

CASE NO.:

Appeal (civil) 1789 of 1998

Appeal (civil) 2080-2081 of 1998

PETITIONER:

PATANGRAO KADAM

Vs.

RESPONDENT:

PRITHVIRAJ SAYAJIRAO YADAV DESHMUKH & ORS.

DATE OF JUDGMENT: 26/02/2001

BENCH:

CJI, R.C. Lahoti & Shivaraj V. Patil

JUDGMENT:

With

CIVIL APPEAL NOS. 2080-2081 OF 1998

J U D G M E N T

L...I...T.....T.....T.....T.....T.....T.....T...J
Shivaraj V. Patil J.

These appeals are filed under Section 116-A of the Representation of People Act, 1951, aggrieved by the judgment and order dated 29.1.1998 of the High Court of Judicature at Bombay made in election petition No. 5 of 1996. Since the election petition was dismissed upholding the preliminary objection by the respondent no.3, we consider it unnecessary to narrate the pleadings and facts in detail. However, the relevant and material facts, which are considered necessary for the disposal of these appeals, briefly stated, are the following.

The appellant filed election petition No. 5 of 1996 impugning the election of the respondent no. 1 to be void under section 100(1)(b) and 100(1)(d)(ii) and 100(1)(d)(iv) read with section 123(4) of the Representation of People Act, 1951 (for short 'the RPA) and sought for further declaration that he should be declared as elected. One Sampatrao Yadav Deshmukh was elected to the Maharashtra State Assembly from Bhilawadi-Wangi Constituency No. 270 of Sangli District in the general election held in the month of March, 1995. He died on 6.5.1996. Consequently, a notification was issued on 13.9.1996 for holding bye-election to the said Constituency. The last date for filing nomination papers was 20.9.1996. On 18.9.1996 the appellant, the respondent no. 1 and one Sampatrao Chavan filed nomination papers. Sampatrao Chavan withdrew his candidature on 23.9.1996, which was the last date for withdrawal of nomination papers. The final list of contesting candidates was published on the same day wherein the appellant and the respondents 1-6 were left in the field. Sampatrao Chavan after withdrawal of his candidature became the election agent of the respondent no. 1. Polling took place on 11.10.1996. After counting the respondent no.

1 was declared elected on 13.10.1996 having secured 72,526 votes being the highest.

In the election petition, allegations were made against the respondent no. 1, his agents, supporters and his election agent Sampatrao Chavan. The respondent no. 1 filed his written statement inter alia raising the contention that the election petition was not maintainable for non-compliance of mandatory provisions of sections 81 and 83 of the RPA and sought for its dismissal. He denied all the material averments made in the election petition. The trial court framed issues including issues as to the maintainability of the election petition. The respondent no. 1 took out chamber summons no. 66/98 to decide the maintainability of the election petition. After hearing the learned counsel, the High court held that the issue nos. 1 and 2 regarding maintainability of election petition cannot be decided at the threshold and the points raised in the said chamber summons were kept open until final hearing of the election petition. Thereafter the trial court proceeded to examine the witnesses produced by the appellant. The respondent no. 3 took out chamber summons no. 72/98 praying for dismissal of the election petition for non-compliance of section 82(b) of the RPA inasmuch as Sampatrao Chavan, a validly nominated candidate, had not been made a party to the election petition. The appellant took out chamber summons no. 93/98 seeking permission to amend the election petition so as to delete the allegation of corrupt practice made against Sampatrao Chavan. Both of them were heard together. Chamber summons no. 72/98 was allowed and the chamber summons no. 93/98 was rejected. Consequently the election petition was dismissed by the impugned judgment and order.

The appellant has filed Civil Appeal No. 1789 of 1998 aggrieved by the dismissal of election petition and Civil Appeal Nos. 2080-2081/98 aggrieved by allowing chamber summons no. 72/98 and dismissing chamber summons no. 93/98.

Shri P.P. Rao, learned senior counsel for the appellant, contended:

1. Once a contesting candidate is impleaded under Section 82(a) of the RPA, Section 82(b) does not come into play at all if the allegations of corrupt practice are made against a contesting candidate because of the additional declaration prayed for.

2. In clause (b) the words any other candidate do not include a contesting candidate impleaded under clause (a) even if allegations of corrupt practice are levelled against him.

3. In a petition merely claiming a declaration that the election of the returned candidate is void on the allegations of corrupt practice against another candidate, whether contesting candidate or not, he has to be impleaded; clause (b) is wide enough to include even a non-contesting candidate, who had withdrawn from the contest either before committing a corrupt practice or after committing it.

4. In terms of Section 123 corrupt practices mentioned therein can be committed not only by the candidate himself but also by his election agent or other agent or any other

person with his consent or the consent of his election agent such allegations of corrupt practice made are against the candidate himself and he alone is made liable to answer the same as a necessary party to the election petition; therefore, for any alleged corrupt practice committed by an election agent, who is the alter ego of the candidate, the candidate alone has to be impleaded and his election agent need not be impleaded at all under Section 82; if, however, the High Court comes to the conclusion after considering the evidence on record that the election agent is also to be named as having committed the corrupt practice, notice has to be given to him under the proviso to Section 99(1)(a)(ii).

5. If two interpretations are possible of Section 82(b), the one which furthers the object of purity of election should be preferred to the one which permits a candidate who has resorted to corrupt practice through his election agent or agent or any other person, to escape the liability for the same and thereby vitiate free and fair elections, which is a basic feature of the Constitution.

He made submissions elaborately in support of these contentions and cited few decisions.

Per contra, Shri V.A. Mohta, learned senior counsel for respondent no. 1, while supporting the judgment and order of the High Court urged:

1. Having regard to the scheme of RPA and by reading Sections 79, 82, 99 and 123 it is quite clear that a candidate within the meaning of Section 79(b) has to be necessarily impleaded in an election petition where a corrupt practice is alleged irrespective of the fact whether he withdrew his candidature or retired from the contest or became an election agent after withdrawal of his candidature of another contesting candidate; the object of the provisions is to see that no candidate against whom corrupt practice is alleged escapes the consequences.

2. There was no choice to the High Court but to dismiss the election petition when there was non-compliance of Section 82(b) and such a petition ought to be dismissed in terms of Section 86(1).

3. When Sampatrao Chavan was a candidate within the meaning of Section 79(b), as the nomination filed by him was accepted as valid, his becoming the election agent of respondent no. 1 after withdrawal did not make any difference as to impleading him as a party to the election petition.

While citing few decisions in support of his contentions, he added that the law is already settled by this Court on the point in controversy.

We think, it is appropriate to extract the relevant provisions of the RPA to the extent required, for the purpose of immediate reference and focus on them for appreciating the rival contentions raised by the learned counsel for the parties.

Section 79. Definitions In this Part and in [Part VII] unless the context otherwise requires

(a)

(b) candidate means a person who has been or claims to have been duly nominated as a candidate at any election;

(c)

Section 82. Parties of the petition A petitioner shall join as respondents to his petition.

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other 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.

Section 86. Trial of election petitions (1)
The High court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation -

(2)-(7).....

Section 99. Other orders to be made by the High court (1) At the time of making an order under section 98 [the High Court] shall also make an order

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, regarding

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b)

Provided that [a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless

(a) he has been given notice to appear before

[the High Court] and to show cause why he should not be so named; and

(b)

(2) In this section and in section 100, the expression agent has the same meaning as in section 123.

Section 123. Corrupt practices The following shall be deemed to be corrupt practices for the purposes of this Act

- (1)
- (2)
- (3)

(4) The publication by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates election.

- (5)
- (6)
- (7)
- (8)

There are three categories of candidates as can be gathered from the provisions contained in the RPA -- (1) candidate, (2) contesting candidate, and (3) returned candidate.

As per Section 79(b) candidate means the person who has been or claims to have been duly nominated as a candidate at any election. The definition of the word candidate, as given in clause (b) of Section 79, has been amended by Act 40 of 1975 retrospectively. Therefore, the distinction between a candidate who has withdrawn and a candidate who has continued till the contest is over is of no relevance. It is not disputed that the nomination filed by Sampatrao Chavan had been accepted and a list of validly nominated candidates including that of Sampatrao Chavan was affixed on the notice board as required under Section 36(8). He withdrew his candidature on 23.9.1996 as per Section 37(1); thereafter a list of contesting candidates was published under Section 38(1); in the election petition filed, corrupt practices were alleged against the respondent no. 1 and his election agent Sampatrao Chavan besides others; he was not joined as a respondent in the election petition; in the election petition the appellant in addition to seeking election of respondent no. 1 to be void had sought for further declaration that he should be declared as elected. As per Section 82 the appellant was required to join all the contesting candidates other than himself and further he had to join any other candidate against whom allegations of any corrupt practice were made in the petition. Even though Sampatrao Chavan had withdrawn his candidature after it had been duly accepted and notified he could not go out of the definition of candidate within the meaning of Section 79(b). This position is made amply clear by various pronouncements of this Court. Even the learned counsel for the appellant could not dispute this

position but he made efforts to distinguish the case on hand stating that Sampatrao Chavan after withdrawing his candidature had become the election agent of respondent no. 1; the respondent no. 1 having been impleaded under Section 82(a) there was no need to implead his election agent Sampatrao Chavan; there was merger of personality between the respondent no. 1 and Sampatrao Chavan inasmuch as all actions of Sampatrao Chavan in law were to be considered as the actions of respondent no. 1 himself; since the respondent no. 1 as a contesting candidate had been impleaded under Section 82(a) he could not be considered as any other candidate under Section 82(b) for impleading. It was also urged that there was no need to implead the election agent as corrupt practices alleged against him were subsequent to the withdrawal of his candidature. The learned counsel added that the decisions of this Court cited did not specifically deal with a candidate, who after withdrawing his candidature subsequently became the election agent of another contesting candidate and where allegations of corrupt practice pertained to the period after withdrawal. According to the learned counsel, consequent to the dismissal of the election petition the respondent no. 1, who had committed corrupt practices, was left free and that because of the time gap no action could be taken against his election agent Sampatrao Chavan also.

From the plain and unambiguous language and terms of Sections 79(b) and 82(b) without anything more, Sampatrao Chavan had to be necessarily joined as a respondent. He was a candidate within the meaning of Section 79(b) and in the election petition the appellant had sought further declaration that he should be declared as duly elected. Hence Section 82(b) got attracted. Section 82 speaks of all the three categories the contesting candidates, the returned candidates and any other candidate. Sampatrao Chavan, as already stated above, undoubtedly, is covered by Section 82(b) read with Section 79(b). Merely because he became an election agent of the respondent no. 1 subsequently after withdrawal of his candidature, he did not cease to be a candidate within the meaning of Section 79(b). Sections 82 and 99 are independent and are to serve different purposes. Sections 82 to 84 are included in Chapter II of the RPA dealing with the presentation of election petitions. Section 82 speaks of the parties to be joined in the petition and Section 84 states as to the relief that may be claimed by the election petitioner. Chapter III contains Sections 86 to 107 relating to trial of election petitions and section 99 indicates as to other orders to be made by the High Court at the time of making an order under Section 98 concerning the relief/reliefs to be granted at the conclusion of the trial. Under Section 99, the High Court has to make other orders regarding (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of corrupt practice; and (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of corrupt practice and its nature. But before naming any person who is not a party to the election petition, he has to be given an opportunity to show cause and hearing. Thereafter action shall be taken under Section 8A against all the persons who are found guilty of corrupt practice and so named. Thus it is clear that Section 82 deals with an election i.e. parties to the election petition in relation to the reliefs claimed whereas Section 99 deals with the

action to be taken against all persons found guilty of corrupt practices and to name them for further action under Section 8A. Section 82 is mandatory in relation to joining of respondents mentioned therein. Section 86(1) does not leave any option to the High Court but to dismiss an election petition for non-compliance of Sections 81, 82 and 117. Section 82 speaks of impleading of the respondents in the election petition itself requiring their presence at the trial. Section 99 comes into operation at the time of making an order under Section 98 at the conclusion of the trial of an election petition. The argument that Sampatrao Chavan could have been impleaded at later stage if necessary under Section 99, if accepted, renders the mandatory requirement of Section 82 ineffective. Unambiguous language and clear terms contained in Section 82(b) read with Section 79(b) lead to only one interpretation as stated above and there is no scope for two interpretations, as sought, to be made out on behalf of the appellant. This Court in the case of M/s. Keshavji Ravji & Co. etc. etc. Vs. Commissioner of Income-tax [AIR 1991 SC 1806] while dealing with interpretation of statutes when language of statute is unambiguous, in para 6 has observed thus:-

As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature. In Doypack Systems Pvt. Ltd. Vs. Union of India (1988) 2 SCC 299: AIR 1988 SC 782) it was observed:

The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary (p.331) (of SCC)(at pg. 301 of AIR).

Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle.

It must be remembered in relation to a returned candidate if the allegations of corrupt practices are established, two consequences follow (1) his election will be declared as void and (2) he shall be disqualified to contest or vote at any election for a period up to six years. Against all others, who are found guilty of corrupt practices other consequences shall follow. Under Section 8A the case of every person found guilty of a corrupt practice by an order made under Section 99 shall be submitted to the competent authority for determination of the question as to whether such person shall be disqualified and, if so, for what period provided the period of disqualification shall not exceed six years from the date on which the order made in relation to a person under Section 99 takes effect. Corrupt practice is not confined only to a returned candidate, it can be committed by the persons mentioned in Section 123 and no one can be allowed to escape consequences

of Section 8A, the object being to maintain the purity in the election process. Fair and free elections are essential requisites to maintain the purity of election and to sustain the faith of the people in election itself in a democratic set up. Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character. Hence those indulging in corrupt practices at an election cannot be spared and allowed to pollute the election process and this purpose is sought to be achieved by these provisions contained in the RPA.

One more aspect to be kept in view is that since serious consequences follow against a candidate within the meaning of Section 79(b) indulging in corrupt practices in an election, principles of natural justice do demand of providing an opportunity to such a candidate. In this view also impleading of Sampatrao Chavan as respondent to the election petition was necessary in terms of Section 82(b). It is the general rule that the act of an agent does not bind his principal unless it is within the authority given to him. An agent is having an authority to do every lawful thing which is necessary to do an act authorized, but in law an agent can neither be authorized to do an unlawful thing/act nor an agent can be permitted to do so. This apart, under Section 40 a candidate at an election may appoint one person other than himself to be his election agent. As per Section 45 an election agent is to perform only such functions as are authorized by or under the RPA in connection with the election.

If an election agent travels beyond his authority given under Section 45 and commits an illegal act or an offence, may be electoral or criminal, he cannot pass on his sins to the candidate and escape punishment and consequences on proof of commission of such act/ offence merely on the ground or saying that he is only an election agent of a candidate and it is enough to proceed against the candidate alone.

In the case on hand it was also pointed out to us that the corrupt practice was alleged in the election petition not only against the respondent no. 1 but also against his election agent Sampatrao Chavan specifically pointing out to para 11(h) of the election petition, which reads: -

(h) On 10.10.1996, at about 10 A.M., Shri Sampatrao Chavan, the election agent of Respondent No. 1 was himself distributing the said reconstructed handouts/bills in respect of the said news item to various people in the village Nagrale, Taluka Tasgaon, District Sangli and was indulging in publication of statement of fact which is false and which he believed to be false and did not believe to be true in relation to the personal character and conduct of the petitioner for prejudicially affecting the petitioners election prospects. Other workers of Respondent No. 1 (along with said Shri Sampatrao Chavan) were also distributing the reconstructed handouts/bills to various people of village Nagrale, Taluka Tasgaon, District Sangli.

This apart, one thing is clear that since he did not cease to be a candidate within the meaning of Section 79(b), as already discussed above, his non-joining as respondent in the election petition was fatal.

Almost in an identical case, this Court, in *Natau Ram Indra Singh vs. Trikamal Jamandas Patel and others* [37 ELR 267] has held that a person who had been nominated as a candidate for an election and had since withdrawn his candidature was for the purpose of Section 82 a candidate and he must be impleaded in a petition if any allegations of corrupt practice were made against him, whether committed before or after his withdrawal in the election petition. That was also a case where the appellant had filed an election petition on 10.4.1967 to set aside the election of first respondent and for a further order that the fourth respondent be declared elected. In the petition it was averred that the first respondent and his election agent Jamna Shanker Pandya and other agents with their consent had committed corrupt practices within the meaning of Section 123(3), (3A) and (4) of the RPA. Jamna Shanker Pandya had filed his nomination for election to the same constituency, but he had later withdrawn his candidature and thereafter he had become an election agent of the first respondent. He was not impleaded as respondent to the election petition. The first respondent applied to the High Court praying for dismissal of the election petition. Thereafter, in June 1967 an application was made under Order 1 Rule 10 CPC for impleading Jamna Shanker Pandya as a party respondent. The High Court rejected the application and dismissed the election petition for non-compliance with Section 82(b). This Court affirmed the said decision of the High Court stating that Section 79 of the RPA defines candidate as meaning a person who has been or claims to have been duly nominated as a candidate at any election, and any such person should be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. The Court went on to say as under: -

This Court has held that a person who had been nominated as a candidate for an election and has since withdrawn his candidature is for the purpose of S.82 a candidate and he must be impleaded in a petition if any allegations of corrupt practice are made against him whether committed before or after his withdrawal in the election petition. *Har Swarup and another v. Brij Bhushan Saran and others* (1967 (1) SCR 342), *Mohan Singh v. Bhanwar Lal and others* (1964 (5) SCR 12) and *Amin Lall v. Hunna Mal* (1965 (1) SCR 393), Jamna Shanker Pandya being a necessary party to the election petition, failure to implead him rendered the election petition, defective, and the High Court was bound to dismiss the election petition.

This Court, in *Har Swarup and another vs. Brij Bhushan Saran and others* [AIR 1967 SC 836], expressed the 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 S. 79(b) of 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 Section 82 (b) of the Act. We are therefore of opinion that the view taken by the Patna High Court on which reliance has been placed on behalf of the appellants is not correct and the decision of the High

Court under appeal is correct.

The view that a candidate, who is duly nominated, continues to be a candidate for the purpose of Section 82(b) in spite of withdrawal is supported by the decisions of Har Swarup (supra) and Amin Lal vs. Hunna Mal [1965 (1) SCR 393]. This Court referring to the said decisions in Mohan Raj vs. Surendra Kumar Taparia and others [AIR 1969 SC 677] agreed with the said view. Further the decision in Chaturbhuji vs. Election Tribunal Kanpur [AIR 1958 All 809] taking the same view after elaborate consideration on all aspects touching the question is approved. Dealing with the applications made for impleadment under Order I Rule 10 and amendment under Order 6 Rule 17, in para 10 of the same judgment, this Court has stated thus:

No doubt the power of amendment is preserved to the Court and O. 1 R. 10 enables the Court to strike out parties but the Court cannot use O. 6 R. 17 or O. 1 R. 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see S. 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.

It may be noted that the facts of the case in Ram Partap Chandel vs. Chaudhary Lajja Ram and others [(1998) 8 SCC 564] are similar to the facts of the case in hand. In the election petition the appellant averred that certain corrupt practices had been committed by the first respondent (the returned candidate) and by his son Harbhajan Singh, who was the election agent; also, by one Amarnath Kaushal, who was the counting agent of the first respondent. Both Harbhajan Singh and Amarnath Kaushal had been candidates at the election but had withdrawn their candidature. They were not impleaded as respondents to the election petition. The High Court in the light of Section 82 of the RPA dismissed the election petition as not maintainable. This Court, while dismissing the appeal against the said judgment of the High Court referring to the case of Mohan Raj (supra), in paragraph 7 of the judgment, has stated thus: -

7. It will be seen that sub-section (a) of Section 82 uses the words contesting candidates and sub-section (b) uses the words any other candidate. The combined effect of sub-sections (a) and (b) is, plainly, to require the impleadment in an election petition of all candidates at an election against whom allegations of corrupt practice are made. This would apply not only to those who actually contested the election, but also to those who stood for election but withdrew their candidature before the polling date. The person being the same, it is of no consequence that the allegation of corrupt practice is made in relation to a point of time when the candidature had been withdrawn and the person was now acting as the agent of a contesting candidate.

Yet in another recent judgment in *Gadnis Bhawani Shankar, V. vs. Faleiro Eduardo Martinho* [(2000) 7 SCC 472], agreeing with the exposition of law made in the cases of *Har Swarup, Mohan Raj* and *Ram Partap Chandel* aforementioned, this Court in para 13, concluded thus:-

13. 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.

No arguments were advanced in support of Civil Appeal Nos. 2080-2081 of 1998. Even otherwise in view of decisions in *Natau Ram Indra Singh vs. Trikamal Jamandas Patel and others* [37 ELR 267] and *Mohan Raj vs. Surendra Kumar Taparia and others* [AIR 1969 SC 677] there is no merit in these appeals.

Thus having regard to all aspects, we do not find any infirmity in the judgment and order impugned in these appeals which may warrant interference by this Court.

In the light of the facts stated, discussions made and reasons given above, these appeals, in our view, are devoid of any merit and consequently they are dismissed, but without any order as to costs.

CJI
R.C. Lahoti
Shivaraj V. Patil
February 26, 2001.