ELECTION PETITION

Before Daya Krishan Mahajan, J.

PARKASH SINGH,—*Petitioner*

versus

HARCHARAN SINGH AND OTHERS,—*Respondents*

Election Petition No. 1 of 1967

July 21, 1967

Respresentation of the People Act (XLIII of 1951)—Ss. 83, 86, 87 and 97—Code of Civil Procedure (Act V of 1908)—Order 6 Rule 17—Recrimination petition—Amendment of by addition of new ground not based on corrupt practice—Whether to be allowed—Position of a recriminatory petitioner—Whether that of a defendant in a suit.

Held, that the procedure for the trial of an election petition is the one set out in the Code of Civil Procedure excepting where that procedure either expressly or impliedly is contrary to the provisions of the Representation of the People Act. Therefore, while determining the question, whether the evidence should or should not be permitted to be led on a new ground in the recrimination petition and the new ground should or should not be permitted to be added to the recrimination petition by way of amendment, the same considerations will apply as apply to amendment of pleadings under the Code of Civil Procedure, so far as those provisions are not contrary to the provisions of the said Act.

Held, that section 86(5) of the said Act only places an embargo on new ground regarding corrupt practices sought to be introduced but there is no bar under the section to a new ground other than the one relating to corrupt practices. There is also no express provision that once notice is given under section 97(1) proviso of the Act, no evidence can be led regarding a fact not pleaded as referred by section 83 of the Act. If the intention of the legislature was to absolutely rule out a new ground of attack other than a ground based on corrupt practices, a provision like section 86(5) would have been worded otherwise, and its scope would not have been limited. It appears that the legislature left all other amendments to the discretion of the Court and they have to be allowed where interests of justice would be furthered.

Held, that the position of a recriminatory petitioner is, more or less, that of a defendant, and the same rules, that govern the amendments of pleadings, will apply to the amendments of his reply to the claim of the election petitioner under section 84 of the Act. Certain rules are common to the amendment of the plaint and the written statement. But the written statement stands on a different footing than a plaint with regard to a new claim. Though a new claim cannot be raised in a plaint after limitation has stepped in, the same will not be the position with regard to a new defence sought to be raised by amendment of the written statement.

Held, that so far as election petitions are concerned, a new ground for setting aside an election will not be permitted after the period of limitation has expired. But there is no souch rule, so far as recriminating petition is concerned. Recriminatory petition merely is permitted to defeat the claim of a defeated candidate under section 84 of the Act; and though the procedure in a recriminatory petition for its trial is identical with that of the election petition, it will be unsafe to apply the stringent rule of limitation to such a petition.

Petition under Chapter II of Part 6 of the Representation of the People Act, 1951 *and under sections* 80, 81 *and* 101 *of that Act and various other sections of that Chapter praying that the election of Harcharan Singh be declared void and the petitioner be declared elected as Member of the Punjab Legislative Assembly having secured more valid votes than respondent Harcharan Singh and further praying that in the interest of justice that the difference of votes being a little, inspection scrutiny may be allowed and after recount, the petitioner be declared elected as a Member of the Punjab Legislative Assembly for Gidderbaha Assembly Constituency No.* 2.

BHOPINDER SINGH DHILLON AND NAROTAM SINGH, ADVOCATES, for the Petitioner.

M. L. SETHI, M. S. PUNNU, A. S. SARHADI AND S. S. SODHI, ADVOCATES, for the Respondents.

ORDER

MAHAJAN, J.—The salient facts of this case have been fully reproduced by S. B. Capoor, J. (now Acting Chief Justice) in his order dated the 2nd of May, 1967, deciding the preliminary issues, that arose in the election petition filed by Parkash Singh Badal. It is therefore, not necessary to state the facts all over again for the purposes of the recrimination petition filed by the returned candidates, Harcharan Singh Brar. Capoor, J. (as he then was) on the 25th of

May, 1967, framed the following preliminary issues in the recrimination petition and these issues will be decided today:

"(1) Is the plea in the recriminatory petition as to 766 of the votes cast in favour of the election petitioner being invalid on account of the voters, who cast those votes, not having attained the age of 21 years on the qualifying date, open to the recriminatory petitioner?

(2) Is the recriminatory petitioner entitled in the absence of necessary particulars as to the votes cast in favour of the returned candidate having been improperly rejected or as to the votes cast in favour of the election petitioner being improperly accepted, to lead evidence as to such votes?

(3) Whether the allegations of corrupt practices mentioned in paragraph 9 of the recriminatory petition lack in material and full particulars? If so, to what eflect?

(4) Whether the recriminatory petitioner can be permitted to bring in the ground as stated in the application dated the the 22nd May, 1967?"

I have heard the learned counsel for the parties. It is not disputed that the decision on issue No. (1) must be returned against the recriminating petitioner in view of the decision of the Full Bench of this Court in *Roop Lal Mehta* v. *Dhan Singh and others* (1). In this view of the matter, this issue is decided against the recriminating petitioner.

The real contest before me is on issue No. (4) and, therefore, I have decided to deal with that issue first. The notice to the respondents to appear to defend the election petition filed by Parkash Singh Badal was issued for 12th of April, 1967. According to the explanation of section 86, sub-section (4) of the Representation of the People Act, 1951 (hereinafter referred to as the Act), the trial of a petition is deemd to commnece on the date fixed for the respondent to appear before the High Court and answer the claim or claims

(1) 1967 P.L.R. 612=1967 Current Law Journal 561.

made in the petition. Therefore, the trial will be deemed to have commenced on the 12th of April, 1967. As a matter of fact, the written statement was filed by the recriminating petitioner on the 11th of April, 1967. The recrimination petition was filed on the 25th of April, 1967, that is within the period allowed by section 97(1) Proviso. On this, there is no dispute. Reply to the recrimination petition was filed by the election petitioner on the 14th of May, 1967. On the 22nd of May, 1967, the recriminating petitioner put in a replication to the reply filed by the election petitioner. In this replication, a new point, which was not taken in the recrimination petition, has been urged, namely, that the election petitioner was the Chairman of the Block Samiti of Lambi,—(*vide* a notification dated the 4th of June, 1965 published in the Punjab Government Gazette) and as such was not qualified for nomination in view of the provisions of Article 191, sub-article (1)(a) of the Constitution of India. Along with the replication, an application was filed under Order 6, rule 17 and section 151 of the Code of Civil Procedure for permission to amend the recrimination petition and to include this ground therein. This amendment application has been opposed by the election petitioner. The reply to the amendment application was filed on the 26th of May, 1967.

The objection of the election petitioner is that the limitation for the recrimination petition having expired, a new ground cannot be allowed to be raised by way of amendment. His contention is that the same rule will apply to the recrimination petition which applies to the election petition, namely, that after the period of limitation for presenting the election petition has expired, a new ground for setting aside the election cannot be pleaded.

On the other hand, Mr. Sethi, who appears for the recriminating petitioner, contends that the position of a recriminating petition is quite different from that of an election petition. In any case, he contends that even if the same rules apply to a recrimination petition, the amendment being not an amendment or addition to any ground of corrupt practice, it can be allowed at a later stage of the proceedings. He also maintains that there is no period of limitation fixed for adding to or amending the grounds in the recrimination petition excepting grounds regarding corrupt practices.

Before examining the respective contentions it will be proper to refer briefly to the relevant provisions of the Act. Section 83 provides for what an election petition must contain. For the purposes

of this petition, relevant part of this provision need be quoted namely:—

"83: Contents of Petition:—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relise;

(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

(c) * * * * *

* * * * *

* * * * *

Section 84 provides what relief an election petitioner can claim. It enables him to obtain a declaration that he or any other candidate has been duly elected and not the returned candidate.

Section 86(5) is pre-emptory and forbids the High Court to allow amendment of the election petition by introducing particulars of a corrupt practice not alleged in the petition. This sub-section reads thus:—

"86. (5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

Section 87 provides the procedure for the trial of election petition and is in these terms:

"87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder,

every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing to examine any witness or witnesses, if it is of the opinion, that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition."

The only other provision, which has a material bearing in the determination of the present controversy, is section 97 and is reproduced below:—

"97. Recrimination when seat claims.—(1) when in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party, as aforesaid, shall not be entitled to give such evidence unless he has, within fourteen days from the date of the commencement of the trial, given notice to the High Court, of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner."

The amendment sought for pertains to ground (a) in section 100(1) on the basis of which the relief sought by the election petitioner, that he be declared elected, is opposed by the returned candidate. This ground is in the following terms:—

> "100(1) subject to the provisions of sub-section (2), if the High Court is of opinion—
>
> (a) that on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963, or
>
> (b) * * *
>
> the High Court shall declare the election of the returned candidate to be void.
>
> (2) * * *"

It is not disputed that the procedure for the trial of an election petition is the one set out in the Code of Civil Procedure excepting where that procedure either expressly or impliedly is contrary to the provision of the Representation of the People Act. Therefore, while determining the question, whether the evidence should or should not be permitted to be led on a new ground in the recrimination petition and the new ground should or should not be permitted to be added to the recrimination petition by way of amendment, the same considerations will apply as apply to amendment of pleadings under the Code of Civil Procedure, so far those provisions are not contrary to the provisions of the Representation of the People Act.

The rule governing amendments under the Code of Civil Procedure is now well settled. The leading authority on the subject is of Batchelor, J. in *Kisandas Rupchand* v. *Rachappa Vithoba* (2). At pages 649 and 650, the learned Judges observed as follows:—

> "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties..... but I refrain from citing further authorities, as, in my

(2) I.L.R. (1909) 33 Bom. 644.

opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore, still remains the same; can the amendment be allowed without injustice to the other side, or can it not?"

These observations were approved by their Lordships of the Supreme Court in *Pirgonda Hongonda Patil* v. *Kalgonda Shivgonda Patil and others* (3). It will be useful to refer to the facts of the case in which Batchelor, J. made the aforesaid observations. In a suit for dissolution of partnership and accounts, the plaintiffs alleged that in pursuance of the partnership agreement, they had delivered Rs. 4,001 worth of cloth to the defendants. The trial Court found that cloth was delivered; but there was no partnership between the plaintiff and the defendants. The plaintiffs' suit was dismissed. In appeal, the plaintiffs abandoned the plea of partnership and prayed for leave to amend the plaint by adding a prayer for the recovery of Rs. 4,001. On that date, the claim for money was barred by limitation. In appeal, the amendment was allowed. Batchelor, J. held that the amendment was rightly allowed as the claim was not a new claim. In *Pirgonda Hongonda Patil's* case, the facts were—

"The plaintiff obtained a decree for possession against A, but was obstructed by B in obtaining possession of the suit properties in execution. His application under O. 21, R. 97 was dismissed on 12th April, 1947 and on 12th March, 1948 he instituted a suit under O. 21, R. 103 against A and

(3) A.I.R. 1957 S.C. 363=1957 S.C.R. 595.

B. Apart from the decree obtained in the earlier suit, no particular averments were made in the plaint as to the facts or grounds on which the plaintiff based his title to the suit properties as against B. On 29th March, 1950, the plaintiff made an application for permission to give further and better particulars of the claim made in the plaint. The application was rejected by the trial Court but was allowed in appeal by the High Court. It was contended that the High Court should not have exercised its power to allow amendments because (1) the period of limitation for the suit had already expired before the date on which the application for amendment was made and (2) the attention of the plaintiff to the defect in the original plaint had been drawn by an application filed on behalf of B on 20th November, 1948 and, in spite of that application, no amendment was asked for till 29th March, 1950."

It was held by their Lordships of the Supreme Court —

"(1) that when B made the application on 20th March, 1948, the period of limitation for the suit had already expired and B had very clearly said therein that no permission should be given to the plaintiff to make an amendment thereafter and therefore this was not a circumstance for not exercising the power of amendment.

(2) that the power exercised was undoubtedly one within the discretion of the High Court and the discretion was not exercised on a wrong principle. The amendment did not really introduce a new case, and the application filed by B himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation."

This decision was again noticed by their Lordships of the Supreme Court in *A. K. Gupta and Sons Ltd.* v. *Damodar Valley Corporation* (4) and the following observations were made:—

"It is not in dispute that at the date of the application for amendment a suit for a money claim under the contract

(4) A.I.R. 1967 S.C. 90.

was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred. *Weldon* v. *Neale* (5). But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation; See *Charan Das* v. *Amir Khan* (6) and *L. J. Leach and Co. Ltd* v. *Jardine Skinner and Co.*(7).

The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes *Cropper* v. *Smith* (8) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended *Kisandas Rupchand* v. *Rachappa Vithoba* (2) at p. 651, approved in *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda* (3) at p. 366.

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke* v. *Gill* (9) in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson* v. *Unicos Property Corporation Ltd.*, (10) and it seems to

(5) (1887) 19 Q.B.D. 394.
(6) 47 Ind. App. 255.
(7) 1957 S.C.R. 438.
(8) (1884) 26 Ch. D. 700 (710—711).
(9) (1873) 8 C.P. 107 (116).
(10) (1962)2 All. E.R. 24.

us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas'. *Doran* v. *J. W. Ellis and Co. Ltd.* (11). This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

I am not unmindful of the observations of their Lordships of the Supreme Court in *Harish Chandra Bajpai and another* v. *Triloki Singh and another* (12), wherein it was observed that—

"* * Public interests equally demanded that election disputes should be determined with despatch. That is the reason why a special jurisdiction is created and Tribunals are constituted for the trial of election petitions. Having regard to the circumstances, the order of amendment would be open to grave criticism even if it had been made in an ordinary litigation, and in an election matter, it was indefensible. Even if the Tribunal had the power under O.6, R.17, to permit an amendment raising a new charge, it did not under the circumstances exercise a sound and judicial discretion in permitting the amendment in question."

These observations were made in the following circumstances:—

"The election petition was filed on June 10, 1952, which was the last date allowed under S. 81 of the Representation of the People Act and R. 119. It contained only the bare bones of a charge under S. 123(8) of the Act. Nothing further was heard of this charge, until December, 1952, when other persons who sailed with the petitioner, filed statements alleging that the respondents had obtained the assistance from Government servants including *mukhias* in furtherance of their election prospects. On January 16, 1953, the petitioner filed a replication in which he sought to weave these allegations into the fabric of his petition, but the result was a mere patchwork. On February 25, 1953, the

(11) (1962) 1 All. E.R. 303.
(12) A.I.R. 1957 S.C. 444.

respondents opened their arguments at the hearing of the preliminary issue, and thereafter, with a view to remedy the defects which must have been then pointed out, the peitioner filed his application for amendment. Even that was defective and had to be again amended. And no attempt was made to explain why it was made after such long delay and why the new allegations were not made in the original petition. The position taken up by the petitioner was that the amendment only made express what was implicit in the original petition. The tribunal was of opinion that notwithstanding all these features, the amendment should be allowed as it was in the interest of the public that purity of elections should be maintained."

The considerations, which prevailed with their Lordships in deprecating the amendment, that was permitted by the Tribunal in that case, have no parallel or even the nearest resemblance to the facts of the present case. In fact, the rule laid down by Batchelor J., in *Kisandas Rupchand's* case fully covers the present case. The returned candidate has opened the door to the attack that the election petitioner, if he wins the election petition, cannot be declared elected in view of certain objections raised by him including the new objection sought to be raised by way of amendment. This merely is an introduction of a new fact, but not a new claim on a new basis. The claim has already been made that even if the election petitioner succeeds, the election petitioner cannot be declared elected in place of the respondent (the returned candidate).

If I am wrong in my view that the new plea is not a new cause of action and proceeding on the basis that it is, the question, that requires consideration, is whether there is any rule of limitation which bars its being brought in by amendment of the pleadings ?

Reverting to section 97 of the Act, it merely enables the returned candidate to defeat the claim of the election petitioner under section 84 of the Act to be declared as the returned candidate in the event of his election petition against the returned candidate succeedings. But evidence to this effect can only be led if within fourteen days of the commencement of the trial of the election petition, a notice is given to the High Court of his intention to do so. The notice has to

comply with the provisions of section 83 as regards particulars and their verification. Now section 86 (5) only places an embargo on a new ground regarding corrupt practice sought to be introduced. The present ground, which is sought to be introduced by amendment in the recriminatory petition, is admittedly not one relating to corrupt practices. It is a ground, the proof of which is furnished by official records, that is, the gazette notification. The gazette notifies the election petitioner as the Chairman of the Block Samiti. This fact alone is to be proved to sustain the new ground. Otherwise the question to be settled is one purely of law. Gazette notification can be taken into consideration without proof is not denied. There is also no bar under section 86(5) to a new ground. other than the one relating to corrupt practices. There is also no express provision that once notice is given under section 97(1) proviso, no evidence can be led regarding a fact not pleaded as referred by section 83. Can then a bar be imported in such circumstances when all other requirements have been satisfied and a fact has been omitted to be mentioned by inadvertence? In my opinion, there is no justification for holding that the result contemplated by the counsel for the election petitioner follows. If the intention of the legislature was to absolutely rule out a new ground of attack other than a ground based on corrupt practices, a provision like section 86(5) would have been worded otherwise, and its scope would not have been limited. It appears that the legislature left all other amendments to the discretion of the Court and they have to be allowed where interests of justice would be furthered. It will be an irony of fate if a defeated candidate is declared elected when there is a constitutional bar to his being elected.

Moreover, there is another way of looking at the matter. The position of the returned candidate is that of a defendant. The claim of the defeated candidate is that he be declared elected in place of the returned candidate. In defence, the returned candidate urges that this cannot be done for the reasons stated by him. Thus the position of the returned candidate in meeting the claim under section 84 is that of a defendant. There is no rule of limitation regarding a defence and none has been shown. It was held by a Division Bench of this Court in *Ram Sarup* v. *Ram Chandar* (13), that 'it is well settled that the Limitation Act only applies to suits or

(13) I.L.R. 1948 E.P. 365.

applications mentioned therein and does not debar a person from raising a plea in defence. The only case, where a man loses not only the remedy but also the right by his failure to bring an action within time is the one which comes within the purview of section 28 of the Indian Limitation Act.'

The position of a recriminatory petitioner is, more or less, that of a defendant, as already observed, same rules, that govern the amendments of pleadings, will apply to the amendment of his reply to the claim of the election petitioner under section 84 of the Act. Certain rules are common to the amendment of the plaint and the written statement. But the written statement stands on a different footing than a plaint with regard to a new claim. Though a new claim cannot be raised in a plaint after limitation has stepped in, the same will not be the position with regard to a new defence sought to be raised by amendment of the written statement. I am supported in this view by the decision of Mukharji, J. in *Nrisingh Prosad Paul* v. *Steel Products Limited* (14). For facility of reference, I reproduce the relevant observations of the learned Judge from that case: —

> "Amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principles. Some important general principles are certainly common to both, such as the application for amendment whether of a plaint or a written statement must be *bona fide* and must also be for the purpose of determining 'the real controversy' between the parties and where it is just. But the rule that the plaintiff cannot be allowed to amend his plaint so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the defence or the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Hence the Courts are inclined to be more liberal in allowing amendment of defence than of plaint and questions of prejudice are less likely to operate with same rigour in the former than in the latter case.

(14) A.I.R. 1953 Cal. 15.

But nevertheless no amendment of a defence or written statement should be allowed which is no answer to the plaint and the cause of action pleaded therein. An immaterial and useless amendment should not be permitted by the Court. Nor does the Court allow amendment by introduction in the written statement of a stale and untenable set-off. These conclusions follow naturally from the 'real controversy' rule in O.6, R.17.

> The governing consideration in an application to amend the written statement should be how far, if at all the proposed amendment of the defence is necessary to determine the 'real controversy' between the parties. If that test is not satisfied then the amendment should not be allowed, even on the ground that there can be no real prejudice by the amendment and that the costs awarded against the amending party will act as the panaced for any possible inconvenience occasioned by the amendment. There is always legal prejudice when irrelevant matters are allowed to be introduced by amendment."

It will also be useful to reproduce the following observations of Dua, J. (as he then was) in a Division Bench decision of this Court in *Girdharilal* v. *Krishan Datt* (15):—

> "The law relating to pleadings should not be construed and applied with undue rigidity and strictness if no prejudice or embarrassment towards fair trial of the suit is caused. It would of course be open to the Court to consider whether or not, being an afterthought, the pleas in question lacked merit, but the right of the defendant to raise the new pleas could hardly be negatived by reference to the provisions of Order 6 rule 17 only."

After giving my careful consideration to the contentions of the learned counsel for the parties, I am of the opinion that in the interests of justice, the amendment prayed for should be allowed.

Mr. B. S. Dhillon has placed his reliance on Supreme Court decision in *Jabar Singh* v. *Genda Lal* (16) for his contention, that

(15) A.I.R. 1960 Punj. 575.
(16) A.I.R. 1964 S.C. 1200.

the procedure, which is followed in the case of election petitions, *mutatis mutandis,* must apply to a recrimination petition. This argument is partially correct. No doubt, the procedure would be the same; but we are here concerned with a rule of limitation. So far as the election petitions are concerned, it has been firmly settled that a new ground for setting aside an election will not be permitted after the period of limitation has expired. But there is no such rule, so far as recriminating petition is concerned and I am not prepared to extend that rule by analogy. Recriminatory petition merely is permitted to defeat the claim of a defeated candidate under section 84 of the Act; and though the procedure in a recriminatory petition for its trial is identical with that of election petition, it will be unsafe to apply the stringent rule of limitation to such a petition. It appears to me from the combined reading of the provisions of the Act, that it was not the intention of the framers of the Act.

As regards issue No. (3), the only grievance of the election petitioner is that in the allegations in paragraph 9(8)(a) and (b), the time and place of the incident is not mentioned. Mr Sethi has undertaken to supply the lacuna. He will now amend his recrimination petition so as to mention the time and place of the incident in paragraph 9(8)(a) and (b). To this course, the learned counsel for the petitioner has no objection. In case, however, Mr. Sethi does not provide the necessary particulars as agreed to, then the allegations in paragraphs 9(8)(a) and (b) will not be tried. This settles issue No. (3).

So far as issue No. (2) is concerned, Mr. Sethi's contention is that in view of the similar claim by the election petitioner, which was the subject matter of issue No. (1) of the preliminary issues in the election petition and which issue has been decided by Capoor, J. (as he then was) by his order dated the 7th of May, 1967, it will be proper in the interests of justice to try this issue along with that issue. Capoor J. has left the decision of that issue to be dealt with on the merits along with the other issues on the merits. The learned counsel for the election petitioner has no objection to this course, provided all the objections, which he proposes to raise at this stage, are left open to him. To this Mr. Sethi has no objection. I, therefore, hold that it will be proper that preliminary issue No. (2) of the recriminating petition be decided along with issue No. (1) in the main election petition.

This disposes of all the preliminary issues.

The learned counsel for the parties state that they will give agreed issues, that arise in the recriminating petition, on the 24th of July, 1967. Case to come up on the 24th for this purpose.

In view of the fact that the facts, now sought to be pleaded by amendment, could have been pleaded earlier, I allow the respondent in the recriminatory petition costs amounting to Rs. 100. The amendment will be subject to payment of those costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

THE PANCHAYAT SAMITI, MAJITHA BLOCK,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 2147 of 1966

July 28, 1967

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 31(2)—Executive powers of Panchayat Samitis—Scope of—Panchayat Samiti—Whether entitled to have headquarters at place other than the one chosen by Government.

Held, that a Panchayat Samiti can act only within the bounds of the authority specifically conferred upon it by the Punjab Panchayat Samitis and Zila Parishads Act, 1961, and it has no plenary or residuary powers to perform any act which it considers necessary or in the best interests of the rural area for which it is constituted. Certain executive and other functions have been entrusted to the Panchayat Samitis under the Act. The ultimate responsibility for the smooth working of the Panchayat Samitis and Zila Parishads rests upon the State Government and it is but proper, that it should have necessary power to ensure that the objects for which the Panchayat Samitis or Zila Parishads are created are achieved. This is why under section 104 of the Act the Government has been clothed with the authority to supersede a Panchayat Samiti or Zila Parishad *inter alia* to check the absue of its power by a Panchayat Samiti or Zila Parishad.