

Krishan Chander Vs. Ram Lal

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Court : Punjab and Haryana

Decided On : Aug-02-1972

Reported in : AIR1973P& H396

Judge : Gurdev Singh, J.

Acts : [Representation of the People Act, 1951](#) - Sections 82, 86, 123 and 123(1)(A); Limitation Act; [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 10

Appeal No. : Election Petn. No. 4 of 1972

Appellant : Krishan Chander

Respondent : Ram Lal

Judgement :

ORDER

1. In the last general elections to the Haryana Vidhan Sabha held on the 11th of March, 1972, eight candidates contested from the Karnal Constituency. The following day when the counting took place the respondent Shri Ram Lal was declared elected having secured the highest number of votes as detailed below:

Shri Ram Lal 17, 719 Smt. Shanti Devi 16, 857 Shri Balwant Singh 1,602 Shri Piyare Lal 1,243 Shri Kali Ram 1,203 Shri Kalu Ram 616 Shri Randhe Sham 542 Shri Kashmira Singh 180

2. Shri Kishan Chander, the petitioner before me, one of the electors in the Constituency, has challenged the election of the respondent Shri Ram Lal on the allegations, inter alia, that the respondent, his election agent and other persons with his consent had committed various corrupt practices detailed in the petition. Besides contesting the petition and denying allegations of corrupt practices etc., the successful candidate Shri Ram Lal, who is the sole respondent in petition, has taken some preliminary objections, the first and foremost of which is that the petitioner's petition has to be dismissed under Section 86 of the [Representation of the People Act, 1951](#) (hereinafter referred to as the Act) for non-compliance with the provisions of Section 82(d) of the Act, as various persons against whom the allegations of corrupt practices have been made, including Sarvashri Piyare Lal, Kali Ram, Kalu Ram and Kashmira Singh, who had themselves contested the election, and comrade Ram Piara have not been impleaded, though they were necessary parties. The petitioner in his replication, however, maintained that the returned candidate Shri Ram Lal alone was required to make party and it was not necessary to implead any other candidate as the allegations of various corrupt practices were levelled against the successful candidate Shri Ram Lal and not against any other candidate, though some of the persons had been named as his agents or those who had acted with his consent. On these pleadings, B. R. Tuli, J., before whom the matter came up during vacation, framed the following two preliminary issues, on which the petitioner personally and the respondent's learned counsel have addressed arguments before me at length:

1. Whether it was necessary for the petitioner to implead Sarvashri Ram Piara, Piyara Lal, Kali Ram, Kalu Ram and Kashmira Singh as parties to the petition in view of the allegations in paras 9, 10, 11, 12 and 20 of the election petition?

2. If Issue No. 1 is found in favour of the respondent, what is the effect of non-impleadment of those persons as respondents to the petition?

Issue No. 1:

3. The provision regarding the parties to an election petition is contained in Section 82 of the Act. It provides:

'82. Parties to the petition.--A petitioner shall join as respondent to his petition-

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

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

4. Clause (b) of this section is relevant to the preliminary issues that have been argued before me. It clearly lays down that besides the returned candidate whose election is challenged, any other candidate against whom allegations of corrupt practices are made in the petition has to be impleaded as respondent in an election petition. In view of the opening words of this section, it cannot be disputed that this provision is mandatory and the parties referred to therein are necessary parties in whose absence the trial of an election petition cannot proceed. This, in fact, stands settled by a string of authorities. It will suffice here to refer to Mohan Raj v. Surendra Kumar, AIR 1969 SC 677, wherein it has been ruled, inter alia, that Section 82(b) makes it incumbent that any candidate against whom a charge of corrupt practice has been made must be joined as a party and even a candidate who is duly nominated continues to be a candidate for the purpose of this provision in spite of his withdrawal. The same rule has been reiterated in K. V. Rao v. B. N. Reddi, AIR 1969 SC 872. This being the state of law, what remains to be considered is whether the petitioner has been made any averment of corrupt practices against any person who was a candidate for election from the Karnal constituency.

5. Besides Shri Ram Lal, who won the election, and Comrade Ram Piara who had withdrawn, the other candidates were Smt. Shanti Devi, Shri Balwant Singh, Shri Piyare Lal, Shri Kali Ram, Shri Kalu Ram, Shri Radhe Sham and Shri Kashmira Singh. It is conceded by the respondent's counsel that there is no imputation of corrupt practices against Smt. Shanti Devi, Shri Balwant Singh and Shri Radhe Sham and, accordingly, it was not necessary to implead them. It is, however,

urged that Comrade Ram Piara and the remaining four candidates, namely, Sarvashri Piyare Lal, Kali Ram, Kalu Ram and Kashmira Singh, having been accused of committing corrupt practices set out in paragraphs 9, 10, 11, 12 and 20 of the petition, are necessary parties.

6. Comrade Ram Piara is a candidate who after his nomination had withdrawn by the prescribed date. According to the settled law which has recently been reiterated by their Lordships of the Supreme Court in AIR 1969 SC 677, despite his withdrawal he would be a necessary party to this petition if any allegation of corrupt practices is made against him. The allegations made against him are contained in paragraph 10 of the petition, which runs thus:

'That on 13th February, 1972, the respondent accompanied by Sh. Hargobind again came to the petitioner and asked him to accompany them to Comrade Ram Piyara and request him to withdraw his candidature otherwise the chances of the respondent will be greatly hampered but the petitioner told them that he was not at very cordial terms with Comrade Ram Piara these days and it would be better for them if they seek the help of Sh. Sunder Lal Dhawan and S. Authar Singh Khalsa for the purpose and they both could prevail upon Comrade Ram Piara and the Comrade would not like to displease them both. They did the same and the Comrade withdrew his candidature.'

7. It is obvious that the allegation against Comrade Ram Piara is that he was prevailed upon to withdraw. There is no allegation that his withdrawal was not bonafide or voluntary but was induced by bribery, receipt of gratification or reward or expectation of the same, or anything which is in any manner prohibited under Section 123 of the Representation of the People Act. It is thus obvious that there is no allegation of corrupt practices against Comrade Ram Piara and the petitioner rightly did not implead him.

8. paragraph 11 which refers to the conduct of Shri Piyare Lal, a candidate at the election, reads:

'11. That though Sh. Saradha Ram, President, Municipal Karamchari Dal, Karnal, and Shri Prithvi Raj, President, District Municipal Subordinate Employees Union,

Karnal, the respondent Shri Ram Lal and Sh. Hargobind, Senior Vice-President, Municipal Committee, Karnal, induced Shri Piara Lal a caste brother of Mr. Sardha Ram to stand at the election for the Karnal Assembly Constituency. For that deal Sh. Sardha Ram was promised that he would not be dismissed again even if his appeal had been dismissed by the learned Commissioner, Ambala Division, and Shri Prithvi Raj would be given extension of his service. It was further promised by the respondent at the house of Sh. Piara Lal, Ward No. 9 Jundla Gate, Karnal that he would bear the entire election expenses of Sh. Piara Lal for the purpose and he was paid Rupees 3,000/- for standing in the elections in advance as gift by the respondent on 10th February, 1972. It was further agreed upon that the Jan Sangh workers would also work the Sh. Piara Lal. He was actually supplied workers and loud-speaker fitted rickshaw for propaganda work. So this inducement to Sh. Piara Lal to stand at the election is a corrupt practice in the meaning of the Section 123(1)(A)(a) of the Representation of the People Act and election is void'.

9. It will be seen that what is alleged in this paragraph is that the returned candidate Sh. Ram Lal and others at his instance had induced Sh. Piyare Lal to stand for the election not only by promising that he Sh. Ram Lal would bear the entire expenses of his election and supply Jan Sangh workers for propaganda, but also by paying him Rupees 3000/- for standing in the election, on 10th of February, 1972. The petitioner has argued that this is an accusation of corrupt practice against the returned candidate Shri Ram Lal and not against Shri Piyare Lal as it is not stated that the later and accepted the money or the offer of bearing his workers. This contention is clearly untenable, as a part from the clear averment contained in this paragraph that Sh. Piyare Lal was 'actually supplied workers and loud speaker fitted rickshaw', it is specifically stated that Shri Piyare Lal had been paid Rs. 3,000/- on the 10th of February, 1972 for standing in the election. There being unequivocal allegation that Shri Piyare Lal received Rs. 3,000/- for standing in the election, it is obvious that he his being accused of committing a corrupt practice falling under sub-clause (a) of Section 123(1)(B) of the Act.

10. In paragraph 12 it is stated that the respondent Shri Ram Lal accompanied by his agents and others went to the house of Shri Kali Ram and offered him Rupees 2,000/- as inducement to stand for the election, besides offering to bear his

election, besides offering to bear his election expenses and to supply workers. It is further stated that thereafter on the 10th of February, 1972, Shri Kali Ram took the respondent and others to the house of Shri Kalu Ram, where it was settled that he should also stand for election and for that purpose both (Shri Kali Ram and Shri Kalu Ram) were paid Rs. 2000/- each at the spot. It is then alleged that on the following day (11th February, 1972), Sh. Kali Ram and Shri Kalu Ram filed their nomination papers and both of them promised that they would not withdraw their candidature come what may. These averments clearly contain allegations of bribery having been committed not only by respondent but also by Shri Kali Ram and Shri Kalu Ram, as apart from other things, they had accepted the payment of Rs. 2000/- each as inducement for standing for the election.

11. The allegations against Kashmira Singh, the other candidate, are contained in paragraph 20 of the petition, which is in these words:

'On 25th February a meeting of Sikh Community of the Karnal city was convened by Khalsa Autar Singh and S. Inder Singh in Gurdwara Manji Sahib. Karnal. This meeting took place at 8.00 P. M. S. Sewa Singh refused to preside over the meeting on the ground that religious places should not be used for election propaganda but in spite of his objection the meeting was held under the Presidentship of S. Manohar Singh of Model Town, Karnal, who exhorted the Sikhs that a time has come to wreak vengeance on Ch. Bansi Lal by defeating his Jat candidate Behn Shanti Devi and thus Sikhs of Pehowa would have a sigh of solace. S. Autar Singh and S. Inder Singh Advocate also conveyed the decision of the Pursharthi Sabha, Karnal, dated 21-2-1972 and also the promise respondent Sh. Ram Lal for grant of Rs. 5,000/- a year to the Khalsa College, Karnal by the Municipal Committee, Karnal. So it was decided to fully support the candidature of Sh. Ram Lal in the elections to the Karnal Assembly Constituency and it was further decided to persuade S. Kashmira Singh to retire from contesting the elections in the interests of Sikh Panth and for the furtherance of the prospects of election of Sh. Ram Lal respondent. S. Kashmira Singh was made to retire and sit silent in the elections for himself if he could not help the respondent. All this amounted to corrupt practice within meaning of Section 123(1) and 123(3) of the Representation of the people Act, 1951'.

12. It will be seen that the imputation against Kashmira Singh is that the respondent Shri Ram Lal had prevailed upon S. Autar Singh and S. Inder Singh Advocate and members of the Pursharthi Sabha by promising a grant of Rs. 5000/- a year to the Khalsa College to persuade Shri Kashmira Singh to retire from the contest. It is not disputed that the results also show that Kashmira Singh had not withdrawn his candidature. The petitioner, however, urges that Kashmira Singh was made to retire and become inactive in the election, if he could not help the respondent, and thereby a corrupt practice as defined in Section 123(3A) of the Act had been committed. The question whether or not the various acts attributed to Shri Ram Lal in this paragraph constitute corrupt practices under Section 123(3A) of the Act does not arise for consideration at this stage and here we are concerned only with the question whether there is any allegation of corrupt practices against Shri. Kashmira Singh. The only thing that has been attributed to Kashmira Singh is that he was persuaded to retire from the contest and sit silent in the election if he could not help the respondent. There is no allegation that Shri Kashmira Singh had ever agreed to receive or had actually received any gratification, promoted or attempted to promote feeling of enmity or hatred between different classes of the citizens on grounds of religion, race, caste, community or language, or committed any other act that constitutes a corrupt practice under the Act.

13. In view of the above discussion, I find that the petition contains the allegations of corrupt practices against the candidates Sarvashri Piyare Lal, Kali Ram and Kalu Ram besides the returned candidate, who is already respondent in the case, and in view of the mandatory provisions of Section 82 of the Act they are necessary parties to this petition. Issue No. 1 is thus decided against the petitioner accordingly.

Issue No. 2

14. In view of the settled law that Section 82 is a mandatory provision and all candidates against whom allegations of corrupt practices are made shall be joined as respondents besides the returned candidate, it is obvious that the necessary parties named above having not been impleaded the petition is not properly

constituted as held in *Amin Lal v. Hunna Mal*, AIR 1965 SC 1243, and it cannot proceed in their absence. What remains to be considered is the effect of the petitioner's failure to implead the three candidates who have been held as necessary parties. In a suit where necessary parties are not impleaded, recourse is sometime permissible to Order 1, Rule 10, Civil Procedure Code, but even in such cases the provisions of the Limitation Act have to be kept in view and where the claim against the party sought to be impleaded is barred by limitation, addition of that party is not allowed. The question whether the power contained in Order 1, Rule 10, Civil Procedure Code can be exercised in dealing with an election petition was considered in *K. V. Rao's case*, AIR 1969 SC 872, *supra*, and it was held that though amendment to the petition in a civil proceeding and the addition of parties to such proceedings is possible subject to the law of limitation, an election petition stands on a different footing and the trial of such petitions and the powers of the Court in respect of it are circumscribed by the Act. On consideration of the various provisions of the Act, it was held that no right is given to the High Court to entertain an election petition which does not comply with the provisions of Sections 81, 82 or Section 117 of the Act, and the power of the High Court to allow amendment of the petition is restricted by Section 86(5) of the Act. In this connection, delivering the judgment of the Court, Mitter, J., observed as follows:

'But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of the parties which is possible in the case of a suit under the provisions of Order 1, Rule 10, subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.'

15. Admittedly, the period of 45 days allowed under the law for making this election petition expired long ago, and even if it be assumed that this Court has power to allow amendment to implead the necessary parties (though no such prayer has been made either orally or by way of an application), it cannot be allowed at this stage. Thus I find that the failure of the petitioner to implead the candidates Sarvashri Piyare Lal, Kali Ram and Kalu Ram must result in dismissal of his petition. This issue is decided accordingly.

16. As a result of the above findings, the petition is dismissed with costs.

17. Petition dismissed.

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