

(1972) 10 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Election Petition No. 38 of 1972

Mangal Sein

APPELLANT

Vs

Sri Kishan Dass and Others

RESPONDENT

Date of Decision : 24-10-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Limitation Act, 1963 — Section 29(2)

Representation of the People Act, 1951 — Section 100, 123(1), 123(6), 15, 30

Citation : AIR 1973 P&H 456

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

1. The petitioner Shri Mangal Sein has called in question the election of Shri Sri Kishan Dass to the Haryana Legislative Assembly from Rohtak constituency by an election petition filed u/s 81 and Section 100 of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

2. A notification was issued u/s 15 of the Act. This notification was published in the Official Gazette on 4th February, 1972. The notification called upon all the Assembly constituencies in the State of Haryana to elect members to the Haryana Legislative Assembly in accordance with the provisions of the Act and the rules and orders made thereunder. By another notification published in the official Gazette u/s 30 of the Act, the Election Commission fixed 11th February, 1972 as the last date for filing the nomination papers. 13th of February, 1972, was fixed as the date for the scrutiny of the said nominations. The nominations could be withdrawn by the 14th February, 1972. The poll was to take place on 11th march, 1972.

3. The petitioner Shri Mangal Sein, the returned candidate Shri Sri Kishan Dass, Shri Om Parkash Saini, Shri Man Singh, Shri Ved Parkash, Shri Balwan Singh, Shri Govind Lal, Shri Om Parkash (Harijan), Shri Ishwar, Shri Mansa, Shri Hari Mohan, Shri Ram Sarup, Shri Parka Nand Tuli and Shri Balbir Singh filed their

nomination papers from the Rohtak Legislative Assembly consistency No. 40. The returning Officer rejected the nomination paper of Shri Balbir Singh. The following candidates withdrew their candidature on the date fixed for the withdrawal of the nomination papers:--

1. Shri Man Singh,
2. Shri Om Parkash Saini,
3. Shri Ishwar,
4. Shri Mansa,
5. Shri Om Parkash Harijan,
6. Shri Hari Mohan,
7. Shri Ram Sarup, and
8. Shri Parma Nand Tuli.

The application for withdrawal made by these candidates was accepted, thus leaving Shri Mangal Sein, Shri Sri Kishan Dass, Shri Ved Parkash, Shri Balwan Singh and Shri Govind Lal in the field. The real contest was between Shri Sri Kishan Dass and Shri Mangal Sein. Shri Mangal Sein was contesting on the Congress ticket. As a result of the poll, Shri Sri Kishan Dass was elected as he secured 24, 879 votes. Shri Mangal Sein polled 21, 057 votes. The other contesting candidates forfeited their securities.

4. The present petition has been filed by Shri Mangal Sein calling in question the election of the returned candidate Shri Sri Kishan Dass. The petition was filed on 26th April, 1972, on the last date of limitation. The petitioner impleaded Shri Sri Kishan Dass, Shri Om Parkash Saini, Shri Man Singh, Shri Om Parkash Harijan, Shri Ishwar, Shri Mansa, Shri Ved Parkash and Shri Govind Lal as respondents. Shri Ram Sarup who was a candidate was not impleaded. The petition was presented personally at 3.40. P. M. by Shri K. S. Kanwar, Advocate, counsel for the petitioner. It now transpires that at the time when the petition was presented, it was accompanied by eight copies of the petition, whereas the rules framed by this Court requires seventeen copies of the petition. The petition was ordered to be put up for scrutiny on 15th May, 1972. On the 15th May, 1972, the Deputy Registrar opined that the petition seems to be in order. He directed notices to issue to the respondents and the case was to be laid before a nominated Judge for scrutiny of service on 22nd May, 1972, and for settlement of issues on 26th May, 1972.

5. On the 5th June, 1972, an application was filed by the petitioner u/s 151 of the CPC alleging:--

"that now it has come to the knowledge of the petitioner that some copies of the petition served on the respondents bear the signatures of the counsel only and does not bear his signature. The mistake seems to be a bona fide mistake and

the same escaped notice even at the time of scrutiny by the Registrar. Had this effect been noticed at that time, the same could be rectified under Rule 14 of the Rules framed by this Hon''ble Court in this behalf and contained in Chapter 4-GG High Court Rules and Orders Vol. V."

The ultimate prayer in the petition was that the attached copy of the election petition may be ordered to be served on each of the respondents per registered post. Notice of this application was given to the respondent for 10th of July, 1972. This application was supported by an affidavit of that date. On the 3rd of July, 1972, the returned candidate filed his reply to this application and prayed that the application be dismissed. On the 10th of July, 1972, I rejected this application.

6. The written statement by the returned candidate was filed on 10th July, 1972, and a copy of it had already been supplied to Shri Sri Chand Goyal, Advocate, Counsel for the petitioner, on 7th July, 1972. In addition to the written statement by the returned candidate, Shri Om Parkash Saini respondent No. 2 and Shri Man Singh respondent No. 3 filed their written statements. They supported the petitioner.

7. On the 18th July, 1972, the petitioner filed another application under O. 6, Rule 17, and Section 151 of the Code of Civil Procedure, for amendment of the election petition. The relevant paragraphs of this petition are 2, 3, 4, and 5 and are reproduced below:--

"2. That on a careful reading of his Election Petition the petitioner has found that some typographical mistakes of accidental character have occurred in the Election Petition. This has now been pointed out by Respondent No. 1 also in his written statement. To obviate the difficulty which may arise on account of such mistakes continuing in the Election Petition and to keep the records straight and to avoid confusion, the petitioner felt advised to remove such mistakes by making appropriate amendment to the Election Petition. The mistakes so occurred are as under:--

3. In the third line from the bottom appearing at page 9 as contained in paragraph 11(e)(i) of the Election Petition the word "six" has been stated instead of the word "five". In this clause names of five specific persons have been given. Reference has been made only to those five persons. This fact has been so stated in the earlier part of this clause at two places.

4. That the petitioner filed 8 copies duly attested by him to be true copies under his own signatures along with the Election Petition and filed 9 copies of the Election Petition duly signed by his counsel. In this manner 17 copies in all were filed along with the Election Petition. This was besides the main Election Petition which was filed in this Hon''ble Court duly signed and verified by the petitioner.

5. That as the petitioner was required to file only 8 copies of the Election Petition with the attestation of the copies as true copies under his signatures, the

petitioner made a statement to that effect in the Election Petition itself. The petitioner stated that the petition was being accompanied by 8 copies duly attested by the petitioner under his signatures to be true copies of the petition but instead of the figure "8" the figure "3" was typed by inadvertence. The figure "3" appearing in paragraph 14 of the Petition deserves to be substituted by the figure "8".

This application was put up before me on the 19th of July, 1972, and I passed the following order:--

"So far as the prayer in paragraph 3 is concerned, it is otiose because in the original petition what is sought to be substituted by amendment already exists. With regard to the prayer, in paragraph 4 the prayer is that instead of digit "3" digit "8" be substituted in paragraph 14 of the Election Petition. It is stated in paragraph 4 of the amendment application that the petitioner under his signatures, filed 8 copies of the petition duly attested by him. However, instead of stating 8 copies in the relevant para of the Election Petition, only three were stated. This prayer is of an inconsequential nature. The learned counsel states that originally he filed 8 copies. If that is so, the office record will prove it. The petitioner in that situation will not be adversely affected."

8. On the 19th of July, 1972, I framed the following preliminary issues:--

- "1. Whether Ram Sarup is a necessary party on account of allegations contained in para 9 and sub-para (c) clause 1 of Para No. 11 of the petition. If so, with what effect?
2. Whether the petitioner is guilty of non-compliance of Rule 12(f) of the rules framed by the High Court and Section 81, and if so, with what effect?
3. Whether the copy of the petition served on respondent No. 1 is incorrect copy as alleged in Para 3 of the preliminary objection in the written statement and if so, with what effect?
4. Whether the verification of the petition is not in accordance with the rules framed by the High Court, and if so, with what effect?
5. Whether the affidavit in support of the allegations of corrupt practice is defective and if so, with what effect?
6. Whether the annexures A and B to the petition are not correctly and properly verified, and if so, with what effect?
7. Whether the copies of annexures A and B attached with the copies of the petition are not true to their originals, and if so, with what effect?
8. Whether copies of Annexures A, B, C-1 and D-1 have been furnished by the petitioner to the respondent and if not, with what effect?
9. Whether the allegations of corrupt practices contained in paras 9, 11(a) to (d), (e), (i) to (iii), (f)(g)(i) to (iii), (h)(I)(i) to (v), (J), (K), (L), (M), (N), (O) and (P)

are vague and not specific and lack material particulars, and if so, with what effect?

10. Whether Shri Balbir Singh is a necessary or a proper party to the petition. If so, with what effect?"

I directed evidence on preliminary issues to be led on 21st August, 1972. The evidence was recorded on 21st August, 1972, and then on 7th September, 1972. Between 21st August, 1972, and 7th September, 1972, another application under Order 6, Rule 17 and Section 151 of the CPC was made by the petitioner on 2nd September, 1972. A copy of this petition was handed over to the counsel for the returned candidate. This application was placed before me on 4th September, 1972, and I issued notice for 7th September, 1972. On 7th September, 1972, the returned candidate filed his reply dated 6th September, 1972, to this application. The evidence on preliminary issues was closed on 7th September, 1972, and the case placed for hearing before me on 28th September, 1972.

9. After I had heard arguments on the first three issues, I came to the conclusion that this petition must fail because I must return findings on the first and third issue in favour of the returned candidate. It is in this situation that I decided not to hear the parties on the remaining preliminary issues. As a consequences of this order, the application under Order 6, Rule 17 and Section 151 of the Code of Civil Procedure, filed on 2nd of September, 1972, will also stand disposed of.

10. I now proceed to record my findings on issues 1 to 3:

Issue No. 1:

11. Before I proceed to deal with this issue, it will be proper to set out the contention raised by the counsel for the returned candidate. The contention is that Shri Ram Sarup was a candidate. In the election petition an allegation of corrupt practice has been made against him. He has not been impleaded as a party to the election petition in spite of Section 82(b) of the Act and, therefore, the petition must be dismissed in view of Section 86(1) of the Act.

12. In reply, the learned counsel for the petitioner contends that there is no allegation of corrupt practice in the petition against Shri Ram Sarup figures is the allegation relating to the incurring of expenditure by the returned candidate over and above the expenditure authorised by Section 77 of the Act, thus the returned candidate is guilty of a corrupt practice within the meaning of Section 123(6) of the Act. He further contends that even if it is held that there is an allegation of corrupt practice against Shri Ram Sarup in the election petition, that allegation was made inadvertently and by a bona fide mistake. The petitioner initially had a mind to make an allegation of corrupt practice against Shri Ram Sarup. But before filing the election petition he had received information from Maya Krishan that the information supplied to the petitioner that Shri Ram Sarup was guilty of a corrupt practice was incorrect. Therefore, before filing the election petition, it was decided to drop the charges of corrupt practice against Shri Ram Sarup and

this contention is sought to be supported by reference to the copies of the election petition originally filed and those filed later with the first application under O. 6, Rule 17, and Section 151 of the Code of Civil Procedure.

13. Before examining the respective contentions, it will be proper to set out the relevant parts of the petition, the written statement and the replication. The sequence of events as they have occurred during the trial of this petition, I have already adverted to.

14. The allegations of corrupt practice, according to the learned counsel for the returned candidate, against Shri Ram Sarup are made in paragraphs 9 and 11(I)(i)(b). These paragraphs are reproduced below for facility of reference:--

"9. That it was respondent No. 1 and/or his agents or other persons acting with his consent who committed the act of bribery as defined in Section 123(1) of the Act by making offer or promise of gratification to candidates mentioned hereunder with the objection directly or indirectly of inducing to withdraw from being candidates at the election in question. Their names are given below:--

- (i) Shri Man Singh
- (ii) Shri Om Parkash (Saini)
- (iii) Shri Om Parkash (Harijan)
- (iv) Shri Ishwar
- (v) Shri Mansa
- (vi) Shri Ram Sarup.

11. That the election of respondent No. 1 is liable to be set aside and held void u/s 100 of the Act on various grounds appearing hereunder:--

x x x x x x (1) That the respondent No. 1 incurred or authorised incurrence of expenditure beyond the prescribed limit in contravention of Section 77 of the Act and thereby committed a corrupt practice falling u/s 123(6) of the Act.....Some of the items of expenditure among others are given below:--

(i) Amount paid by way of bribery to various candidates in consideration of their withdrawal of their candidature from the election in question is:--

- (a) Amount of Rs. 10,000/- paid to Shri Man Singh,
- (b) A sum of Rs. 2,000/- was paid to Shri Ram Sarup.
- (c) A sum of Rs. 3,000/- was paid to Shri Om Parkash Saini.
- (d) Om Parkash Harijan was paid Rupees 3,000/-.
- (e) Shri Mansa and Ishwar were paid a sum of Rs. 2,000/- each.

(f) A sum of Rs. 10,000-was paid to Shri Ved Parkash.

So, a sum of Rs. 30,000/- was spent in this respect."

15. In the written statement the reply to these paragraphs is as follows:--

"9. In reply to para No. 9 of the Election Petition, it is submitted that neither the Answering Respondent nor his agents nor any other person with the consent of the Answering Respondent committed any act of bribery as defined in Section 123(1) of the Act. The answering Respondent did not appoint any agent nor consented to any other persons to do any illegal act on his behalf. The allegation is vague and indefinite and reiteration of the provisions of law contained in Section 123(1) of the Act but not specific. It is also incorrect that the Answering Respondent offered or extended promise of gratification to candidates Nos. (i) to (vi) given in para No. 9 of the petition with the object directly or indirectly to induce them to withdraw their candidature at the election.

11. Para No. 11 of the Election petition is incorrect, therefore, not admitted. The reply to the grounds given ad seriatim hereunder:--

(I) In reply to sub-para (I) it is submitted that the answering respondent neither incurred nor authorised incurring of expenditure beyond the prescribed limits in convention of the provisions of Section 77 of the Representation of the People Act 1951 (No. 43 of 1951). It is incorrect that the Answering Respondent committed any corrupt practice as provided by Section 123(6) of the Act.....

(i) Clause (i) is already denied and not a single penny was paid to any of the persons, named for the withdrawal of their candidature."

16. In the replication the petitioner has made the following averments with regard to these paragraphs:--

"9. Contents of paragraph 9 of the written statements are wrong and denied. Contents of the corresponding paragraph of the petition are re-affirmed as correct. Respondent No. 1 is guilty of having committed various corrupt practices as indicated in the petitioner's election petition by himself and through his agents.

11(I). That the contents of paragraph (I) of the written statement are wrong and denied the contents of paragraph (I) of the petition are reiterated as correct. Respondent is guilty of the provision of corrupt practice as provided by Section 123(6) of the Representation of the People Act.....All the items of expenditure incurred by the respondent as indicated in written statement were either incurred by him or authorised to be incurred by him. Respondent No. 1 has falsely denied such incurrence of expenditure in his written statement contents of cls. 1 to 5 of the written statement are denied.

The respondent No. 1 spent money in connection with his election campaign himself and through his election agents in his own name as well as in the names

of City Congress Committee. Name of the City Congress Committee is only a disguise."

17. I first propose to deal with the question whether the allegations in the aforesaid paragraphs against Shri Ram Sarup amount to a corrupt practice within the meaning of Section 123(1) of the Act. The relevant part of this provision is in the following terms:--

"123. The following shall be deemed to be corrupt practices for the purposes of this Act:--

(1) "Bribery", that is to say,--

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election. Or

(b).....

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward-

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b)....."

18. It is clear that in paragraph 9 Shri Ram Sarup's name is mentioned and in paragraph 11(1)(i) a specific allegation is made that Shri Ram Sarup accepted Rupees 2,000/- from the returned candidate and withdrew from the contest. It is no doubt true that the allegation in paragraph 11(I)(i) is made with reference to a corrupt practice within the meaning of Section 123(6), but keeping in view the relevant provisions of Section 99 of the Act, which are in the following terms:--

"99. (1) At the time of making an order u/s 98 the High Court shall also make an order-

(a) Where any charge is made in the petition of any corrupt practice having been committed at the election, recording-

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

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

(b)....."

it will be clear that there is no escape from the conclusion that an allegation of

corrupt practice has been made against Shri Ram Sarup. Therefore, for the reasons recorded above, I repel the contention of the learned counsel for the petitioner that there is no allegation of corrupt practice against Shri Ram Sarup in the election petition. What I have said above is supported by the persistent effort on the part of the petitioner to get rid of the allegations made in paragraphs 9 and 11(I)(i) on the ground that he had decided not to make any allegation of corrupt practice against Shri Ram Sarup before filing the election petition on 26th of April, 1972. It is now this part of the argument which I propose to examine, whether the petitioner is entitled to ask for amendment of the election petition so as to delete the allegation of corrupt practice against Shri Ram Sarup.

19. The contention of the learned counsel for the respondent that the allegations in paragraph 9 of the petition by themselves, apart from paragraph 11(I)(i), amount to a corrupt practice within the meaning of Section 123(1)(A) cannot be accepted in view of the different phraseology used in Sections 123(1)(A) and 123(1)(B). The mere offence of illegal gratification by the returned candidate to another person would not be a corrupt practice so far as the other person is concerned. In order to bring into play Section 82(b), the mere fact that the returned candidate is guilty of corrupt practice will not make it corrupt practice vis-a-vis the other person under clause (A) of Section 123(1). For that purpose, recourse will have to be made to clause (B). In clause (B), the receipt of, or agreement to receive, any gratification by a person including any other candidate is a corrupt practice so far as he is concerned. If this construction is not accepted, then clause (B) becomes redundant. I am, therefore, not persuaded to hold that paragraph 9 constitutes a corrupt practice so far as Shri Ram Sarup is concerned. In fact, the learned counsel for the returned candidate did not seriously press this point.

20. There is no doubt that in the petition as presented, an allegation of corrupt practice occurs against Shri Ram Sarup in paragraph 11(I)(i). It is maintained by the learned counsel for the petitioner that before filing the petition it was decided not to make any allegation of corrupt practice against Shri Ram Sarup, and necessary corrections were made in the petition and the copies. This stand is supported by the testimony of Shri Mangal Sein petitioner P.W. 4, and Shri Malook Singh, counsel for the petitioner P.W. 5. To corroborate their testimony, the copies served on the other respondents have been got produced, but not all of them. The factual position that emerges is this: As already stated, in the original petition, there is a clear allegation of corrupt practice against Shri Ram Sarup. The petitioner relies on copies of the election petition, Exhibits P.W. 2/1, P. W 4/1, P.W. 4/2, P.W. 4/3, P. W 4/4, P.W. 4/5, P.W. 4/6, P.W. 4/8, P.W. 4/9, P.W. 5/1 and P.W. 5/2, for the contention that by mistake and inadvertence paragraph 9 and paragraph 11(I)(i) of the original petition were not corrected so as to exclude the name of Shri Ram Sarup. It is further maintained that in the aforesaid paragraphs, if the totaling is done, it comes to Rs. 32,000/- whereas the total is mentioned as Rs. 30,000/-. Therefore, the name of Shri Ram Sarup

was intended to be excluded.

21. The position that emerges from the study of the above exhibits is as follows:--

- (i) Paragraph 9 in Exhibits P.W. 2/1, P.W. 4/3, P.W. 4/4, P.W. 4/6, P.W. 4/8, P.W. 4/9 and P.W. 5/2 is identical with paragraph 9 of the original petition.
- (ii) Paragraph 11(I)(i) in Exhibit P.W. 4/6 is identical with paragraph 11(I)(i) in the original petition.
- (iii) Paragraph 9 has been altered by striking out Shri Ram Sarup's name with ink in Exhibits P. W 4/1, P.W. 4/5, and P.W. 5/1.
- (iv) In paragraph 11(I)(i) of Exhibits P.W. 2/1, P.W. 4/1, P.W. 4/3, P.W. 4/4, P.W. 4/5, and P.W. 5/2, the clause relating to Shri Ram Sarup has been scored off with ink.
- (v) In paragraph 11(I)(i) of Exhibits P.W. 4/2, P.W. 4/8, P.W. 4/9 and P.W. 5/1 the clause relating to Shri Ram Sarup has not been typed.
- (vi) In paragraph 11(I)(i), in Exhibit P.W. 2/1, clause relating to Shri Ram Sarup has been scored off by pen and ink but the serial numbering has not been corrected.

22. It will appear from the above analysis that no positive finding can be given that the intention to start with was to delete the name of Shri Ram Sarup. I am forced to this conclusion by the fact that the petitioner Mangal Sein as P.W. 4 admitted that before the petition and the copies were filed, the correction had been made. The petitioner had read the original petition as well as the copies and had compared the original with the copies. The information that the charge of corrupt practice originally sought to be made against Shri Ram Sarup was false was received by the petitioner when he was reading by the petitioner when he was reading the petition and it was at that stage that it was decided to drop the charge of corrupt practice against Shri Ram Sarup. The petitioner's testimony does not rest here. He satisfied himself that there was no allegation of corrupt practice made against Shri Ram Sarup in the petition. He categorically stated that he cut down the allegations of corrupt practice against Shri Ram Sarup, when his attention was drawn to the said allegations, his explanations was that by mistake they were not scored off. Thakar Malook Singh, Advocate, P.W. 5, admitted that he made corrections in the copies of the petition, but as the time was short, he may have omitted to do so in places where Shri Ram Sarup's name still occurs and has not been deleted. In fact, the learned counsel was put in precarious position when the matter came to Exhibits P.W. 5/1 and P. W 5/2. Exhibit P.W. 5/2, was typed from Exhibit P.W. 5/1, and curiously enough, the correction in Exhibit P.W. 5/1, is not mentioned in Exhibit P.W. 5/2.

23. To say the least, I am not satisfied with the testimony of either Shri Mangal Sein P.W. 4 or Thakar Malook Singh P.W. 5, and I cannot believe the story set up

that the allegation against Shri Ram Sarup was in fact dropped and it has inadvertently appeared in the election petition the explanation that in paragraph 11(I)(i), the total is Rupees 30,000/- whereas it should have been Rupees 32,000/- if the amount paid to Shri Ram Sarup was included therein, is not conclusive. In one of the items, Rupees 2,000/- each is said to have been paid to two persons, and while counting that, Rs. 2,000/- was not counted as Rs. 4,000/- as it should have been. Therefore, no conclusive argument can be built on this that the allegation in this paragraph against Shri Ram Sarup remained in the original petition by inadvertence. In the verification, paragraphs 1 to 10, 11(a) to (d), (e)(vii), (f), (I)(v), (K), (N), (O), and (P), 12 to 15 have been verified as true to knowledge and paragraphs 11(e)(i) to (vi), (h)(i) to (iv), (J), (L) and (M) have been verified true according to the information received and believed to be true. In the affidavit accompanying the petition, in paragraph (a) it is stated:--

"I have read the whole of the petition and have signed it after reading it and understanding it."

In paragraph (d), it is stated that the "statement of fact made in paragraphs 11(I)(i) to (v),..... are correct partly to my knowledge and also information from Shri Hukam Chand Goyal, Shri Maya Krishnan, Radhey Sham Tayal, Parma Nand Tuli....."

24. One more significant fact is that Maya Krishnan has not been examined as a witness though his name figures in the affidavit attached to the petition, but in the petition his name does not figure.

25. Shri Malook Singh also stated that the final draft of the petition came to him on 25th April, 1972. Therefore, all the copies must have been prepared along with the original and were in the hand of the petitioner on 26th Morning. It is when the petitioner was comparing the copies and the original that Maya Krishnan is reported to have brought the information that allegations of corrupt practice against Shri Ram Sarup are false. Therefore, all that was needed to be done was to make the necessary corrections in the petition and if this had been done there would be no divergence in the copies that have been filed. The very fact that there is considerable divergence in the copies and the original and there is no uniformity, clearly proves that the whole thing was handled in a slipshod manner and no positive conclusion can be drawn that any mistake was made.

26. The learned counsel for the petitioner relies on the following circumstances in support of his case:--

(a) That the election petition was filed on the last date of limitation.

(b) That as many as seventeen copies had to be filed.

(c) That the entire petition and the copies were ready when the information was brought by Maya Krishnan and then the decision was taken to delete the name of Shri Ram Sarup on the 26th of April, 1972.

(d) That the petitioner instructed his counsel to delete the name of Shri Ram Sarup.

(e) That the first page of the petition was substituted.

(f) That corrections have been made in the original and the copies.

(g) That in the copies produced by respondent No. 1, the allegation in paragraph 11(I)(i) pertaining to Shri Ram Sarup is not there, and

(h) That the same has been scored out in Exhibits P.W. 4/1, P.W. 4/5, and P.W. 2/1.

27. It is significant that the allegation that the first page of the petition was changed after the arrival of Maya Krishnan is also not borne out on the evidence in the case. The draft petition has not been produced, there is no evidence that the first page of the draft petition contained Shri Ram Sarup's name.

28. These circumstances taken as a whole or individually, do not alter the complexion of the case. On the other hand, they lead to the conclusion that the allegation of corrupt practice against Shri Ram Sarup was not dropped and only when this fact dawned on the petitioner that the explanation now offered was invented to save the petition from being dismissed.

29. The matter can be examined from a different stand-point. It is the original petition which is the document which has to be looked at. No amendment of the original petition is permissible after the period of limitation to include an allegation of corrupt practice, though of course an allegation of corrupt practice can be dropped at a later stage. It is quite understandable that the allegation of corrupt practice against Shri Ram Sarup was put in the petition without realising that if such an allegation was made against him he had to be impleaded as a party, and now the entire attempt is to drop that allegation. I cannot look at the copies to whittle down what is stated in the original petition. Copies have to take colour from the original petition and not the original petition from the copies. Moreover, amendment of an election petition is not permissible.

30. It will be profitable at this stage to refer to the decision of the Supreme Court in K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, , which does not help to settle the present problem. The relevant parts of the observations occur at page 877 and are reproduced below:--

"Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election petition. Under Order 6, Rule 17, Code of Civil Procedure, a Court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the Court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of Limitation. But Section 86(5) of the Act provides for restrictions on the power of the High

Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1, Rule 10 subject to the added party's right to contend that these suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-section (4) of Section 86. Section 22 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. u/s 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.

It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such petition and the powers of the Court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all Civil Proceedings and some special criminal proceedings, which can be taken in a Court of Law unless the application thereof has been excluded by any enactment; the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act."

31. It is also clear from the verification that the petitioner had made up his mind to make allegations of corrupt practice against Shri Ram Sarup. Even when an application was made to Court on 5th June, 1972, for putting in additional copies no attempt was made to compare them with the original, otherwise at the earliest opportunity steps would have been taken to set up the case which has now emerged from evidence. On the 18th July, 1972, an application was made under Order 6, Rule 17. Code of Civil Procedure, and again no attempt was made to get rid of paragraph 11(1)(i). It is for the first that on the 2nd September, 1972, by another application for amendment, it was alleged that paragraph 11(I) (i)(b) figures in the petition by inadvertence and by reason of a clerical mistake.

32. I am, therefore, clearly of the view that no ground has been made out to permit amendment of the original petition. No case has been made out for deleting the allegation of corrupt practice against Shri Ram Sarup. The effect of Section 81, read with Section 86 of the Act, cannot be whittled down as is sought to be done by the petitioner in the present case. It may be unfortunate that serious allegations of corrupt practice against the returned candidate would

remain untried but the law must take its own course.

33. For the reasons recorded above, I decide Issue No. 1 against the petitioner and hold that the petition must fail for want of compliance with the provisions of Section 82(b), read with Section 86 of the Act.

Issue No. 2:

34. On the evidence led in the case, it is difficult to hold that there is non-compliance of Rule 12(f) of the Rules framed by the High Court and Section 81 of the Act, and even if there is any slight non-compliance it does not render the petition liable to dismissal. This issue was also not very seriously pressed by the learned counsel for the returned candidate. This issue is accordingly decided against the returned candidate.

Issue No. 3:

35. The learned counsel for the returned candidate has raised two contentions under this issue. His first contention is that the two copies sent to him, Exhibits P.W. 4/8 and P. W 4/9 have not been attested to be true copies under the signatures of the petitioner. This is so, it is, therefore, maintained that there is violation of Section 81(3) and the petition must fail in view of Section 86 of the Act. The second contention is that the copies supplied to the returned candidate are not correct copies of the original and, therefore, the petition is to fail in view of Section 86 of the Act.

36. So far as the first contention is concerned, when the petition was filed in this Court, it was accompanied by eight copies, and the office made a note that the petition was in order. If the eight copies had not been verified and signed by the petitioner, the office would have made a different report. According to the rules framed by this Court, the petitioner had to file seventeen copies of the present case. The remaining nine copies were filed later on, and it is possible that the office sent two copies out of the nine copies that were filed later on, and in this situation, I am not prepared to penalise the petitioner. I would, therefore, repel the first contention.

37. So far as the second contention is concerned, the position is like this: According to the petitioner and his counsel, nine copies out of seventeen copies of the petition did not bear the signature of the petitioner. Only on eight copies the signatures of the petitioner and his counsel were appended. The copies produced in Court are Exhibits P.W. 2/1, P.W. 4/1, P.W. 4/2, P.W. 4/3, P. W 4/4, P.W. 4/5, P.W. 4/6, and P.W. 4/8. Shri Malook Singh produced his office copy Exhibit P.W. 5/1, and a copy Exhibit P.W. 5/2 sent with notice of application dated 5-6-1972, to respondent No. 1. It is common case that respondent No. 1 did not get a copy which was attested to be a true copy by the petitioner. However, the petitioner did file eight copies attested by him for service on the respondents who are eight in number, and if the office had been diligent, respondent No. 1 would have got a copy duly attested by the petitioner. The copies produced and

Exhibited in the case which are attested by the petitioner are Exhibits P.W. 4/1, P.W. 4/2, P.W. 4/3, P.W. 4/4, P.W. 4/5, P.W. 4/6 and P.W. 5/2. Copies Exhibits P.W. 4/1 and P.W. 4/2 were served on Shri Om Parkash Harijan. P.W. 4/3 was served on Shri Ved Parkash and so also Exhibit P.W. 4/4. Exhibit P.W. 4/5 was served on Shri Gobind Lal Satyarthi. Only Exhibit P.W. 5/2 was sent to the returned candidate. Exhibit P.W. 4/6 was produced by the petitioner.

38. It will be clear from the various copies signed by the petitioner, produced in the case that there is material difference between the original and the signed copies. To illustrate this, I am reproducing below the relevant parts of the original petition and the corresponding parts of the Copy Exhibit P.W. 4/2. The portions underlined in the original petition as well as in the copy indicate the difference between the two:--

ORIGINAL PETITION EXHIBIT P.W. 4/2

In paragraph 11(c) it is stated:-- "Shri Balbir Singh was present before the Returning Officer at the time of scrutiny of his nomination paper. Petitioner, other candidates and their agents were also present at the time of scrutiny, At the time of scrutiny, when it was pointed out to Shri Balbir Singh that he had not made mention in Col. (a) about the number of years of his life he had completed, he replied that he had completed the age of 40 years and that he was fully eligible to contest the election in question.....Other candidates and their agents supported the explanation of Shri Balbir Singh and requested the Returning Officer to accept his nomination paper, but the Returning Officer, without giving any consideration to the explanation and the offer of Shri Balbir Singh, rejected his nomination paper improperly although Shri Balbir Singh had stated....." In Paragraph 11(c) it is thus stated:-- "Shri Balbir Singh was present before the Returning Officer at the time of scrutiny of his nomination paper. Petitioner, other candidates and their agents were also present at the time of scrutiny. At the time of scrutiny, when it was pointed out to Shri Balbir Singh that he had not made mention in col. (a) about the number of years of his life he had completed he replied that he had completed the age of 40 years and that he was fully eligible to contest the election in question.....Some candidates and their agents supported the explanation of Shri Balbir Singh and requested the Returning Officer to accept his nomination paper, but respondent No. 1 opposed and the Returning Officer, without giving any consideration to the explanation and the offer of Shri Balbir Singh, rejected his nomination paper improperly although Shri Balbir Singh had stated.....".

ORIGINAL PETITION EXHIBIT P. W 4/6

Paragraph 11(1)(i)(b): "A sum of Rs. 2,000/- was paid to Shri Ram Sarup. Paragraph 11(J)(iii): "A public meeting held at Gandhi Camp." Paragraph 11(J)(vii): " A public meeting was also held at Julahan Chowk." Paragraph 11(I)(i)(b): This is missing. Paragraph 11(J)(iii): "General Public meetings were held at

Gandhi Camp." Paragraph 11(J)(vii): "Public meeting was held on Chowk Rohtak."

Note: In Exhibits P.W. 4/1, P.W. 4/3, and P.W. 4/4, Clause (vii) is missing.

39. It will appear from the comparison of the original with the copy that the differences are not such that there can be no possibility of misunderstanding. In fact, these differences can easily mislead an ordinary person.

Section 81(3) of the Act provides that:--

"Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 86(1) of the Act provides:--

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81....."

The question whether the provisions of Section 81 are directory or mandatory was left undecided by the Supreme Court. See Jagat Kishore Prasad Narain Singh Vs. Rajendra Kumar Poddar and Others, . However it was held that Section 81(3) has to be substantially complied with. While dealing with this matter, their Lordships observed as follows:--

"The requirements of Section 81(3) have been laid down by this Court in Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, . In that case this court ruled that the word "copy" in Section 81(3) of the Act did not mean an absolutely exact copy but a copy so true that nobody could by any possibility misunderstand it, and that the test whether a copy was a true one was whether any variation from the original was calculated to mislead an ordinary person. The same view was taken by this Court in Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad, ."

40. In view of the clear pronouncement of the Supreme Court and the fact that the discrepancies in the original petition and the copies attested by the petitioner are material and can mislead the returned candidate in the matter of his defence, there is no alternative but to hold that the provisions of Section 81(3) have not been complied with. Once it is held that these provisions have not been complied with subsequently, the necessary consequences is that the petition must be dismissed in view of Section 86(1) of the Act.

41. I, therefore, decide Issue No. 3 in favour of the returned candidate and against the petitioner.

42. For the reasons recorded above, this petition fails and is dismissed with costs which are assessed at Rs. 500/-.

43. Petition dismissed.