

PETITIONER:
GADNIS BHAWANI SHANKAR.

Vs.

RESPONDENT:
FALEIRO EDUARDO MARTINHO

DATE OF JUDGMENT: 01/08/2000

BENCH:
R.C.Lahoti, K.G.Balakrishnan

JUDGMENT:

Judgement

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Would the provisions of sec. 82(b) of the Representation of the People Act, 1951 get attracted to a candidate who allegedly commits a corrupt practice, after the withdrawal of his candidature as a voter, is the meaningful question requiring our consideration in this appeal?

The appellant was a candidate for rajya Sabha elections for one seat from Goa in the year 1999. There were three candidates in the fray. Apart from the appellant and respondent. there was another candidate Luis Alex Cardozo. All the three candidates had filed their nomination papers which were accepted. After the acceptance of his nomination paper Luis Alex Cardozo withdraw from the contest on 17th July, 1999. In the contest held thereafter respondent was declared elected. The appellant filed an election petition, challenging the election of respondent, principally on the ground of commission of corrupt practices. In the election petition respondent alone was arrayed as a party-respondent. After service of notice, respondent raised a preliminary objection by filing an application under Sec 86 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') It was averred that election petition was liable to be dismissed for non-compliance with the requirements of Sec. 82 of the Act. The preliminary objection was upheld and election petition was dismissed. Hence, this appeal.

Section 82(b) of the Representation of the People Act, 1951 provides:

"82 - A petitioner shall join as respondents to his petition -

(a) -----

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

Sec 86 which deals with trial of election petitions provides in sub-clause (1) as follows:

"86(1) The High Court shall dismiss an election petition which does not comply with the provisions of sec. 81 or section 82 or sec. 117

Explanation - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

In the instant case, Luis Alex Cardozo withdraw his nomination on 17th July, 1999. Election took place on 26th July, 1999. In the election petition apart from various other allegations against the respondent two allegations contained in paragraphs 30-D(ii) and 30-G alone are relevant for purposes of our discussion. Those paragraphs read thus :

"30-D The corrupt practice committed by the respondent and his agents is as follows:

i) -----

(ii) Offering and promising of cabinet berths to some of the 8 dissident MLAs of Congress party and appointment on other important public offices to the remaining of them as also to one independent MLA who are namely Shri Subash Shirodkar, Shri Somnath Zuwalkar, Shri Sanjay Banekar, Smt. Victoria Fernandes, Shri Luis Alex Cardozo Shri Jose Philip D'souza, Shri Mauvino Godinho Shri Babu Azganokar and Shri Isidoro Luis Fernandes (Independent).

G - The said 8 dissident Congress MLAs and one independent MLA in agreement to receive the said gratification voted for the respondent at the said election."

The allegations, in a nutshell, contained in these two paragraphs are concerned, are to the effect that after withdrawal of his candidature, Cardozo agreed to receive gratification along with some other MLAs as a motive or reward to vote for respondent. Acceptance of or agreement to receive gratification as a motive or reward to vote at the election is a corrupt practice dealt with in Section 123-(1)(B) of the Act which provides:

"123 - Corrupt practices :

The following shall be deemed to be corrupt practices for the purposes of this Act :-

(1) "Bribery", that is to say -

(A) -----

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward -

(a) by a person for standing or not standing as or for withdrawing or not withdrawing from being a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw or not to withdraw his candidature.

Explanation - For the purposes of this clause the term "gratification" is not restricted to pecuniary gratification or gratifications estimable in money and it

includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at or for the purpose of any election and duly entered in the account of election expenses referred to in sec. 78."

A plain reading of the above provision shows that the receipt of or agreement to receive, any gratification as a motive or reward by any person whomsoever for himself or any other person for voting or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw or not to withdraw his candidature would amount to commission of a corrupt practice. The averments noticed in paragraphs 30-D(ii) and 30-D of the election petition (supra) contain allegations against Cardozo that he agreed to receive gratification as a motive or reward for voting in favour of the respondent. These averments would amount to allegations of commission of corrupt practice by Cardozo within the meaning of Sec. 123(1)(8) of the Act.

The argument of Mr. Krishnamani, learned senior counsel appearing for the appellant, however, is that since Cardozo had withdrawn from the contest he could not be treated as a candidate who was necessarily required to be impleaded as a party-respondent under sec. 82(b) of the Act and if the corrupt practice was committed by him as a voter only he was not required to be impleaded as a party respondent in the election petition. This argument does not appeal to us. Sec. 79(b) of the Act defines a candidate to mean a person who has been or claims to have been duly nominated as a candidate at any election. There is no dispute that Cardozo had been duly nominated as a candidate at the election in question. A similar argument as raised by Mr. Krishnamani came up for consideration in *Har Swarup & Anr. Vs. Brij Bhushan Saran & Others* (1967 (1) SCR 342).

Wanchoo, J. speaking for a three judge Bench opined :-

"But the argument is that as the alleged corrupt practice was committed after the date of his withdrawal he would not be a candidate within the meaning of S. 82(b). We are of opinion that if the effect of withdrawal is said to be that a person nominated can no longer be considered to be a candidate only after his withdrawal the date of withdrawal cannot be a dividing line as to the time upto which he can be treated as a candidate and the time after which he cannot be treated as a candidate. If purity of elections has to be maintained a person who is a candidate as defined in sec. 79(b) the Act will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under s. 82(b) of the Act."

In *Ram Pratap Chandel Vs. Chaudhary Lajja Ram and Other* (1998 (8) SCC 564), the requirements of Section 82 of the Representation of the People Act were dealt with and the Bench held opined that a candidate against whom a charge of corrupt practice had been made in the election petition was required to be joined as a party to the election petition, irrespective of the fact whether he had withdrawn his candidature and not contested the election as such and had committed the corrupt practice after his withdrawal.

The Bench in Ram Pratap Chandel's case considered the judgment in Mohan Raj Vs. Surendra Kumar Taparia & Ors. 1969 (1) SCR 630 which has been pressed into aid by Mr. Krishnamani before us distinguished it in the following words :-

"Lastly, it is submitted that Periwai was being charged in his character as an election agent and not as a candidate. This submission runs counter to the amendment petition which says that he was not an election agent and therefore, he was really charged in his capacity as an individual and as he was a duly nominated candidate he had to be joined. The argument really contradicts the last amendment petition and cannot be entertained.

He submitted that the allegations of corrupt practice made against a person who, though he had been a candidate, had withdrawn in his capacity as the election agent of another candidate, did not necessitate his impleadment and this question had been left open in the aforesaid judgment. It is difficult to agree. By reason of the contradiction the argument was not entertained. But it is clear from what was stated there in above that a candidate who is duly nominated continues to be a candidate for the purposes of Section 82(b) in spite of his withdrawal and if allegations of corrupt practice are made against him,, he must be impleaded as a party to the election petition or the election petition must fail."

We are in complete agreement with the exposition of law, as made above.

In our opinion the allegations which have been made in the election petition are allegations of corrupt practice against Cardozo besides some others. Since, Cardozo was a nominated candidate. It was necessary to implead him as a party-respondent under Section 82(b) of the Act. irrespective of the fact that before the actual date of election he had withdrawn his candidature and allegedly committed the corrupt practice after his withdrawal from the election. Thus, the answer to the question posed in the earlier part of the judgment is in the affirmative.

The learned Single Judge of the High Court committed no error in dismissing the election petition for non-compliance with the provisions of Sec. 82(b) of the Act. The appeal has no merits. It fails and is dismissed. Parties to bear their own costs.

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