

A

UDHAV SINGH

v.

MADHAV RAO SCINDIA

October 10, 1975

[P. N. BHAGWATI AND R. S. SARKARIA, JJ.]

B

Representation of the People Act, 1951—Sec. 82(b), 86—123(2), 123(i) & 123(ii)—Non-joinder of candidate against whom allegation of corrupt practice is made whether fatal—Whether objection must be raised in written statement or whether can be taken by separate application after the appellant's evidence is over—Whether non-compliance can be waived—C.P.C. Order 8 rule 2—Distinction between material facts and material particulars.

C

Six candidates filed nomination papers for contesting the election to Lok Sabha from Guna Parliamentary Constituency in March, 1971. Pratap Singh and Gaya Prasad withdrew their candidature after their nomination papers were found to be in order on scrutiny. The respondent herein was declared elected by a margin of about 1,41,000 votes over his close rival Jadhav. The appellant an elector of the Constituency filed an election petition challenging the election of the respondent on two grounds (1) The respondent incurred or authorised expenditure in excess of the limit prescribed, (2) The workers of the respondent including Pratap Singh, with his consent had threatened the electors with bodily injuries and criminal intimidation not to vote for Jadhav. The respondent filed his written statement and denied the charges made by the appellant. Issues were framed and evidence of the appellant was recorded. Thereafter, the respondent submitted an application alleging that the appellant in his petition alleged the commission of a corrupt practice within the meaning of s. 123(2) of the Act by Shri Pratap Singh one of the candidates but he failed to show him as a respondent and as such the petition was liable to be dismissed under s. 86 on account of non-compliance with the mandate of s. 82(b). The appellant in his reply to the said application denied that any allegation was made against Shri Pratap Singh and further stated that the respondent did not raise this objection in his written statement and that he should not be allowed to raise it at a belated stage. The appellant also contended that since the objection as to the non-joinder of the necessary party was not taken at the earliest, it should be deemed to have been waived by the respondent.

D

E

F

The High Court found that the allegation against Shri Pratap Singh constituted a charge under s. 123(2) of the Act and that non-joinder of Shri Pratap Singh as a respondent was fatal to the petition. On merits also, the High Court found against the appellant on both the issues.

On appeal it was contended by the appellant :

1. In view of mandate of Order 8 Rule 2 of C.P.C. it was obligatory for the respondent to take all pleas of non-joinder in the written statement.

2. In any case, the respondent should be deemed to have waived his rights.

G

3. No allegations of corrupt practice were, in fact, made against Shri Pratap Singh.

4. Assuming that there is an allegation against Shri Pratap Singh, the allegation is so bereft of material facts and material particulars that it does not constitute a complete charge of corrupt practice under s. 123(2).

On the other hand, the respondent contended;

H

1. That it was not obligatory to take this objection in the written statement. It was a purely legal objection which for its determination did not require any facts to be pleaded. The fatal defect is patent on the face of the Election Petition.

2. Order 8 Rule 2 is not attracted because that provision, as its marginal heading shows, enjoins the pleading of new facts only as distinguished from pure points of law. In the alternative, the said application was additional pleading which was accepted by the High Court. The appellant had sufficient opportunity to file his reply, to the said application and was not taken by surprise.

3. Section 86 read with s. 82(b) are in the nature of a mandate to the Court which is bound to dismiss an election petition whenever it comes to its notice, whether on its own motion or on the motion of the respondent, that there has been a non-compliance with the imperative of s. 82(b).

4. The respondent cannot by consent, express or tacit, waive these provisions.

5. There was a charge of corrupt practice against Shri Pratap Singh.

6. All primary facts, as distinguished from material particulars, are necessary to constitute a complete charge of corrupt practice under s. 123(2).

Dismissing the appeal,

HELD : (1) The respondent was not precluded from raising the objection as to non-joinder merely because he has done so after the close of the appellant's evidence nor was he obliged to raise it in the written statement.

[252—H]

(2) Rule 2 of Order 8 of C.P.C. is a rule of practice and convenience and justice. This procedural rule is to subserve and not to enslave the cause of justice. It lays down broad guidelines and not cast iron traps for the defendant in the matter of drawing up his statement of defence. [253-A]

(3) The plea raised by the respondent arises out of allegations made in the petition itself and raise a pure question of law. No question of prejudice or surprise to the appellant arises. There are various decisions where objection as to non-joinder of a necessary party in an election petition was allowed to be raised by a simple application submitted long after presentation of the written statement. [253-G]

(4) There was a clear allegation of corrupt practice against Shri Pratap Singh. [259—E]

(5) All primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are material facts. In the context of a charge of corrupt practice material facts would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the charge levelled, the grounds relied upon and the special circumstances of the case. Particulars on the other hand are the details of the case set up by the party. Particulars serve the purpose of finishing touches to the basic contours of a picture already drawn to make it full, more detailed and more informative. The gist of the corrupt practice of undue influence as defined in s. 123(i) is direct or indirect interference or attempt to interfere on the part of the candidate or his agent. The Election Petition alleged that Shri Pratap Singh and others threatened the workers of the rival candidate with bodily injury threatening them not to vote for rival candidate. It is thus clear that all the material facts constituting a complete charge of corrupt practice under s. 123(ii) against Shri Pratap Singh were stated in the petition. The approximate date of the threat which was only a material particular was also given. Only the places and the precise time of giving the threat were not stated but these were, at best, material particulars and not material facts. [257C—F, 258-D-E, G, 259-A]

(6) It was obligatory for the appellant to implead Shri Pratap Singh as a respondent. The rationale behind s. 82(b) is a fundamental principle of natural justice. A charge of corrupt practice against a respondent if established, has the effect of debaring him from being a candidate at an election for a

A considerably long time. Section 82(b) is in clear and peremptory terms. The respondent cannot by consent express or tacit, waive these provisions. [252E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2651 of 1972.

From the Judgment and Order dated the 27th October, 1972 of the Madhya Pradesh High Court in Election Petition No. 5 of 1971.

B *G. N. Dixit, S. K. Mehta, M. Qamaruddin and P. N. Puri* for the Appellant.

S. G. Gupte, R. N. Bhalgotra, S. S. Khanduja, Ashok Chitale, S. R. Chide and V. P. Gupta for the Respondent.

The Judgment of the Court was delivered by

C SARKARIA, J. This appeal is directed against a judgment, dated October 27, 1972, of the High Court of Madhya Pradesh dismissing the election petition filed by the appellant to question the election of the respondent, to Lok Sabha.

D Six candidates filed nomination papers for contesting the election to Lok Sabha from Guna Parliamentary Constituency in March 1971. Out of them, Sarvshri Shiv Pratap Singh and Gaya Prasad withdrew their candidature after their nomination papers were found to be in order after scrutiny, leaving four candidates in the field viz., Sarvshri Madhavrao Scindia, Deorao Krishnarao Jadhav, Narayan Singh 'Albela' and Bundel Singh to contest the election. Shri Madhav Rao Scindia respondent herein who was sponsored by the Jan Sangh was declared elected by a margin of 1,41,090 votes over his nearest rival, Shri E Deorao Krishnarao Jadhav, sponsored by the Indian National Congress.

F Udhav Singh, an elector of the Constituency, filed an election petition on 26-4-1971, in the High Court challenging the election of the respondent on two main grounds viz., (i) that the respondent and/or his election agent had incurred or authorised expenditure in connection with the election in excess of the limit of Rs. 35,000 prescribed under s. 77(3) of the Act read with r. 90 of the Conduct of Election Rules, 1961. It was alleged that the respondent made a tour in the Constituency by helicopters and showed Rs. 5,000 only as an expense towards the cost of the aviation fuel but did not show the hiring and other charges in respect thereof. It was further alleged that the respondent hired and used motor vehicles, not less than 18, but did not show the expenditure incurred in respect thereof in the statement of election expenses submitted by him to the Election Commission;

G (ii) that the workers of the respondent, with his consent, had threatened the electors with bodily injuries and criminally intimidated them not to vote for Shri Deorao Krishnarao Jadhav, the Congress candidate. Five instances of such threats and intimidation interfering with the free exercise of electoral rights, were set out in clauses (i) to (v) of the original Paragraph 10(III) of the petition, which, after amendment, was renumbered as Para 11(iv). Clause (iv) of Paragraph 11 is as follows :

H "That, on or before 22-2-71, Shri Mohan Prasad Ojha, a Congress Worker of Village Umri (Tehsil Guna) was threaten-

ed at pistol point by the workers on the respondent with his consent, Shri Shiv Pratap Singh and others of Umri threatened not to vote and canvass in favour of the Congress candidate, Devrao Krishnarao Jadhav and threatening with dire consequences."

Process was issued to the lone respondent impleaded in the election petition. On 28-5-1971, an advocate put in appearance on his behalf. In the written statement presented on 24-9-1971 the respondent traversed the allegations of corrupt practices made in the petition. In answer to clause (iv) of Paragraph 11 of the petition, the respondent stated :

"The allegations of the petitioner that on or before 22-2-1971 Shri Mohan Prasad Ojha, a Congress Worker of the village Umri (Tehsil Guna) was threatened at pistol point by the workers of the respondent with his consent is denied. It is also denied that with the consent of the respondent, Shri Shiv Pratap Singh and others of Umri threatened him not to vote and canvass in favour of the Congress Candidate Shri Devrao Krishnarao Jadhav and threatened him with dire consequences. This para is also lacking in material particulars as to who were the alleged workers, what was their names; their addresses, castes etc. It cannot therefore, be enquired into. The allegation is incorrect, baseless and vague. It is also vague because particulars as to when, where and in whose presence the alleged consent of the respondent was given are not mentioned."

The main issues framed on 1-10-1971 were as under :

1. "Has the respondent incurred or had authorised expenditure which was more than the prescribed limit laid down under the Representation of the People Act, 1951 or the Rules made thereunder, as detailed in Para 10(I) and 10(II) of the petition ?
2. (a) Did the worker of the respondent with his consent threaten the voters with injury, and criminally intimidated them in case they voted for D.K. Jadhav as detailed in Paragraph 11 of the petition, and if so, what is its effect ?"

Thereafter, the petitioner examined twelve witnesses on various dates, fixed in the case, from 16-12-1971 to 24-7-1972.

On 3-8-1972, an application (No. 58/72) was submitted by the respondent alleging that the election-petitioner has in paragraph 11(iv) of the petition alleged the commission of a corrupt practice within the meaning of s. 123(2) of the Act, by, Shri Shiv Pratap Singh, one of the candidates, but has failed to join him as a respondent, and as such, his petition is liable to be dismissed under s. 86 on account of non-compliance with the mandate of s. 82(b). In this application, the respondent reproduced clause (iv) of Para 11 of the petition as follows :

A "That on or before 22-2-71, Shri Mohan Prasad Ojha a Congress worker of village Umri (Tehsil Guna) was threatened at pistol point by the workers of the respondent with his consent, Shri Shiv Pratap Singh and others of Umri and threatened *him* not to vote and canvass in favour of the Congress candidate. Deorao Krishnarao Jadav and threatening him with dire consequences."

B Notice of this application was given to the election petitioner, who after taking several adjournments, ultimately filed a reply on 28-8-1972.

In his reply, the petitioner stated that Paragraph 11(iv) as reproduced in the respondent's application was not a correct reproduction. It was further stated :

C "It is denied that there has been any allegation of corrupt practice against Shri Shiv Pratap Singh who was a candidate at the aforesaid election. The respondent also understood the same thing, that is why he did not raise any objection for a long period of 11 months since the respondent filed his written statement.

D "However, though there is absolutely no doubt about the identity of the said Shri Shiv Pratap Singh, but the basic question giving rise to this application that an allegation of corrupt practice has been made against him in para 11(iv) of the petition is wholly incorrect and based on absolutely wrong interpretation of the statement of allegation made in the aforesaid paragraph."

E The petitioner further stated that the objection as to non-joinder of necessary party not having been taken at the earliest, should be deemed to have been waived by the respondent.

F In his rejoinder (I.A. 76/72, dated 7-9-1972), the respondent maintained that Para 11(iv) had been correctly extracted by him in his application dated 3-8-72, from the copy of the election-petition which was served upon him, certified to be true copy under the seal and signature of Shri R. K. Tankha, Advocate, the then Counsel for the petitioner. On 5-9-72, at about 4.30 p.m. the Counsel for the respondent on inspecting the original election petition discovered to their amazement that the three words (now underlined by us) had been erased and the erasures initialled. It was alleged that this tampering with the petition had been done to wriggle out of the fatal defect in the petition. The respondent prayed that the petitioner be recalled and allowed to be cross-examined on this point.

G The learned trial judge postponed consideration of these applications and of the objection as to non-joinder of Shri Shiv Pratap Singh till the conclusion of the trial. Thereafter the respondent examined his witnesses. He also examined his Advocate Shri Baghel, who produced Ex. R-33, a copy of the petition, he had received from the office of the High Court. The respondent closed his evidence on 9-7-72.

H

The learned trial judge, heard these objections arising out of the non-joinder of Shri Shiv Pratap Singh, along with the final arguments in this case.

Shri Baghel, Counsel for the respondent, while appearing in the witness-stand was unable to say definitely whether Ex. R-33, was a true copy of the copy he had received from the High Court office. In view of this the learned Judge held that it had not been proved that these erasures in para 11(iv) under initials were made subsequently to the filing of the petition. He therefore, considered clause (iv) of para 11 *sans* the words erased. There, as here, it was contended that the second part of clause (iv) of para 11 if properly construed would mean that Shri Shiv Pratap Singh and others of Umri were threatened—and not that they threatened—not to vote and canvass in favour of the Congress candidate”. The learned judge repelled this contention with the observations that “in no circumstances of the case (it) is possible to read” para 11(iv) in the manner suggested by the petitioner. According to him the allegations in this paragraph constituted a charge under sec. 123(2) of the Act against Shri Shiv Pratap Singh and his non-joinder as a respondent was fatal to the petition which was liable to be dismissed on that score alone under s. 86.

On merits he found Issues 1 and 2 against the petitioner. In the result, he dismissed the election petition with costs. Hence this appeal by the petitioner.

We have heard arguments of the learned Counsel on both sides with regard to the non-joinder of Shri Shiv Pratap Singh.

It is common ground that Shri Shiv Pratap Singh was one of the candidates who had withdrawn his nomination papers for election from this Constituency, after the same had been found in order by the Returning Officer. There was thus no doubt that he was a “candidate” for the purpose of the relevant provisions of the Act. If therefore the allegations made in cl. (iv) of para 11 of the petition relate to him and amount to a charge of corrupt practice against him, his non-joinder as a respondent would be fatal, to the election-petition.

Mr. Dixit, the learned Counsel for the appellant, contends that this objection as to non-joinder was not taken in the written statement, that it was raised for the first time—about 14 months after the service of the notice of the election petition on the respondent—after the petitioner had examined all his witnesses in the case. It is submitted that this amounted to wavier. According to the learned Counsel, in view of the mandate of Order 8, rule 2, Code of Civil Procedure, it was obligatory for the respondent to take all such pleas showing the petition to be non-maintainable, in his written statement. Since this was not done, the respondent should not have been allowed to raise this plea, namely, by an application when the case was in an advanced stage, and an amendment of the written statement was liable to be refused on the ground of latches.

On the other hand, Mr. Gupte, learned Counsel for the respondent, submits that it was not obligatory to take this objection in the written

- A statement. It was a purely legal objection which for its determination did not require any facts to be pleaded and proved by the respondent. The fatal defect, it is submitted, is patent on the face of the election petition. Mr. Gupte submits that O. 8, r. 2, is not attracted because that provision, as its marginal heading shows, enjoins the pleading of new *facts*, only as distinguished from *pare points of law*. In the alternative, it is submitted that the application, dated 3-8-72, whereby this objection was raised was in nature and substance additional pleading of the respondent which was accepted as such by the Court. The petitioner also submitted his reply thereto and he could not complain that he was taken by surprise. It is further urged that the provisions of sec. 86, read with s. 82(b), are in the nature of a mandate to the Court, which is bound to dismiss an election petition wherever it comes to its notice, whether on its own motion, or on the motion of the respondent, that there has been a non-compliance with the imperative of s. 82(b).

The material part of s. 82 reads thus :

Parties to the petition—A petitioner shall join as respondent to his petition—

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

E 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—

- F "dismiss an election petition which does not comply with the provisions of section 82."

G 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.

- H Considered in the light of the above enunciation the respondent was not precluded from raising the objection as to non-joinder, merely because he had done so after the close of the petitioner's evidence, and not at the earliest opportunity.

Nor was the respondent obligated to raise this objection only by his written statement, and in no other mode. Rule 2 of Order 8 of the Code of Civil Procedure is a rule of practice and convenience and Justice. This procedural Rule is to subserve and not enslave the cause of justice. It lays down broad guidelines and not cast-iron traps for the defendant in the matter of drawing up his statement of defence. It says :

“The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and *all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise* or would raise issues of fact not arising out of the plaint, as for instance fraud, limitation, release, payment, performance, or facts showing illegality.”

The key-words are those that have been underlined. These words indicate the broad test for determining whether a particular defence plea of fact is required to be incorporated in the written statement. If the plea or ground of defence ‘raises issues of fact not arising out of the plaint’, such plea or ground is likely to take the plaintiff by surprise, and is therefore required to be pleaded. If the plea or ground of defence raises an issue arising out of what is alleged or admitted in the plaint, or is otherwise apparent from the plaint, itself, no question of prejudice or surprise to the plaintiff arises. Nothing in the Rule compels the defendant to plead such a ground, nor debars him from setting it up at a later stage of the case, particularly when it does not depend on evidence but raises a pure question of law turning on a construction of the plaint. Thus, a plea of limitation that can be substantiated without any evidence and is apparent on the face of the plaint itself, may be allowed to be taken at any stage of the suit.

An objection on the ground of non-compliance with the requirement of s. 82(b) is a plea of this category. It arises out of allegations made in the petition itself. Such a plea raises a pure question of law depending on a construction of the allegations in the petition, and does not require evidence for its determination. Such a plea therefore, can be raised at any time even without formal amendment of the written statement.

In the instant case, it was raised by an application, dated 3.8.72, which was accepted by the court as a supplementary pleading of the respondent, and the petitioner had also pleaded in reply to the same. There are several decisions wherein an objection as to non-joinder of a necessary party in an election petition was allowed to be raised by means of a simple application submitted long after the presentation of the written statement by the respondent.

In *Rao Abhe Singh v. Rao Nihal Singh*,⁽¹⁾ A Division Bench (constituted by Dua and Grover JJ.) allowed an objection as to non-joinder of a candidate, against whom a corrupt practice was alleged, to be raised by way of an application which was filed after practically the whole evidence in the case had been recorded.

(1) 25, E. L. R. 113 (Punjab).

- A** Other instances wherein such an objection was allowed to be raised by a separate application without incorporating the same in the written statement by an amendment, are furnished by these cases: *Hari Gopal Dabe v. Smt. Vijaya Raje Scindia*⁽¹⁾; *Jagan Nath v. Jaswant Singh and ors.*⁽²⁾ *K. Kamaraja Nadar v. Kunju Thevar and ors.*⁽³⁾, *Mallappa Basuppa v. Basavaraj Ayyappa*⁽⁴⁾ *S. B. Adityan v. Kundaswami and ors.*⁽⁵⁾, *Mohan Singh v. Bhanwar Lal and ors.*⁽⁶⁾ *Amin Lal v. Huma Mal*⁽⁷⁾.

Having rejected the first contention of the appellant, we now pass on to the pivotal point in the case.

- C** What should be the fair construction of the allegations in Para 11(iv) of the petition? Is it possible to read—as Shri Dixit wants us to read—this paragraph as containing a charge that Shri Shiv Pratap Singh and others of Umri were threatened by the workers of the respondent, not to canvass and vote for the Congress candidate? Or, does it mean that Shri Mohan Prasad Ojha, an elector and a Congress worker was *threatened* by Shri Shiv Pratap Singh and others of Umri not to canvass and vote for the Congress candidate, Shri Deorao Krishnarao, Jadhav?

- D** Mr. Dixit submits that Clause (iv) of Para 11 falls in two parts, separated by a comma, and the allegations in each part are distinct from the other. The first part comprising the allegations,

“That, on or before 22-2-71, Shri Mohan Prasad Ojha, a Congress Worker of Village Union (Tehsil Guna) was threatened at pistol point by the workers”

- E** according to Counsel, stands alone, and should not be read conjointly with the second part which speaks of Shri Shiv Pratap Singh and others of Umri. However, not very consistently with this argument, it is urged further that since the allegations in the first part are set out in passive voice, the contents of the second part should also be deemed to have been expressed in passive voice. If this methodology is adopted, the **F** second part of Para 11(iv) according to Mr. Dixit, would read like this :

Shri Shiv Pratap Singh and others of Umri (were) threatened not to vote and canvass in favour of the Congress candidate, Deorao Krishnarao Jadhav”

- G** We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to call out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that

H (1) (1971) 33, E. L. R. 119.

(3) A. I. R. 1958 S. C. 687.

(5) A. I. R. 1958 S. C. 857.

(2) A. I. R. 1954, S. C. 210.

(4) A. I. R. 1958 S. C. 698.

(6) A. I. R. 1964 S. C. 1366.

(7) A. I. R. 1965 S. C. 1243.

has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole. ✓

The construction of Para 11(iv) suggested by Mr. Dixit is not possible without a radical change in its sense and tense, by unwarranted addition and excision of words. It would necessitate a material change in the tense by reading the verb "threatened" as "were threatened" so that what was clearly expressed by its author in active voice gets converted into a passive voice with consequent inversion and subversion of the original sense. Even the addition and attachment of the word "were" to the pre-existing verb "threatened" would not completely transform Shri Shiv Pratap Singh and others of Umri from "threateners" into the "threatened" unless the contra-indicative phrase "and threatening with dire consequences" was also amputated.

In our opinion, the correct way of construing Para 11(iv) is to take it as it stands, and read it not in parts but as a whole together with its preamble and the rest of the pleading. Thus read, the relevant allegation in clause (iv) of Para 11 would fairly and clearly admit of only this construction :

"That on or before 22-2-71, Shri Mohan Prasad Ojha, a Congress Worker and elector of village Umri (Tehsil Guna) was threatened at pistol point with dire consequences by Shri Shiv Partap Singh and others of Umri, the workers of the respondent with his consent, not to vote and canvass in favour of the Congress Candidate, Deorao Krishnarao Jadhav."

In our opinion, this is the only reasonable construction that the language of Para 11(iv) without undue stretching, straining and twisting, can bear. Indeed, from the relevant portions of the pleadings extracted earlier in this judgment, it is evident that both the parties, including the petitioner, had understood the allegations in Para 11(iv) in the sense in which we have construed them. It was only after the presentation of the application, dated 3-8-72, raising the objection, the petitioner in an attempt—as the High Court rightly put it—"to wriggle out from the unfortunate position he was placed in not making Shiv Pratap Singh a party", has started claiming the antic interpretation quite different from the one flowing from the plain language and tenor of Para 11 (iv).

We have therefore no hesitation in repelling the second contention also, canvassed on behalf of the appellants.

The last contention of the learned Counsel for the appellant is that even if the second part of clause (iv) is construed as an allegation that Shri Shiv Pratap Singh and others of Umri threatened not to vote and canvass, then also, this allegation is so bereft of material facts and material particulars, that it does not constitute a complete charge of corrupt practice under sec. 123(2). The material facts and material particulars, which according to Counsel were, in view

- A of the mandate of s. 83 required to be pleaded, but have not been pleaded are : the place where the threat was given, the kind and nature of the injury threatened, or injury, if any, actually caused, the particulars of the parentage, address of Shiv Pratap Singh and others, the fact that this Shiv Pratap Singh of Umri was the same who was one of the candidates at the election and that the person threatened was an elector, and how the threat constituted an interference with the free exercise of his electoral right. It is urged that in ascertaining whether or not the allegations in Para 11(iv) constitute a complete cause of action relating to a corrupt practice, the Court has to confine itself to this Para, and cannot take into consideration even an admission of the petitioner appearing in evidence or in any document extraneous to the election petition. Support for this contention has been sought from the decisions of this Court in *Sheodhan Singh v. Mohal Lal Gautam*,⁽¹⁾ *Samant N. Balakrishna etc. v. George Fernandez and ors.*⁽²⁾ and *Hardwari Lal v. Kanwal Singh*⁽³⁾.

- D As against this, Mr. Gupte, has pointed out that all the *material facts*, as distinct from material particulars, necessary to constitute a complete charge of corrupt practice under s. 123(2) against Shri Shiv Pratap Singh, a candidate can be found in the petition if the same is read as a whole. In any case, the identity of this Shiv Pratap Singh as a candidate was admitted by the petitioner in the particulars supplied by him pursuant to an order of the Court on 8-8-1972. Those particulars, according to the Counsel are to be treated as a part of the Petitioner's pleading. It is further submitted that if there is any deficiency of particulars, as distinguishable from material facts, in Para 11(iv), then also they could be supplied, even after the expiry of limitation for the petition, pursuant to an order of the Court, made at the instance of the respondent. The petitioner cannot, it is stressed, take advantage of his own default, in not setting forth full particulars of basic facts set out in the petition.

Section 83 lays down :

- F “(1) An election petition—
- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice and
- G (c)

- H Like the Code of Civil Procedure, this section also envisages a distinction between material *facts* and material *particulars*. Clause (a) of sub-section (1) corresponds to O.6, R.2, while clause (b)

(1) [1969] 3 S. C. R. 417.

(2) [1969] 3 S. C. R. 603.

(3) [1972] 2 S. C. R. 742.

is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single *material fact* leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of *material facts*, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of *material particulars*, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1)(a).

"Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of s. 83(i) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

The distinction between 'material facts' and 'material particulars' was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A. N. Ray J. (as he then was) said on this point in *Hardwari Lal's case* (supra) :

"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that

A

assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action."

B

C

D

Bearing in mind the criteria for distinguishing material facts from material particulars, let us now see whether the allegations in Para 11(iv) of the petition cover all the material facts constituting a complete charge of corrupt practice within the meaning of sec. 123(2) against Shri Shiv Pratap Singh who was a candidate at the election.

The gist of the corrupt practice of "undue influence" as defined in sub-section (i) of sec. 123 is "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".

E

By way of illustration sub-clause (1) of clause (a) of the Proviso lays down that if a person who threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of sub-section (2).

F

In Para 11(iv) the particular corrupt practice alleged is of the kind indicated in the aforesaid sub-clause (i) of the Proviso. Reading Para 11 as a whole, it is clear that it is pleaded that Shri Shiv Pratap Singh and others of Umri had administered a threat to Shri Mohan Prasad Ojha who was a Congress Worker and an elector of Umri; that the threat was not to vote for the Congress candidate, Shri Jadhav, the threat was of causing bodily injury to the said elector, that the threatener Shri Shiv Pratap Singh, was an election worker of the respondent and had administered the threat to the said elector, with the consent of the respondent. Reading Para 11(iv) together with the contents of Para 10 of the petition, the import is clear that this threatener was none else but "Shri Shiv Pratap Singh MLA, s/o Shri Birjendra Singh r/o Umri House Guna", who "during the election of the respondent acted as his agent."

H

It will thus be seen that all the "material facts" constituting a complete charge of corrupt practice under s. 123(2) against Shri Shiv Pratap Singh were stated in the petition. The approximate date

of administering the threat—which was only a material particular as distinguished from a material fact—was also given. Only the place and the precise time of giving the threat were not stated. But these were, at best, only material particulars, and not “material facts”. The occasion for furnishing such particulars would have arisen only if the respondent had asked for them. Similarly, further and better particulars of the address etc. of Shri Shiv Pratap Singh would fall within the category of particulars. By an application dated 1-8-1972, the respondent, obviously as a matter of abundant caution, asked for fuller particulars of Shiv Pratap Singh referred to in para 11(iv). The petitioner submitted his reply, dated 8-8-72, through his Counsel in which he furnished these particulars of the said Shri Shiv Pratap Singh :

“Shiv Pratap Singh s/o Brijendra Singh, aged about 35 years, occupation cultivation (at present M.L.A. Guna) resident of Umri House, Guna, Distt. Guna.”

These particulars supplied by the election-petitioner were in the nature of his supplemental pleading. They could not be treated as something extraneous to his pleading. They could be legitimately looked into for construing Paragraph 11(iv) of the petition. These particulars supplied by the petitioner were substantially the same as given in Para 10 of the petition. These particulars doubly confirmed the identity of Shiv Pratap Singh mentioned in Para 11(iv) as the same person who was one of the candidates.

In sum, Para 11(iv) of the petition contained allegations of a complete charge of corrupt practice against a candidate, Shri Shiv Pratap Singh and consequently in view of sec. 82(b) it was obligatory for the petitioner to implead him, as also, as a respondent, Failure to do so, would inexorably lead to the dismissal of his petition under sec. 86.

Accordingly on this short ground, and for all the reasons aforesaid, we uphold the dismissal of the election petition and disallow this appeal with costs.

P.H.P.

Appeal dismissed.