

CIVIL WRIT

Before Eric Weston C.J. and Harnam Singh, J.

1952

HARI CHAND,—Petitioner,

August, 22nd

versus

SHRI RAMESHWAR DYAL, Sub-Judge, 1st Class, Delhi, acting as Election Commission in the matter of the petition of Hari Chand v. Daroga Mal and others in the Delhi Municipal Elections, and (2) Daroga Mal Advocate,—Respondents.

Civil Writ Application No. 196 of 1952

Delhi Municipality Election Rules 1951—Rule 119—Amendment of list attached to election petition by adding further instances of corrupt practices—Whether permissible—Adding instances of corrupt practices already alleged and adding one or more corrupt practices of a nature different to those already alleged—Difference between.

Held, that Rule 119 of Delhi Municipality Election Rules, 1951 does not provide for amendment of the petition nor does it provide for amendment of the list filed with the petition. What it provides for is amendment of the particulars which have been included in the list originally filed. Addition is an amendment of the list and not of the particulars which were contained in it and which remain un-effected. The Election Commission has, therefore, no jurisdiction to allow the petitioner to add instances of corrupt practices to those which he had given in his original petition and the list attached thereto.

Held further, that it is to the public good that election petitions should not be delayed and that they should not be encouraged to be made except upon substantial cause.

Held further, that there is no difference in principle between adding one or more further instances of corrupt practices of a nature similar to those already alleged and adding one or more corrupt practices of a nature different to those already alleged. Each instance is a corrupt practice itself.

Petition under articles 226 and 227 of the Constitution of India praying:—

- (1) That the records of the Election Petition of the Petitioner may be sent for and that the order of the Election Commission, dated the 29th of May, 1952 be quashed in so far as it disallows

the prayer made in the application under Rule 119(3) of the Municipal Election Rules filed by the petitioner, dated the 31st March/1st April, 1952.

- (2) That proper writs and directions may be issued directing respondent No. 1 to allow the amendments sought by the application mentioned in the petition.
- (3) Such interim orders may be made as may be deemed necessary.
- (4) That costs of the petition may be allowed.

A. N. GROVER and D. K. KAPUR, for the Petitioner.

H. D. HARDY, S. L. BHATIA and BISHAN NARAIN, for Respondents.

ORDER.

Weston, C. J.

WESTON C.J. The applicant in this matter is one Hari Chand who was an unsuccessful candidate for election to the Delhi Municipal Committee from Constituency No. 15, Lal Darwaza, Bazaar Sita Ram, Delhi. The election took place on the 15th of October and the result was declared on the 17th of October 1951. On the 8th of November the present applicant filed an election petition under rules 117 and 118 of the Delhi Municipality Election Rules, 1951. In this election petition he made various allegations of corrupt practices on the part of respondent No. 2 and these allegations fell within several of the classes of corrupt practices set out in rule 116 of the Rules mentioned above. With this application a list was filed in accordance with rule 119(2) setting forth particulars of the corrupt practices alleged. Following the petition a Commission was appointed by the Chief Commissioner under rule 123, and on the 1st of April 1952 an application was filed to the Commission by which the present applicant sought to add in the list attached to his petition various further instances of corrupt practices which he claimed to have been committed. The officer who constituted the Commission considered whether these amendments could be allowed in view of the wording of

clause (3) of rule 119, and holding on the wording of this rule and upon interpretations which had been placed by various Election Commissions on rules identical or practically identical in terms held that no amendment could be allowed by which further instances of corrupt practices, whether of the same nature as those already alleged or of a different nature, could be added. The applicant now seeks that we should hold that this view of law is wrong, that the Commission had jurisdiction to allow the amendment and that we should by issue of a writ of mandamus require the Commission to consider whether in the exercise of its discretion the proposed amendment should be allowed.

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It is urged on behalf of the applicant that by reason of delay in obtaining inspection it was not possible for him to obtain full information, particularly in respect of cases of impersonation, and of cases of persons who had left Delhi or who were dead, but whose votes nevertheless were recorded. It is urged that we should be reluctant to give an interpretation of rule 119 (3) whereby injustice can result and genuine grievances may be shut out. There is, however, another aspect of the matter and that is this; that it may be considered to the public good that election petitions should not be delayed and that they should not be encouraged to be made except upon substantial cause. This, it may be said, is the purpose of the provision in rule 118 limiting strictly the period in which an election petition may be filed. It may be said to be undesirable that it should be open to a defeated candidate to file an election petition upon entirely fictitious allegations and trust to time, beyond that allowed by the rule being afforded to him, by exercise of a right of amendment, so that he can gather material upon which ultimately some case might be built. The matter, however, has to be decided on the wording of the rules themselves, and the material rule as already indicated is rule 119 (3). This rule reads as follows:—

“ (3) The Commission appointed under rule 123 below may upon such terms as to

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costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring fair and effectual trial of the petition provided that particulars as to any additional corrupt practice not contained in the said list shall not be added by means of any such amendment."

This rule follows word for word that which has been dealt with by many Election Commissions except that the proviso contained in the latter part of the rule appears peculiar to the Delhi Rules. It has not been urged before us and has never been urged before any Commission that by amendment under such a rule it is permissible for an applicant to add to his petition corrupt practices of a nature other than those specifically alleged in the original petition. The argument has been only that if corrupt practice of a particular kind or kinds has already been alleged it is permissible to add what are called instances of that particular kind or kinds of corrupt practices.

Apart from authority I must confess I find it difficult to understand what difference in principle there could be between adding one or more further instances of corrupt practice of a nature similar to corrupt practices already alleged and adding one or more corrupt practices of a nature different to those already alleged. Each instance is a corrupt practice itself. The wording of the rule moreover seems to militate against the interpretation suggested. The rule does not provide for amendment of the petition and it does not provide for amendment of the list filed with the petition. What it provides for is amendment of the particulars which have been included in the list originally filed. It may be said with some force that by adding there is really no amendment at all of the particulars already contained in the list. Addition is an amendment of the list not of the particulars which were contained in it and which

remain unaffected. This was the view expressed by the Election Commission in *Kistna (N-M-R) 1928's* case which is reported in *Election Cases* by Sir Laurie Hammond at page 449, and with respect I agree with the view expressed and arguments advanced in support of it by the learned Commission in that case. This view has been followed by a number of other Election Commissions and the only instance where the opposite view appears to have been taken is a Bombay case, *Bombay city (M.U.) 1924*, which also appears in Hammond's book at page 173. There the Commission considered that an amendment could be permitted by adding fresh instances of corrupt practice of a nature already expressly stated in the original petition, but the Commission do not seem to have given reasons for their decision.

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I think, therefore, the learned Commission in the present case was right in the view he took that he had no jurisdiction to allow the present applicant to add instances of corrupt practice to those which he had given in his original petition and the list attached thereto, and no question of our requiring him to consider the matter further arises. The application therefore must be dismissed with costs in favour of respondent No. 2, which I would assess at Rs 50.

HARNAM SINGH J.,—I agree.

Harnam Singh
J.