should be condemned unheard so as to amount to an infraction of the well settled practice of *audi alteram partem* (rules of natural justice) and requires that an allegation must be proved to the hilt in the presence of the person affected, failing which the election petition would stand dismissed. If such a consequence were to follow, it is obvious that the allegations must be interpreted as they are and not by adding or subtracting one from the other.

Moreover, the scheme followed by the respondent would itself show that the allegations in para 4 are not meant to be an index or glossary for the recitals in para 16 because wherever other corrupt practices have been averred, it has been clearly mentioned in those very averments that the consent of the appellant or his election agent was obtained. In para 16, however, this is completely absent. For instance, in para 18 where the respondent has made a clear allegation

regarding the slanderous campaign against him, he has in the clearest possible terms mentioned that these acts were committed by the appellant, his election agent and workers with his tacit consent. In this connection, the relevant portion of the averment may be extracted thus : A

> "That the respondent, his workers and election agent did not choose to rest there and it appears had devised well-knit and calculated slanderous campaign against the petitioner. The respondent, his election agent and workers *with his consent* to further the prospects of the respondent by denigrating the petitioner in the eyes of people launched a character assasination.....The respondent, his agent and workers knew that the contents contained in Annexure 'G' are false and the respondent does not believe it to be true." B C

If, therefore, the intention of the respondent was to allege corrupt practice as contemplated by law against Batish and Sood, the averment in para 16 should have been either identical or of the nature of averments contained in para 18 (which is in respect of other persons). This is yet another reason why we cannot accept the argument or Mr. Shanti Bhushan that the averments of para 16 must be read with the averments made in para 4. D

In *Samant N. Balakrishna etc.* v. *George Fernandez & Ors.*(1) this Court pointed out thus : E

> "But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, void the election without any further condition being fulfilled. F

.. .. ..

> In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a diffetrent cause G H

(1) [1969] 3 S.C.R. 603.

A of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different cause off action.

B Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied
C later on."

We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the elction petition but also other serious consequences like disbarring the candidate concerned from contesting a future election for a period of six years, the allega-
D tions must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings :—

(1) Direct and detailed nature of corrupt practice as defined
E in the Act,

(2) details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, etc.

F (3) it must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent.

A person may, due to sympathy or on his own, support the
G candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contem
It cannot be left to time, chance or conjecture for t h
H an inference by adopting an involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt

practice will irresistibly admit of no doubt or qualm. A

As a logical consequence of the principles enunciated by us, it follows that where the allegation of fradulent practice is open to two equal possible inferences, the pleadings of corrupt practice must fail. For instance, A, or in this case Sood or Batish, joined or participated or was present in an election rally or crowd and may have shouted B slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of s.123(2) because the element of consent is wholly wanting.

Applying these tests to the averments made in para 16, the position is as follows : C

That Batish and Sood doubtless participated in the rally and may have shouted libelous slogans but there is nothing to show that they were either the election agents or workers of the appellant or that they participated or shouted slogans with the express or implied consent of the candidate. D

In these circumstances, it is difficult to accept the argument of Mr. Shanti Bhushan that reading the averments in para 4 alongwith para 16, the irresistible inference would be that Sood and Batish had shouted the slogans with the consent of the appellant. E

The fundamental core and the pivotal basis of the argument of the appellant that in view of the specific allegations of corrupt practices having been made by the respondent and yet Batish and Sood were not made parties to the election petition is not proved and, therefore, the requirement of s.82(b) read with s.86 of the Act has not F been fulfilled in this case so as to reject the election petition at the very behest.

We are, therefore, in agreement with the arguments of Mr. Bhandare, counsel for the respondent, that the averments contained in para 16 cannot by any stretch of imagination be construed to G constitute allegations of corrupt practice as envisaged by s.123(2) of the Act. The additional issue is, therefore, decided against the appellant.

For the reasons given above, the preliminary objection raised H by Mr. Shanti Bhushan is overruled and it is held that the election

A petition was not liable to be dismissed *in limine* under s.86 of the Act. The appeal will now be posted for hearing on merits in respect of other issues.

B N. V.K. *Preliminary objection over-ruled.*