

Sessions Judge, that no breach of the provisions of sub-section (1) has been committed then the Deputy Commissioner cannot go behind or re-open that decision. The only authority on which the learned counsel for the appellants relied is *M/S Macherlappa and sons v. Government of Andhra* (1), where it was laid down that prosecution for an offence of failure to furnish the return due under rule 11 (1) of the Madras General Sales Tax Rules punishable under section 15(a) of the Act ending in an acquittal did not debar the assessment by the Sale Tax authorities based on the same questions. That was a wholly different case and there can be no doubt that a decision by a criminal Court could not debar the department from making an assessment of sales tax. No such question arises in the present case nor is the language of sub-sections (1) and (2) of section 12 *in pari materia* with the provisions which came up for consideration by the Andhra Court.

There is no merit in this appeal which is dismissed, but in the circumstances there will be no order as to costs.

D. FALSHAW, C.J.—I agree.

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and another,  
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Sadda Ram  
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APPELLATE CIVIL

Before A. N. Grover and Inder Dev Dua, JJ.

AMIN LAL,—Appellant.

versus

HUNNA MAL,—Respondent.

F.A.O. 4-E of 1963.

Representation of the People Act (XLIII of 1951)—Ss. 82 and 90—Election petition containing vague allegations of

1963

(1) A.I.R. 1958 Andhra Pr. 371.

August, 27th.

*corrupt practices—Particulars supplied in pursuance of order of Tribunal—Amended petition making allegations of corrupt practices against a candidate who was not made party to the petition—Application made for amendment of petition so as to add that candidate as a respondent to the petition or to delete the particulars of corrupt practices relating to him—Election Tribunal—Whether can allow such amendment—S. 82(b)—Whether confined to allegations made against a candidate in his capacity as such.*

*Held*, that the Election Tribunal cannot allow amendment of an election petition which does not comply with the provisions *inter alia* of section 82 of the Representation of the People Act, 1951, so as to defeat the mandatory provisions of the Act and make a petition entertainable which it otherwise is not. The penal consequence of the rejection of the petition has been statutorily imposed for non-compliance with the provisions of section 82, and the Election Tribunal has no power to invoke the procedure under Order 1 rule 10 of the Code of Civil Procedure. So where the election petition contained vague allegations of corrupt practices committed by certain persons and the Tribunal directed the petitioner to give particulars of those corrupt practices and the petitioner gave those particulars naming a person, who was a candidate but was not made a party to the election petition, as one of those who committed corrupt practices, the amended petition giving particulars has to be rejected under section 90 of the Act for non-compliance with the mandatory provisions of section 82(b) of the Act. The Tribunal has no power to allow amendment of the petition so as to add the name of that candidate as a respondent or to delete the particulars of corrupt practices relating to him.

*Held*, that there is no distinction between an allegation made against a person in his capacity as a candidate and in any other capacity for the purpose of attracting the provisions of section 82(b) of the Representation of the People Act, 1951. The scope of section 82(b) cannot be confined only to the allegations of corrupt practices against a candidate when it is committed by him in his capacity as such. If corrupt practices are alleged against a person who was a candidate, even if he withdrew from the election before the date of withdrawal, he must be made a party to

the election petition and the failure to implead him will entail the penal consequence of the rejection of the petition.

*First Appeal from the order of Shri Manmohan Singh Gujral, Election Tribunal, Rohtak, dated 7th January, 1963, dismissing the election petition in limine for non-compliance of the provisions of Section 82 of the Act by failing to implead Suraj Bhan, who was a necessary party.*

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Appellant.

H. L. SIBBAL, P. S. JAIN AND N. C. JAIN, ADVOCATES, for the Respondent.

### JUDGMENT

DUA, J.—This is an appeal under section 116-A of the Representation of the People Act, 1951 (hereinafter called the Act) from an order of the Election Tribunal, Rohtak dated 7th January, 1963, dismissing the appellant's election petition in *limine* under section 90(3) of the Act for non-compliance with the provisions of section 82(b) of the Act by omitting to implead Suraj Bhan as a respondent who was considered to be a necessary party. The question raised in this appeal, therefore, is a very short one though it cannot be described to be simple or easy to answer. The facts relevant for our purposes may now be stated.

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In the months of January and February, 1962 general elections to the Punjab Legislative Assembly were held and the present dispute arises out of an election relating to the Hissar City Constituency of the Punjab Legislative Assembly. Nomination papers were filed on behalf of 11 candidates including Hunna Mal, respondent and Suraj Bhan, his brother. I have mentioned the name of Suraj Bhan because it is the failure to implead him which has given rise to

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the controversy before us. Five out of the eleven candidates withdrew their candidature within the prescribed time with the result that the names of only six candidates were published under section 38 of the Act. Suraj Bhan, it may be mentioned, was one who had withdrawn his candidature. As a result of the poll, the respondent Hunna Mal was declared duly elected. The petitioner who claims to be an elector at the election in question filed the election petition out of which the present appeal has arisen alleging, *inter alia*, commission of corrupt practices by the respondent, his agents and by other persons with the consent of the respondent. We are only concerned with the allegations contained in para 9(c)(i) of the election petition. The petition as presented to the Election Commission dated 8th April, 1962 contained the following allegations so far as relevant for our purposes in para 9:—

“9. That the election of the respondent is void because of the various corrupt practices having been committed by the respondent, his agents, and by other “persons with the consent of the respondent, the details of which are given in the various sub-paras belows:—

(a) \* \* \* \* \*

(b)\* \* \* \* \*

(c) (i) That the respondent by himself and through his agents with his consent has been guilty of the corrupt practice of promoting or attempting to promote feelings of enmity and hatred between different classes of the citizens of India

on grounds of religion, community and language. The respondent was in fact a candidate sponsored by Shri Devi Lal of Chautala, rebel Punjab Congress Leader, who had left the Congress fold and joined hands with professor Sher Singh, Leader of the Haryana Lok Samiti. The very creed of this Samiti was the promotion of or attempt to promote feelings of enmity and hatred between the residents of the Punjabi region and residents of Hindi region. This Samiti has in a way divided the Punjab State into two communities Panjabis and non-Panjabis. The chief target of the leaders, workers, candidates sponsored by the Samiti and their agents and workers were the Congress candidates who were pitched against them in every constituency of the Hindi region whom they described as being the henchmen of Shri Partap Singh Kairon, the Chief Minister of of the Punjab, who according to respondent and his agents was a staunch Sikh and Chief supporter of the cause of the residents of Panjabi region at the cost of the residents of the Hindi region and specially the non-Sikhs among them. They described the Congress candidate Shri Balwant Rai in this Constituency as being an enemy of the residents of Hindi region specially the non-Sikh residents of the Hindi region and preached that if elected he would be a great obstacle in the way of the non-Sikh residents of the

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Hindi region and would be a cause of the death-knell of Hindi language as well. Thus poisonous propaganda on the basis of two communities, Panjabis and Non-Panjabis, and also on the basis of two religions, Sikhs and Non-Sikhs, and on the basis of two languages Hindi and Panjabi, was resorted to by the respondent, his chief agent Shri Devi Lal with his consent throughout the constituency right from the date of the filing of the nomination paper by the respondent up to the date of poll through the various pamphlets, posters and the writings in the paper titled as "Haryana Kesri" a mouth-piece of the ideology of Shri Devi Lal, rebel Congress leader. These pamphlets, posters and newspapers containing the poisonous propaganda were got published by the respondent or by the office of the group headed by Ch. Devi Lal from the office of the 'Haryana Kesri', controlled by Shri Devi Lal with the consent of the respondent and got distributed by the respondent through his workers and agents throughout the constituency at a large scale. These writings will be got produced later on when available."

In the written statement filed on 11th July, 1962 preliminary objection No. 3 was raised to the effect that the petition offended the provisions of section 83(1) inasmuch as it did not contain a concise statement of the material facts nor did it set forth full

particulars of the alleged corrupt practices. On the merits paragraph 9(c)(i) was described to be vague and hence liable to be struck off. Besides denying the correctness of its contents, which denial does not concern us on appeal, it was pleaded to be vague and lacking in particulars and thus offending the provisions of section 83 of the Act. The petitioner, according to the respondent's plea, had not given the names of the agents or other persons who committed the corrupt practice of promoting or attempting to promote feelings of enmity and hatred between different classes of citizens of India on grounds of religion, community and language, nor had he given the details of the propaganda and its nature.

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In the replication filed by the petitioner in reply to preliminary objection No. 3, it was asserted that all the known particulars, so far as possible in respect of the various allegations of corrupt practices, had been given in detail.

In reply to paragraph 9 of the written statement it was reiterated that this paragraph did not suffer from any defect of lack of known particulars and that every known particular so far as possible had been most concisely and without any repetition detailed.

On 3rd September, 1962, the learned Tribunal disposed of the following preliminary issues:—

“Whether any of the allegations of alleged corrupt practices as detailed in paragraph 9 of the petition, are vague, indefinite and devoid of particulars as required by law and if so, to what effect?”

In regard to paragraph 9(c) it was found that the particulars of the pamphlets, posters and of the paper

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“Haryana Kesri” were not given by means of which the corrupt practice of promoting or attempting to promote feelings of enmity and hatred between different classes of citizens of India on ground of religion, etc., had been committed. Neither the pamphlets and posters were produced nor their particulars were given and since no dates or places when and where they were published and distributed had been incorporated in the petition the impugned paragraph was held to offend against section 83(b). The dates of the issues of Haryana Kesri were also not disclosed and the names of the workers and agents of the petitioner who distributed the pamphlets, etc., were also missing. In view of these findings the learned Tribunal deciding the preliminary issue in favour of the respondent allowed the petitioner an opportunity to apply for leave to amend or amplify the particulars of the corrupt practice. In case further particulars were not supplied, the charges on the basis of the aforesaid allegations were directed to be struck off. The petitioner was burdened with Rs. 50 as costs.

It appears that in pursuance of the above order an amended petition was actually allowed to be filed in which paragraph 9(c)(i) was amended. After repeating substantially the unamended portion of the paragraph the following plea was added:—

“This poisonous propaganda on the basis of two communities, Panjabis and non-Panjabis, and also on the basis of two religions, Sikhs and non-Sikhs, and on the basis of two languages, Hindi and Panjabi, was resorted to by the respondent, his chief agent Shri Devi Lal with his consent throughout the constituency through the various pamphlets. One of the pamphlets titled ‘*Phoolonki Sej Se Kanton Ki Rah Par Mager Kion?*’ containing the speech of



Shri Devi Lal dated 5th February, 1962 of the type the one of which is attached with this amended petition, the title page of which purports to have been printed from the Half-Tone Arts Press, Delhi, by one Dr. Ganpati Singh Varma, 3, Darya Ganj, Delhi, as its publisher and the rest of which purports to have been printed at Shivji Mudranalya, Kinari Bazar, Delhi. And the other one titled 'The case of Haryana and Hindi Region' by Professor Sher Singh, President, Haryana Lok Samiti, presented to Dass Commission in which the case of Haryana was put in before the Dass Commission by Professor Sher Singh in such a way as to spread hatred between the Sikhs and non-Sikh population of Punjab State through the various figures given in it of the State Government servants of all ranks employed in the two regions, were distributed by respondent No. 1, his brother Shri Suraj Bhan and his near relation Shri Lakshmi Chand Gupta, Contractor, Gurgaon, at a large scale in Hissar town on the 11th February, 1962 and at Adampur Mandi and Uklana Mandi on the 12th February, 1962 and at Barwala on the 13th February, 1962.

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In the amended written statement again a number of preliminary objections were raised but none of those objections related to the non-impleading of Suraj Bhan. In reply to paragraph 9, besides a general denial, again the allegations about the respondent's agents and other persons were described to be vague and indefinite. Sub-clause (c)(i) was also pleaded to be vague and, therefore, liable to be struck off.

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Thereafter certain supplemental proceedings were taken before the Tribunal which do not concern us at this stage. On 12th November, 1962, however, we find an application filed by the respondent for the dismissal of the petition under section 90(3) of the Act for non-compliance with the mandatory provisions of section 82(b). The basis of this application was that the petitioner had made allegations of corrupt practices particularly in paragraph 9 against Shri Suraj Bhan, Shri Devi Lal and Shri Sher Singh who were duly nominated candidates from different constituencies of the Punjab Vidhan Sabha in the general elections held in 1962 and that they were, therefore, necessary parties. The definition of the word "candidate" as given in section 79(b) of the Act was reproduced and it was prayed that it being obligatory on the Tribunal to dismiss an election petition under section 90(3) of the Act for non-compliance with the provisions of section 82, the election petition should be dismissed. Reply to this petition was put in on 16th November, 1962. In this reply although the allegation of Suraj Bhan being a necessary party was controverted, it was stated that the petitioner was willing to add Shri Suraj Bhan as a party and that he had also formally applied by a separate application for Suraj Bhan's addition as a party, and for the deletion of the allegations regarding him made in paragraph 9(c)(i) of the amended petition. In this reply it was also asserted that no allegation against Suraj Bhan had been made in the original application and a reference to him was made in the amended petition only in pursuance of an order of the Tribunal that the petition required further particulars. It was also asserted that the petitioner had only a day before come to know about Suraj Bhan being a candidate in the election in question. The allegations against Suraj Bhan were also pleaded

not to amount to allegations of corrupt practices. On the same day the petitioner also filed another application under Order 1, Rule 10, Civil Procedure Code, for adding the name of Suraj Bhan as a respondent. In this application an alternative prayer was also made for deleting the words "his brother Shri Suraj Bhan" in paragraph 9(c)(i) of the amended petition. The respondent in his answer to this application pleaded that a substantial right of having the election petition dismissed had accrued to him and, therefore, it was not permissible to delete the words sought to be deleted by the petitioner. The prayer for adding the name of Suraj Bhan was also resisted and the application under Order 1, Rule 10, Civil Procedure Code, was pleaded not to be legally maintainable.

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The learned Tribunal by the impugned order held that the election petition did contain allegations of corrupt practice against Suraj Bhan who was a necessary party, being a candidate; there was no occasion for allowing the application under Order 1, Rule 10, Civil Procedure Code, and that there being non-compliance with section 82(b) of the Act under section 90(3) the election petition was liable to be dismissed. I may here observe that according to the order of the learned Tribunal no serious attempt was made before it to show that Devi Lal and Prof. Sher Singh were necessary parties with the result that it did not consider it necessary to decide whether the expression "candidate" as used in section 82 included candidates of other constituencies.

On appeal before us the learned counsel for the petitioner-appellant has contended that the provisions of section 90(3) of the Act are applicable only to those cases in which the election petition as presented to the Election Commission under section 81 of the

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Act suffers from the vice of non-compliance with section 82(b) and that if such an infirmity creeps in only by way of an amendment lawfully allowed under the Act by virtue of section 90(5), the operation of section 90(3) cannot be attracted. For this submission reliance has been placed on the scheme of the Act and the language of section 90(3) wherein it is laid down that the Tribunal shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 notwithstanding that it has not been dismissed by the Election Commission under section 85. It is emphasised that only such an election petition can be dismissed under this provision of law which was capable of being dismissed by the Election Commission under section 85. In other words, the argument is that section 90(3) merely provides a double check on election petitions which as originally presented do not comply with the provisions of sections 81 and 82. This argument has been sought to be developed by illustrating that in an original election petition it is open to the petitioner to implead a candidate against whom allegations of corrupt practices have been made, but in case of amendments permissible under the law if a new party cannot be added but amendment in the particulars can under the law be permitted, then it would lead to anomalous consequences which cannot reasonably and legitimately be held to have been intended by the Parliament. Permissible amendment, according to the counsel, must by necessary implication be deemed to include amendments which would do away or remedy the vice caused or attracted by virtue of the amendment allowable and allowed under the law. If bald literalness of the language used in section 90(3) is likely to lead to such serious consequences as dismissal of the entire petition, throttling a judicial probe into the charges of corrupt practices, then, so argues the

counsel, this Court should construe this provision in such a manner as to make it effective in achieving the primary object of election petitions.

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As against this contention, the learned counsel for the respondent has submitted that this Court while construing a statutory provision is completely unconcerned with the consequences ensuing therefrom provided, of course, the language is clear and unambiguous. According to him, there is no ambiguity in section 90(3) and if a petitioner chooses so to amend his election petition as to attract the operation of section 90(3) literally construed read with section 82(b), the language of the former should not be strained so as to save the petitioner from its rigours. In support of his contentions, the respondent's counsel has drawn our attention to a decision of the Bombay High Court in *Baburao Tatyaji Bhosle v. Madho Shrihari Aney* (1). The facts of the reported case appear to be somewhat similar to those before us and according to the ratio of that decision non-impleading of Suraj Bhan in the case in hand must attract the provisions of section 90(3).

The petitioner's counsel has, however, submitted that the Bombay decision has not considered all the implications and aspects which arise for consideration and, therefore, it cannot be considered to lay down good law. It has for instance not attached sufficient or due importance to the actual effect of the view adopted on other charges of corrupt practice in election petition unconnected with the defect of non-compliance with section 82(b). In the alternative the counsel has also drawn our attention to the last portion of the last paragraph of the judgment at page 42 of the report from which it is sought to be inferred

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(1) A.I.R. 1961 Bom. 29.

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that the Bombay High Court was apparently of the view that the persons sought to be impleaded as a result of amendment could be impleaded by amendment of the petition and has submitted that the learned Tribunal in the case in hand has erred in disallowing the application for making Suraj Bhan a party to the election petition. This brings me to the other authorities cited on behalf of the respondent in support of the contention that it is not open to a Tribunal to permit impleading of necessary parties who have not been impleaded in the original petition presented before the Election Commission, particularly after the limitation for presenting a petition has expired. In *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa etc.* (2), it was observed that the Representation of the People Act is a self-contained code governing the trial of election petitions and that the provisions of Order 23, Rule 1, Civil Procedure Code, do not apply to election petitions, with the result that it is not open to a petitioner to withdraw or abandon a part of his claim once an election petition is presented to the Election Commission, more so when such a withdrawal or abandonment of a part of the claim would have the effect of depriving the returned candidate or any other party to the petition of the right of recrimination which had accrued to him under section 97 of the Act. These observations, in my opinion, do not affect the question of amendment on the facts and circumstances of the case before us when the amendment only consists of impleading a party whose presence has been necessitated by the amendment allowed by the Tribunal. The counsel has, however, also referred to *K. Kamaraja Nadar v. Kunju Thevar and others* (3), a judgment of the same date and of the same Bench as in *Mallappa Basappa's*

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

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

case, but that decision also, in my opinion, does not improve the position. *Chaturbhuj Chunnial v. Election Tribunal and others* (4), however, does support the contention of the respondent's counsel. It was observed in that judgment that Order 6, Rule 17, Civil Procedure Code, only deals with alteration or amendment of pleadings and not with addition of parties or striking off the names of the parties for which purpose provision is made in the Code in Order 1, Rule 10. This last-mentioned provision, however, was considered by the Bench to be inapplicable to an Election Tribunal trying an election petition. While construing section 90(1) of the Act, the Court observed :—

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“The effect of the words ‘subject to the provisions of the Act and of any rules made thereunder’ in section 90(1) clearly is that the provisions of the Code of Civil Procedure become applicable to the trial of an election petition subject to two limitations so far as the question of permitting amendments is concerned.

One limitation is that the power of amendment under the Code of Civil Procedure cannot be exercised so as to permit new grounds of charges to be raised or to so alter the character of the petition as to make it in substance a new petition, if a fresh petition on those allegations will then be barred. The second limitation is that the power of amendment under the Code of Civil Procedure cannot be exercised so as to defeat the mandatory provisions of the Representation of the People Act itself.”

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(4) A.I.R. 1958 All. 809.

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For these two principles reference was made to two Supreme Court decisions : (1) *Harish Chandra Bajpai etc. v. Tirloki Singh etc.* (5) and (2) *Jagan Nath v. Jaswant Singh and others* (6). The Allahabad Court in construing Rule 10 of Order 1 was also influenced by the provisions of Rule 9, according to which no suit is to be defeated by reason of misjoinder or non-joinder of the parties which, according to the Bench, was in conflict with the principle laid down in section 90(3) of the Act. This decision too, in my opinion, deals only with the petitions which as originally presented to the Election Commission suffered from the vice of absence of necessary parties from the record. *Jagannath Dalai v. Rama Chandra Nahak and others* (7) deals with the non-compliance of the provisions of section 117 of the Act and is, therefore, hardly of much assistance. *Ganpat Singh v. Brijmohan Lal* (8) also seems to me to be irrelevant for the purpose of the point with which we are concerned. *M. A. Muthiah Chettiar v. Saw Ganesan etc.* (9) too is of no assistance so far as the case in hand is concerned. *Gulaher Ahmed v. The Election Tribunal etc.* (10) also does not touch the question with which we are concerned. *S. B. Adityan etc. v. S. Kandaswami and another* (11) does contain an observation that as the penal consequence of the rejection of the petition has been statutorily imposed for non-compliance with the provisions of section 82, it must now be held that the power of the Election Tribunal to invoke the procedure under Order 1, Rule 10, Civil Procedure Code, can no longer apply. The Supreme Court in *S. M. Banerji v. Sri Krishna Agarwal* (12), has also considered the

(5) A.I.R. 1957 S.C. 444.

(6) A.I.R. 1954 S.C. 210.

(7) A.I.R. 1959 Orissa 26.

(8) A.I.R. 1959 Raj. 114.

(9) A.I.R. 1958 Madras 187.

(10) A.I.R. 1958 M.P. 224.

(11) 1958 E.L.R. 394.

(12) A.I.R. 1960 S.C. 368.



power of amendment conferred on the Tribunal under Order 6, Rule 17, of the Code of Civil Procedure, and has found itself bound by its earlier decision in *Harish Chandra Bajpai v. Tirloki Singh* (5). The Court, however, proceeded to clarify the position in the following words :—

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“At this stage we must guard against one possible misapprehension. Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this Court the discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a Civil Court. The same well-settled principles laid down in the matter of amendments to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal.”

This aspect, the Court proceeded to observe, had not been ignored in the earlier decision mentioned above. In *Harish Chandra Bajpai's case* amendment giving for the first time instances of corrupt practice, provided such corrupt practice had been made a ground of attack in the petition, was held permissible. Before the amendment of Act 43 of 1951 in 1956, amendment by impleading other candidates was upheld, but, since the amendment including section 82 in section 90(3) of the Act made it mandatory for the Tribunal to dismiss an election petition which does not comply

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with the provisions *inter alia* of section 82, the view prevailing at the present time is that such an amendment cannot be allowed. Had the matter been *res integra*, I, for my part, would perhaps have been inclined to hold that on the facts and circumstances of the present case the Tribunal would be empowered under the law to allow Suraj Bhan to be impleaded along with the amendment disclosing his name as one of the persons alleged to have committed corrupt practices, for, such a construction appears to me to be both just and calculated to advance the statutory object of promoting and ensuring purity of elections and is not clearly prohibited by the statutory language, but in view of the decisions of the Allahabad and Bombay High Courts I would, as at present advised, adopt the same view and uphold the order of the Tribunal declining to implead Suraj Bhan. I must, however, make it clear that I am doing so reluctantly and with a certain amount of diffidence and hesitation. I must also state that I have to some extent been also influenced in not disagreeing with the above view by the fact that the Allahabad decision was given in March, 1958 and though Act 43 of 1951 was amended in 1961 including the amendment of section 90 no change was made in it in this respect.

The learned counsel for the appellant next contended that there was no allegation against Suraj Bhan in his capacity as a candidate and, therefore, section 82(b) is inapplicable. I am unable to appreciate the distinction between an allegation made against a person in his capacity as a candidate and in any other capacity for the purpose of attracting the above sub-section. The statutory provisions on their plain reading do not support the submission, nor does the statutory scheme or the considerations of achieving the legislative object lend any helpful assistance

to the contention. Where a person has withdrawn his candidature, obviously corrupt practice as a candidate, which has been conceded to mean corrupt practice in support of his own candidature, can only be committed by him during the period that he held himself out as a candidate. The sphere of such commission of corrupt practices must, from the very nature of things, be extremely limited, and, may seldom, if ever, except perhaps in rarest cases, actually affect the result of the election. Considered from this point of view also one cannot see much cogency in necessitating the impleading of a candidate in respect of such corrupt practices and leaving him out for other corrupt practices committed by him which may have more vitally affected the election. At the bar no convincing reason was advanced for construing section 82(b) in the restricted sense suggested. I am, therefore, unable to hold the scope of section 82(b) to be confined only to the allegations of corrupt practice against a candidate when it is committed by him in his capacity as such. This very point has also been raised in *Rao Abhai Singh v. Rao Nihal Singh* F.A.O. 7-E of 1963 and in that case also we have taken the same view.

The counsel then contended that the allegations of corrupt practice contained in the petition are, strictly speaking, against the respondent and not against Suraj Bhan. The allegation of mere distribution of pamphlets without imputing knowledge—express or implied—of its contents to Suraj Bhan does not, according to the argument, amount to an allegation of corrupt practice against him. While developing this point the counsel also emphasised that he had expressly submitted to the Tribunal that no allegation of corrupt practice against Suraj Bhan was ever intended to be made and, therefore, if the amended plea was considered to be capable of bearing

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such a construction, then it may be deleted or omitted from the amended petition. As against this, the learned counsel for the respondent read out to us the original petition and submitted that the allegation of corrupt practice was made against a number of undisclosed persons and on objection having been raised the name of Suraj Bhan, among others, was supplied as one who had also committed the corrupt practice concerned. The counsel thus laid emphasis on the contention that the petition actually contained allegations of corrupt practice against Suraj Bhan and the appellant's argument is merely intended to cover up a fatal defect which has crept in by supplying the name of Suraj Bhan in the amended petition.

I have devoted to the matter my most earnest thought and consideration and after going through the record and the authorities cited in the light of the arguments addressed I am constrained to hold that the relevant pleadings urged as a whole do seem to contain allegations of corrupt practice against Suraj Bhan as well. Whatever the intention of the petitioner, the pleadings have to be construed on their own language and as a whole; so construed it is not easy to hold that there is no allegation of corrupt practice against Suraj Bhan. The objectionable pamphlet is alleged to have been distributed by "respondent No. 1, his brother Suraj Bhan and his near relation Shri Lakshmi Chand Gupta". Read in its context, this sentence does seem to me to amount to an allegation of corrupt practice against Suraj Bhan as it is against respondent No. 1. Pleadings, as is well known, are not to be construed with too much technical strictness; they are required to be read liberally and considered from a practical and common sense point of view. So considered, I am inclined to hold that the allegation of corrupt practice does, *prima facie*, seem to have been made against Suraj Bhan. I may mention that according to the

Tribunal it was not seriously challenged before it that the allegations in the petition against Suraj Bhan did amount to allegations of corrupt practice; we nevertheless heard the appellant on this point but I have not been able to persuade myself to agree with his contention.

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The respondent also tried to attempt to argue that Ch. Devi Lal and Prof. Sher Singh were also candidates and, therefore, necessary parties and that the conclusion of the Tribunal to the contrary is wrong but the counsel soon realised the futility of his attempt and dropped the point.

The result of the foregoing discussion must be against the appellant. It is of course unfortunate that on account of a defect which arose out of the amendment permitted by the Tribunal and which defets the Tribunal is, according to the decided cases, unable to remedy by permitting amendment, the enquiry into the entire election petition has been throttled. But that is a matter of policy of the law with which this Court is not concerned. Our duty is only to administer law as we find it, wholly unconcerned with its wisdom. In consequence, I am constrained to dismiss the appeal but without any order as to costs.

A. N. GROVER, J.—I agree.

B.R.T.

Grover, J.

#### CIVIL MISCELLANEOUS

*Before D. Falshaw, C.J., and A. N. Grover, J.*

HARBANS SINGH AND OTHERS,—*Petitioners.*

*versus*

THE PEPSU LAND COMMISSION AND ANOTHER,—*Respondents.*

Civil Writ No. 389 of 1961.

*Pepsu Tenancy and Agricultural Lands Rules, 1958—  
Rule 30—Provisions of, relating to wool-raising farms—  
Whether valid.*

1963

Sept., 3rd