

Shiv Chand vs Ujagar Singh & Anr on 31 August, 1978

Equivalent citations: 1978 AIR 1583, 1979 SCR (1) 520, AIR 1978 SUPREME COURT 1583, 1978 4 SCC 152 1978 U J (SC) 705, 1978 U J (SC) 705, 1978 U J (SC) 705 1978 4 SCC 152, 1978 4 SCC 152

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, D.A. Desai

PETITIONER:

SHIV CHAND

Vs.

RESPONDENT:

UJAGAR SINGH & ANR.

DATE OF JUDGMENT 31/08/1978

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

DESAI, D.A.

CITATION:

1978 AIR 1583

1979 SCR (1) 520

1978 SCC (4) 152

ACT:

Election fetition-Joinder of parties-Wherther an election Counrt can reject an applection made under s, 86(4) of the Representation of the people act. 1951 by a duly nominated candidate who has retired from the contest-Public police behind s. 82(b) of the Act-in a petition alleging corrupt candidates alleged of corrupt practice must be arrayed as respondents-Words and phrases a candidate" in s. 86(4) includes a a nominated candidate.

HEADNOTE:

In the election petition the appellant, a defeated candidate in the General Eections held in June, 1977, challenged the election of Respondent No 1 making, inter alia allegations constituting a corrupt practice against the returned candidate and also Respondent No. 2 a duly nominated candidated who one among those retired from the

contest. An interlocutory application made by the petitioner/appellant under order 1 Rule 10(2). order 6 rule 17 and S. 151 of the Civil Procedure Code seeking to implead respondent No 2 or in the alternative permission for deletion of the allegation of corrupt practice against Respondent No. 2 as well as the motion made by Respondent No.2 under s. 86(4) of the Act to implead him as a respondent were rejected by the High court. The Election Petition was also dismissed for non-joinder of Respondent No.2 as a necessary party at the first instance and before the preliminary objection was raised in the written statement.

Allowing the appeal by special leave the Court.

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HELD: (1) When the text is plain. in the absence of compelling reasons there is no justification for truncating its sense. Section 82(b) requires the presence of every candidate against whom a corrupt practice has been : What is imperative is the presence as a respondent of such a candidate. not how or at whose instance he has been joined as a respondent[523 C-D]

The purpose is two fold. When injurious averments. are made against a candidate natural justice necessitates his being given an opportunity to meet those charges, because the consequence of such averments being upheld may be disastrous for such candidate. Secondly, in the absence of the party against whom charges have been levelled the reality of the adversity system will be missed. Above all, the constituency is vitally concerned with the investigation into the proof or disproof of corrupt practices of candidate but election. thus, the public policy behind s. 82(b) is the compulsive presence of a candidate against whom corrupt practice has been imputed.. It is of no consequence whether he has been joined at his own instance or by the election petitioner. [523E-F]

(2) "Any candidate shall....be entitled to be joined as a respondent" in the clear wording of s. 86(4) of the Act, entitles respondent No. 3 to be joined as a respondent, he being a candidate in the General Elections. He is a necessary party since a corrupt practice was imputed to him. [522 G. 523 B-C]

(3) S. 86(1) states that the High Court shall dismiss an election petition which does not comply with the provisions of s. 82. The test is whether the;

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election petition complies with the provisions of s. 82, not whether the election petitioner has failed to comply with s. 82. The substance of the matter must govern, because hypertechnicality, when the public policy of the statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat a vital judicial process, namely, investigation into the merits of the case. If respondent No. 2 is impleaded, the election petition, in this case cannot be

dismissed under s. 86(1) of the Act. [523 H, 524 A-B]

(4) The refusal of the Court to implead Sri Mal Singh is illegal and based on a misinterpretation of the provisions of the sections of the Act. [524 C]

(a) S. 86(4) cannot be read down to cover any such candidates as or not required to be impleaded as respondents under s. 82 of the Act. The grammatical construction of "any candidate" does not admit of such a narrow and artificial meaning. Shri Mal Singh, having been a candidate is one entitled to come within s. 86(4). On his application the Court shall implead him. In this view the question of substantial compliance and the mandatory or directly nature of the prescription in s.82(b) does not arise [524 D-E,G]

R. Satyanarayana & Ors. v. Saidayya & Ors., AIR 1969 A.P. 151 dissented to and overruled.

(b) Procedural tyranny compounded by lexically unwarranted technically cannot be tolerated in a Court. The provisions of the Representation of the people Act where they lay down specific prescriptions must prevail and cannot be frustrated by importing the Code of Civil Procedure. The provisions of the Code of Civil Procedure, especially Order 6 Rule 17 and Order 1 Rule 10 cannot be used in such a manner as to defeat the procedural policy and statutory imperative of s. 82 of the Act . [524 H, 525 B]

In the instant case, s.86(4) of the Act itself entitles Mal Singh to be joined as respondent. That right cannot be defeated and once he comes on record as party the petition is in order and cannot be dismissed for non-joinder. Moreover once Mal Singh comes on the party-array, by virtue of s. 86(4), the fatal infirmity, if any, must be judged with reference to the petition as amended by the addition of the new respondent. It is the amended petition consequent on the addition under s. 86(4) of Mal Singh that has to be tested in the light of s. 86(1) read with s. 82(b) of the Act. [525 A-C]

Mohan Raj v. Surendra Kumar Taparia & Ors. [1969] 1 SCR 630, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil appeal No. 2199 of 1977.

From the Judgment and Decree dated 29-11-1976 of the Allahabad High Court in Special Appeal No. 378 of 1974.

G. B. Pai and O. P. Rana for the Appellant.

R. K. Garg, V. J. Francis, Madan Mohan, K. P. Aggarwal and Manju Gupta for Respondents 1 and 2.

Manoj Swarup and Lalita Kohli for the Intervener.

The Judgment of the Court was delivered by KRISHNA IYER, J.-An election petition became an infant casualty because of an alleged non-joinder of a necessary party as visualised by S. 82(b) of the Representation of the People Act, 1951 (the Act, here after). That premature dismissal, by-passing investigation into the merits, has driven the petitioner-appellant to this Court where he has urged that the ends of law and justice have been stultified by the strangely technical view taken by the High Court in its dismissal order.

A few facts, and then, a brief discussion, the point being *res integra* so far as this Court is concerned. The appellant before us is the election-petitioner, having been a defeated candidate in the General Elections held in June, 1977. There were quite a few candidates, including one Shri Mal Singh, who appears to have retired from the contest for the seat although duly nominated as a candidate. The respondent was returned as the successful candidate and the disappointed petitioner challenged the election by filing a petition wherein, *inter alia*, he made allegations constituting a corrupt practice against the returned candidate and Shri Mal Singh. To such a pleading S. 82 is attracted. That provision states that a petitioner shall join as respondent to his petition any candidate against whom allegations of any corrupt practice are made in the petition. By this mandate, the petitioner was bound to implead as respondent Shri Mal Singh. But he omitted to do so initially. The respondent, in his written statement, raised a preliminary objection that the failure to join Shri Mal Singh as a respondent entailed dismissal of the election petition. The case was adjourned for arguments on the preliminary issue to September 15, 1977. In the meanwhile. On September 8, 1977, an interlocutory application was filed by the election-petitioner under order 1 Rule 10(2), order 6 Rule 17 and S. 151, Code of Civil Procedure, seeking to implead as respondent No. 2, the said Mal Singh. In the alternative, he prayed for deletion of the allegation of corrupt practice against Shri Mal Singh. On the same day, Shri Mal Singh filed an application under S. 86(4) of the Act praying that he be impleaded as respondent to the election petition. Thus, there was a motion for impleadment by the election petitioner as well as by Shri Mal Singh and they were disposed of together by an order which is under appeal.

It is fairly clear that Shri Mal Singh was a necessary party since a corrupt practice was imputed to him. He made an application to be impleaded as respondent exercising the procedural right he had under S. 86(4) of the Act which reads thus:

"86(4) Any candidate not already a respondent. shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

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

Shri Mal Singh did apply within the stipulated period, and a plain reading of the provision just re-produced entitles him to be joined as a respondent. Any candidate shall be entitled to be joined as a respondent, on the clear wording of the section and since Shri Mal Singh is a candidate he is entitled to be joined as a respondent. When the text is plain, in the absence of compelling reasons, there is no justification for truncating its sense. If Shri Mal Singh is impleaded on his application then the election petition will have on the party array the candidate against whom allegations of corrupt practice have been made in the petition. That is to say, S. 82(b) will stand fulfilled. It is obvious that S. 82(b) requires the presence of every candidate against whom a corrupt practice has been alleged. What is imperative is the presence as a respondent of such a candidate, not however at whose instance he has been joined as a respondent. The purpose is obvious and two fold. When injurious averments are made against a candidate natural justice necessitates his being given an opportunity to meet those charges, because the consequence of such averments being upheld may be disastrous for such candidate. Secondly, in the absence of the party against whom charges have been levelled the reality of the adversary system will be missed. Above all, the constituency is vitally concerned with the investigation into and proof or disproof of corrupt practices of candidates at elections. Thus, the public policy behind S. 82(b) is the compulsive presence of the candidate against whom corrupt practice has been imputed. It is of no consequence whether he has been joined at his own instance or by the election-petitioner. In the present case, the petitioner did move to bring on record Shri Mal Singh but that was rejected. The petitioner alternatively sought to delete the corrupt practice imputed to Shri Mal Singh. That too was refused, if we may say so rightly. The short question is whether the court was right in rejecting the request of Shri Mal Singh to be ranked as a respondent when his application was otherwise in order.

We are satisfied that if he is impleaded as a respondent the election petition cannot be dismissed under S. 86(1) of the Act. That provision states that the High Court shall dismiss an election petition which does not comply with the provisions of S. 82. The test is whether the election petition complies with S. 82, not whether the election-petitioner has failed to comply with S. 82. The substance of the matter must govern, because hyper- technicality, when the public policy of the statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat a vital judicial process, namely, investigation into the merits of the election petition.

The result of the discussion is that Shri Mal Singh was entitled to have been impleaded as respondent. The refusal by the court to do so is illegal and based on a misinterpretation. Had he been impleaded the dismissal of the election petition would have been illegal.

Let us examine the reasons given by the learned Judge for the course he has adopted. Counsel for the respondent, in supporting the reasoning of the High Court, has relied on a ruling in *R. Satyanarayana & ors. v. Saidayya and ors.*(1) The argument which

has appealed to both the courts is the same and we regard it as fallacious. We do not propose to examine the discretionary dismissal of the application by the election-petitioner under order 1 Rule 10, et al, to implead Shri Mal Singh. We confine ourselves to S. 86(1) and S. 86(4) of the Act. According to the learned Judge, S. 86(4) has to be read down to cover only such candidates as are not required to be impleaded as respondents under S. 82 of the Act. For one thing, the grammatical construction of "any candidate" does not admit of such a narrow and artificial meaning. The reason given by the court hardly impresses us. Indeed, we are not able to conceive easily of a case where a candidate who is neither the returned candidate nor one against whom corrupt practices are imputed would care to implead himself as respondent. He serves no purpose by getting so impleaded except the teasing and gaining experience of being a litigant. The mere assertion by the trial court that S. 86(1) would be rendered nugatory by a candidate like Mal Singh taking recourse to the provisions of sub-section (4) of s. 86 does not carry conviction nor are we able to glean into the intention of the legislature as the learned Judge states. Shri Mal Singh, having been a candidate, is one entitled to come within s. 86(4). On his application the court shall implead him. In this view, the question of substantial compliance and the mandatory or directory nature of the prescription in S. 82(b) do not arise.

Shri Mehta relied upon Mohan Raj(2) heavily. The question raised there was whether the provisions of the Code of Civil Procedure, especially order 6 Rule 17 and order 1 Rule 10 could be used in such (1) AIR 1969 A. P. 151.

(2) Mohan Raj v. Surendra Kumar Taparia & ors. [1969] 1 SCR 630 a manner as to defeat the procedural policy and statutory imperative of A S. 82 of the Act. Obviously that cannot be done because the provisions of the Representation of the People Act where they lay down specific prescriptions must prevail and cannot be frustrated by importing the Code of Civil Procedure. Here, however, S. 86(4) of the Act itself entitles Mal Singh to be joined as respondent. That right cannot be defeated and once he comes on record as party the petition is in order and cannot be dismissed for non-

joinder. Procedural tyranny compounded by lexically unwarranted technicality cannot be tolerated in a court. Moreover, once Mal Singh comes on the party array by virtue of S. 86(4) the fatal infirmity, if any, must be judged with reference to the petition as amended by the addition of the new respondent. It is the amended petition consequent on the addition under S. 86(4) of Mal Singh that has to be tested in the light of S. 86(1) read with S. 82(b) of the Act.

Several decisions have been cited before us by both the sides to buttress up their respective stances but we find only marginal relevance for those decisions and do not burden this judgment with the citations.

In this view, issue No. 2 was wrongly decided by the High Court. We hold that Shri Mal Singh should have been impleaded as a respondent. Since he has applied in this Court also for the same relief we direct him to be joined as a respondent to the election petition. We are not impressed with the

submission of Shri Mehta for the respondent that there are suspicious features suggestive of collusion between the election-petitioner and Shri Mal Singh and that for that reason the petition to implead filed by Shri Mal Singh should be dismissed. It is quite conceivable that Shri Mal Singh against whom serious allegations have been made in the election petition would have sought to be impleaded so that he could clear the aspersions made against him, to the satisfaction of the constituency through an adjudication in the court. Even assuming that there was an element of collusion that would not deprive him of his entitlement under S. 86(4) of the Act. Perhaps the respondent (successful candidate) may well rely on these and other features when enquiry is made into the merits of the matter and seek to persuade the court that when the petitioner himself was willing to abandon the allegations and Shri Mal Singh appeared on the scene under coincidentally dubious circumstances, the charge was liable to be disbelieved. It is not for us in this Court to express any opinion, one way or the other, on the matter except to point out that even assuming Shri Mehta's assumption of mala fides or collusion it has no bearing on the right of Shri Mal Singh to be joined as a respondent.

The upshot of the above discussion is that the appeal has to be allowed, that Shri Mal Singh has to be impleaded as respondent No. 2, that the finding on Issue No. 2 should be set aside and the election petition remanded to the trial court to be restored to file for expeditious disposal on merits. We allow the appeal but in the circumstances direct the parties to bear their costs throughout.

S.R.

Appeal allowed